



Crown  
Commercial  
Service



Government  
Communication  
Service

Call-Off Contract

Letter of Appointment

Call-Off Schedules v2.0

Campaign Solutions 2

Reference Number RM6125

Lot 3 Content Versioning &  
Distribution

DWP Project 24608 ITT\_8125 ecm\_9941

Creative Media Productions

## Contents Page

Introduction to Terms and Conditions.....	3
Letter of Appointment Template and Call-Off Schedules (Framework Schedule 6).....	4
Call-Off Schedule 1 (Transparency Reports) .....	64
Call-Off Schedule 2 (Staff Transfer).....	65
Call-Off Schedule 3 (Continuous Improvement) .....	124
Call-Off Schedule 4 (Proposal) .....	126
Call-Off Schedule 5 (Pricing Details).....	126
Call-Off Schedule 6 (ICT Services) .....	126
Call-Off Schedule 7 (Key Agency Staff).....	126
Call-Off Schedule 8 (Business Continuity and Disaster Recovery) .....	128
Call-Off Schedule 9 (Security).....	135
Call-Off Schedule 10 (Exit Management) .....	156
Call-Off Schedule 13 (Implementation Plan and Testing) .....	164
Call-Off Schedule 14 (Service Levels) .....	181
Call-Off Schedule 15 (Call-Off Contract Management).....	186
Call-Off Schedule 16 (Benchmarking) .....	188
Call-Off Schedule 20 (Call-Off Specification).....	193

## Introduction to Terms and Conditions

The Terms and Condition of the Campaign Solutions 2 framework agreement are provided in two legally binding contracts:

- Framework Contract - this will be the overarching contract between CCS and the individual agencies successfully awarded a place on the Campaign Solutions 2 Framework Agreement.
- Call-Off Contract - this provides the terms and conditions of the contract for clients appointing an agency through the framework agreement.

### Core Terms

These are the main legal terms which apply to both the Framework Contract and the Call-Off contract. The Core Terms govern the agency's relationship with CCS at framework level and with each client at call-off level.

The Core Terms are supplemented with a number of Schedules, comprising:

- Framework schedules
- Joint schedules (for framework and call-off)
- Call-off schedules

### The Framework Contract

This comprises:

- The Specification which sets out the range of campaign services to be provided through the Framework Agreement (Framework Schedule 1)
- The process clients must follow to appoint an agency (Framework Schedule 7 - Call-Off Award Procedure)
- The tender and rates submitted by the Agency in this tender process
- The Core Terms and Joint Schedules of the contract which apply to both the Framework and the Call-Off Contract as above
- Specific Framework Schedules relating to the framework contract between CCS and the Agency

### The Call-Off Contract

Please note the Call-Off Contract should be read in conjunction with the Framework Contract. It is governed by the Core Terms as above and comprises:

- Joint Schedules as in the Framework Contract

- The Letter of Appointment template which is used to form the contract between the Client and the Agency and incorporates Joint and Call-Off Schedules plus any special terms (Framework Schedule 6)
- Specific Call-Off Schedules relating to the contract between the Client and the Agency

### The Process

To appoint an agency through the framework, clients will follow the process outlined in the Schedule 7 of the Framework Contract.

The Client will then use the Letter of Appointment template and incorporate the Joint and Call-Off Schedules in Framework Schedule 6 to form the Call-Off contract with the Agency.

Clients will complete the Call-Off schedules to suit their individual brief and can omit Call-Off Schedules which are not relevant to the contract. The optional schedules are highlighted in yellow and can be amended by the client to suit the requirement.

There are optional Call-Off terms which will only apply to certain clients (MOD and HMRC) and clients subject to Scottish or Northern Ireland laws. These are available as separate documents and do not need to form part of the Call-Off Contract unless required, if they form part of the Call Off Contract they will be legally binding.

The contracts follow the Public Sector Contract which presents the terms and schedules in a modular format. We have brought elements together into single documents but have retained the numbering of the individual terms and schedules for wider consistency. This means the clause numbering is not consecutive.

## **Letter of Appointment Template and Call-Off Schedules (Framework Schedule 6)**

### **Letter of Appointment**

The Agency is one of a number of agencies appointed by the Crown Commercial Service (CCS) to the Framework Agreement and is therefore able to enter into this Call-Off Contract.

## **DPS FRAMEWORK SCHEDULE 4: LETTER OF APPOINTMENT AND CONTRACT TERMS**

### **Part 1: Letter of Appointment**

TAG

REDACTED DATA PROTECTION

Dear Sir

### **Letter of Appointment**

#### **Project\_24608 ecm\_9941 Creative Media Productions**

This letter of Appointment dated 28<sup>th</sup> March 2022 is issued in accordance with the provisions of the DPS Agreement (RM6125 Lot 3) between DWP and the Supplier.

Capitalised terms and expressions used in this letter have the same meanings as in the Contract Terms unless the context otherwise requires.

The terms and expressions “Authority” and “Client” shall have the same meaning unless the context otherwise requires.

Purchase Order Number:	Purchase Orders will be raised for each individual Campaign Project and the Purchase Order number shared with the Supplier at Project start.
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From:	Department for Work and Pensions ("Authority")
To:	TAG Europe Limited ("Supplier")
Effective Date:	Monday 28/03/2022
Expiry Date:	<p>The contract will be for a 2-year initial term from 28/03/2022 to 27/03/2024. With option to extend, at the sole discretion of the Authority, of 1+1 years, taking the term to a maximum expiry of 27/03/2026 (4-years in total).</p> <p>There will be no further option to extend beyond the 4 years to 27/03/2026</p> <p>Minimum written notice to Supplier in respect of extension: 4 weeks</p> <p>This Contract is a Standby agreement for a fixed period of time to work on any number of campaigns. Payment for this arrangement is per campaign and no work is committed.</p>
Services required:	<ul style="list-style-type: none"> <li>• Set out in Section 2, Part B (Specification) of the DPSA Agreement and refined by the: Customer's Project Specification attached at Call-Off Schedule 4</li> <li>• Supplier's Proposal attached at Call-Off Schedule 4 and 5</li> </ul>

Key Individuals:	DWP – REDACTED DATA PROTECTION
	TAG Europe Limited – REDACTED DATA PROTECTION
[Guarantor(s)]	N/A
Contract Charges (including any applicable discount(s), but excluding VAT):	<p>This is a Standby agreement for a fixed period of time to work on any number of campaigns. Payment for this arrangement is per campaign and no work is committed.</p> <p>The maximum contract value for the initial period of 2 years will be £750,000 (excluding VAT). Should the option to extend be executed, the maximum contract value for each single year extended will be £375,000 per year (excluding VAT), up to a total maximum of £1,500,000 (excluding VAT) for the full term of 4 years.</p> <p>In accordance with Clause 4.4 of the Framework Contract, the Supplier shall invoice the Authority for the GCS Management Charge, which is currently set at 1% of the total net contract value excluding VAT, and shall detail this charge as a separate line item on each invoice. The Supplier shall pay the GCS Management Charge to CCS when it pays the Framework Contract Management Charge.</p> <p>REDACTED COMMERCIALY SENSITIVE</p>

Insurance Requirements	Sufficient Public Liability insurance. Employer's liability insurance, Professional indemnity insurance and Product liability insurance sufficient to cover all risks in the performance of the Contract.
Liability Requirements	Suppliers limitation of Liability (Clause 18.2 of the Contract Terms)
Customer billing address for invoicing:	Invoices to be submitted to SSCL Via Email to APinvoices-DWP-U@gov.sscl.com.  Copy to DWP Contract Manager - contact details to be provided at commencement.
GDPR	Section 29 and Schedule 7 of the Framework Terms and Conditions referring to the Suppliers general security obligations to comply with GDPR regulations for this Contract.
Alternative and/or additional provisions (including Schedule 8(Additional clauses)):	N/A

## FORMATION OF CONTRACT

### BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may

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DWP v5 24/03/22 Final



be done by electronic means) the Supplier agrees to enter a Contract with the Customer to provide the Services in accordance with the terms of this letter and the Contract Terms.

The Parties hereby acknowledge and agree that they have read this letter and the Contract Terms.

The Parties hereby acknowledge and agree that this Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Supplier within two (2) Working Days from such receipt

For and on behalf of the Agency:		For and on behalf of the Client:	
Signature:	REDACTED	Signature:	REDACTED
Name:		Name:	
Role:		Role:	
Date:		Date:	

#### PROGRESS REPORT FREQUENCY

Quarterly on the first Working Day of each quarter

#### PROGRESS MEETING FREQUENCY

Quarterly on the first Working Day of each quarter

#### KEY SUBCONTRACTOR(S)

No Subcontractors appointed

#### COMMERCIALLY SENSITIVE INFORMATION

The Supplier considers the following items to be Commercially Sensitive Information (or contains personal information) and has indicated the reasons for commercial sensitivity and the duration of confidentiality (and paragraph 1 of Joint Schedule 4 shall also apply to these items):

- Pricing and rates: The disclosure of this information would prejudice the commercial interests of the organisation. Duration of confidentiality: The duration of any agreement and three years thereafter.
- Revenue, Cost, Profit, Margin, EBIT: The disclosure of this information would prejudice the commercial interests of the organisation. Duration of confidentiality: The duration of any agreement and three years thereafter.
- Information describing security controls, technology and network: The disclosure of this information would prejudice the commercial interests of the organisation and represents an increased risk of security attacks. Duration of confidentiality: The duration of any agreement and five years thereafter.
- Third party suppliers regarding Tag's technology: the disclosure of this information would prejudice the commercial interests of the organisation. Duration of confidentiality: The duration of any agreement and five years thereafter.
- Employee details: We believe public disclosure of any personally identifiable data would be disproportionate to any commercial purpose under the contract and would potentially contravene Data Protection restrictions. Duration of confidentiality: Perpetual
- Client references including client names, case studies (not in the public domain), contract values and contact details: Due to client confidentiality agreements, we are unable to disclose references to client information to the wider public. Duration of confidentiality: The duration of any agreement and three years thereafter.

#### SOCIAL VALUE COMMITMENT

The Agency agrees, in providing the Deliverables and performing its obligations under the Call-Off Contract, that it will comply with the social value commitments in Call-Off Schedule 4 (Call-Off Proposal)

#### CALL-OFF INCORPORATED TERMS

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

1. This Letter of Appointment including the Call-Off Special Terms and Call-Off Special Schedules.
2. *Joint Schedule 1 (Definitions and Interpretation) RM6125*

3. *The following Schedules in equal order of precedence:*
- *Joint Schedules for RM6125*
    - *Joint Schedule 2 (Variation Form)*
    - *Joint Schedule 3 (Insurance Requirements)*
    - *Joint Schedule 4 (Commercially Sensitive Information)*
    - *Joint Schedule 6 (Key Subcontractors) **Not Used***
    - *Joint Schedule 7 (Financial difficulties)*
    - *Joint Schedule 8 (Guarantee)*
    - *Joint Schedule 10 (Rectification Plan)*
    - *Joint Schedule 11 (Processing Data)*
  - *Call-Off Schedules for 24608 Creative Media Productions*
    - *Call-Off Schedule 1 (Transparency Reports)*
    - *Call-Off Schedule 2 (Staff Transfer) **Parts C & E only Applies***
    - *Call-Off Schedule 3 (Continuous Improvement)*
    - *Call-Off Schedule 5 (Pricing Details)*
    - *Call-Off Schedule 6 (ICT Services) **Not Used and Removed***
    - *Call-Off Schedule 7 (Key Supplier Staff)*
    - *Call-Off Schedule 8 (Business Continuity and Disaster Recovery)*
    - *Call-Off Schedule 9 (Security)*
    - *Call-Off Schedule 10 (Exit Management)*

- *Call-Off Schedule 13 (Implementation Plan and Testing)*
- *Call-Off Schedule 14 (Service Levels)*
- *Call-Off Schedule 15 (Call-Off Contract Management)*
- *Call-Off Schedule 16 (Benchmarking)*
- *Call-Off Schedule 17 (MOD Terms) **Not Used and Removed***
- *Call-Off Schedule 18 (Background Checks) **Not Used and Removed***
- *Call-Off Schedule 19 (Scottish Law) Not Used*
- *Call-Off Schedule 20 (Call-Off Specification)*
- *Call-Off Schedule 21 (Northern Ireland Law) **Not Used and Removed***
- *Call-Off Schedule 23 (HMRC) **Not used and Removed***

4. CCS Core Terms

5. Joint Schedule 5 (Corporate Social Responsibility) RM6125

6. Call-Off Schedule 4 (Proposal) as long as any parts of the Call-Off Proposal that offer a better commercial position for the Client (as decided by the Client) take precedence over the documents above.

No other Agency terms are part of the Call-Off Contract. That includes any terms written on the back of, or added to this Order Form, or presented at the time of delivery. For the avoidance of doubt, the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services and produce goods which are the same or similar to the Deliverables.

## **ANNEX A**

**Agency Proposal (Below) – Also See Call-Off Schedule 4 and 5**

**REDACTED**

## **FULL RATE CARD AND TYPICAL BRIEF RATE CARD**

**REDACTED**

## Annex B

### Statement of Work

This Statement of Work is issued under and in accordance with the Call-Off Contract entered into between parties dated Monday 28<sup>th</sup> March 2022



Department  
for Work &  
Pensions

## Bid Pack

### Attachment 3 – Statement of Requirements

Contract Reference: Bravo – 24608

Creative Media Production ITT\_8125 - RM6125 Lot 3

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#### CONTENTS

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#### 1. **PURPOSE**

- 1.1 This document sets out the services the authority requires to call off from the Content Versioning and Distribution lot 3 on Campaign Solutions 2 Framework (RM6125). The requirement covers services deliver for Department for Work and Pensions (DWP).

#### 2. **BACKGROUND TO THE CONTRACTING AUTHORITY**

1. The Authority, the Department for Work and Pensions (DWP), is a major Government Department responsible for welfare, pensions and child maintenance policy. As the UK's biggest public service department it administers the State Pension and a range of working age, disability and ill health benefits to around 20 million claimants and customers.
2. DWP is a ministerial department, supported by [15 agencies and public bodies](#).
3. DWP provides services in a number of ways, for example through Jobcentre Plus, The Pension Service, the Child Maintenance Service and partner organisations.
4. For more information on the work and overall objectives of the Department, please follow the links to the gov.uk website and single Departmental Plan 2018-22:
5. <https://www.gov.uk/government/organisations/department-for-work-pensions/about>

6. <https://www.gov.uk/government/publications/department-for-work-and-pensions-single-departmental-plan>

### 3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1 This is a new requirement for the Authority. The Authority aims to award a new Agreement no later than Mid-February 2022. The service delivery requirements will be as specified in this Statement of Requirements. The services required will be under a fixed term agreement - a contract for services for one or multiple projects within a fixed time period.

### 4. DEFINITIONS

Expression or Acronym	Definition
DWP	Means: The Department of Work & Pensions
The Authority	Means: The Department of Work & Pensions
SMEs	Means: Small and Medium Enterprises
COVID-19	Means: Coronavirus

### 5. SCOPE OF REQUIREMENT

- 5.1 The Authority requires the Supplier to provide the following services, within scope of the requirement:

5.2 We require an agency to work across all campaigns in the DWP Communications Directorate, that can adapt our core creative work, producing asset variations that are impactful and optimised to media channels. The main work areas include but are not limited to Pensions, Universal Credit, Labour Market and Disability communications.

5.3 The agency must have extensive expertise in tailoring creative to achieve audience engagement, beyond simple typesetting and reformatting. The agency must also be experts in supplying creative assets to media and will be able to work with media agencies and media owners to ensure smooth transfer of creative assets.

5.4 The Communications Directorate must be able to respond quickly to new urgent requests from Ministers. Therefore, the agency must also have a good degree of capacity, so that they can respond rapidly, in an agile way, to deliver work at pace. We will need to agree standard response times.

5.5 The agency must work collaboratively, complementing the work of our in-house design teams, and our lead creative and media agencies. This means identifying opportunities to communicate our core creative idea in new and innovative ways, based on a profound understanding of the changing media environment. Open-source design files should be supplied to us once work is completed so that we can make further iterations in-house, if needed.

#### 5.6 Mandatory constraints/ services needed



Sophisticated asset versioning: creating impactful, innovative creative asset adaptations, at speed, based on core campaign creative. Digital assets must be accessible and meet level AA of the Web Content Accessibility Guidelines ([WCAG 2.1](#)) as a minimum and contain subtitles unless determined to be unsuitable for the platform. These services will be provided across a variety of formats, including but not limited to:

- Photography
- Videography: including video and film production for TV and digital media
- Animation
- Logos
- Website and microsite production
- Infographics
- Music
- Audio: including podcast production, radio ads and digital audio
- Documents and statics: including Out of Home, direct mail, leaflets and social statics

5.7 Supplying assets to media agencies and media owners: playout and distribution services to manage cross media delivery of assets to either the broadcasters, to the Media Buying Agency or to digital delivery platforms. This includes but is not limited to:

- Ensuring that formatting is correct for every channel, media owner and platform. For example, ensuring assets are print-ready for print media.
- Ensuring content meets regulatory requirements
- High quality broadcast-grade transcoding from original masters and instant quality checks
- Ensuring secure delivery of ads from a single platform
- Enabling full visibility of ads for Clients before, during and after campaigns go live

5.8 Translation and transcreation services across a variety of different formats. Services include but are not limited to:

- Translation Services including a translation management system. We have a statutory obligation for Welsh language, so ability to translate into Welsh translation will be particularly key to avoid unnecessary complexity in needing to out-source this to another supplier.
- Transcreation Services
- Terminology and translation memory and glossaries
- Cultural insight and consultation
- Validation
- Editing, reviewing and copywriting (including proofing)

5.9 A Digital Asset Management (DAM) platform that enables access to all Clients and their Agency Partners. This platform must be fully compliant with UK GDPR and all other relevant data protection legislation and best practises.

## **5.10 Audiences (Insight)**

Audiences The main work areas include but are not limited to Pensions, Universal Credit, Labour Market and Disability communications.

The range of people the Department speaks to across a broad spread of campaigns is huge and the agency will be provided with the latest audience data and insights for each new piece of work, as needed.

#### **5.12 Constraints that may preclude agencies from accepting this brief**

The agency will need to provide agile support over the full contract period.

We will work closely with the agency to plan activity as far in advance as possible.

In addition to planned work, we will need the agency to respond at pace to ad hoc requests.

This will require the agency to deliver outputs within short timescale.

#### **5.12 Budget**

There is no guaranteed spend for these requirements but based on planned campaign activity the Authority forecast the potential spend on this contract will not exceed the maximum upper limit of £1.5m over 4 years.

#### **5.13 Timescales**

The Authority will require the agency to commence service delivery in February 2022.

#### **5.14 Additional Information**

Additional information Zip file is attached as **Attachment 3b**.

##### **5.14.1 Terms and Conditions**

The Supplier is required to meet and adhere to all Terms and Conditions contained within the Campaign Solutions 2 Framework.

The Supplier must meet and adhere to any additional requirements that are specified within this document and/or included as part of the tender process throughout the life of the Agreement, unless otherwise specified by the Authority.

##### **5.14.2 Agreement Duration**

The Agreement between the two Parties shall be awarded on the basis of a period of forty-eight (48) months.

The Authority reserves the right to terminate the contract at the end of the first or the end of the second year of the contract. Call Off Contract notice periods will apply should the Authority wish to take this action. The Authority will not be liable for any exit costs should this clause be enacted.

##### **5.14.3 Successful Appointment**

The Supplier selected for Award of the proposed Agreement will be appointed as the primary supplier of Versioning to the Authority.

#### **5.15 Agency Response (evaluation)**

Agency to confirm in writing if they can provide the work as stipulated in this document.

Agency to complete response to a typical brief (see **Attachment 3a**), examples of the types of requirement that may be expected (i.e. put through the contract). Please provide methodology, resource plan, timeline and costs for quality (technical) and Price (cost) evaluation.

## **6. THE REQUIREMENT**

General requirements:

The Supplier must meet all minimum requirements as specified in the Campaigns Solutions 2 Framework.

The full requirement can be found in Annex 1 [Framework Schedule 1 (Specification)].

Managed services associated with the above-named services, including but not limited to:

Provision of Management Information relating to the contract and its performance, spend and social value reporting;

Dedicated account management to support the effective delivery of services and ensure the performance of the Contract in line with the agreed service levels; and

Continuous improvement activities.

## **7. KEY ACHIEVEMENT MILESTONES AND DELIVERABLES**

The Milestones and deliverables will be agreed for each individual call-off made by the Client

The following Contract milestones/deliverables shall apply:

<b>Milestone</b>	<b>Requirement, provision of:</b>	<b>Timeframe for delivery</b>
1	Implementation Plan	Within two (2) weeks of initial Start-Up Meeting if not already provided in proposal

2	Key personnel / teams contact details and Detailed standard operating procedures for complaints and issues resolution and escalation.	Within one (1) weeks of contract Award if not already provided in proposal
3	Life Chances workforce monitoring	Within Six (6) months of contract Award and then annually

## 8. MANAGEMENT INFORMATION/REPORTING

### Detailed Management Information (MI) Reporting

1. When requested, the Supplier must provide management information (MI) on the performance and finance relating to the contract.
2. Acknowledgment of a request for MI must be sent to the requester within one (1) working day and receipt of the MI within 5 working days of acknowledgment.
3. Performance Reporting. The Supplier must provide performance reports against the KPIs applicable to the contract, as detailed in the Service Levels and Performance section of this specification on a monthly basis, no later than the 7<sup>th</sup> working day of the following month.

### Social Value & Life Chances Reporting

3. The Supplier is expected to support the Authority in its efforts to support Government priorities to boost growth and productivity, help our communities recover from the COVID-19 pandemic, and tackle climate change.
4. The Supplier must ensure the following reporting metrics are adhered to in line with the Social Value Model for this Agreement: The Authority has identified one key theme under the [Social Value Model](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940828/Social-Value-Model-Quick-Reference-Table-Edn-1.1-3-Dec-20.pdf) to be monitored and continually improved upon throughout the life and duration of the Contract: Theme 4: Equal Opportunity – Tackle Workforce Equality  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/940828/Social-Value-Model-Quick-Reference-Table-Edn-1.1-3-Dec-20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940828/Social-Value-Model-Quick-Reference-Table-Edn-1.1-3-Dec-20.pdf)

### Freedom of Information requests (FOIs) and Parliamentary Questions (PQs)

5. The Authority may request ad hoc MI from the Supplier to support individual data requests as relates to Freedom of Information requests and Parliamentary Questions.
6. Due to the nature of these requests, the deadlines may vary and will be communicated to and agreed with the Supplier in writing at the point of the request.

## 9. VOLUMES

All campaigns are subject to approval by Ministers and through the Cabinet Office Professional Assurance process and therefore there is no guaranteed spend against this contract.

## 10. CONTINUOUS IMPROVEMENT

1. The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
2. The Supplier should present opportunities and recommendations for Continuous Improvement to the Authority during Contract review meetings.
3. Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed in writing prior to any changes being implemented.

## 11. SOCIAL VALUE

Public Services (Social Value) Act 2012

1. The following relates to the 'Public Services (Social Value) Act 2012' and will be ap-

plied to secure wider social, economic and environmental benefits from the Agreement.

2. The Supplier acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and agrees to cooperate

with the Authority to improve life chances for those most disadvantaged and furthest from the labour market.

3. The Supplier acknowledges that the Authority is supporting the Crown's Life Chances and Social Value agendas by aiming to promote opportunities for groups of persons 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.

4. Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Supplier as an on-going item at Contract review meetings.

5. The Supplier shall, and shall ensure that its sub-contractors, take the following action(s) in respect of DWP Priority Groups:

1. Apprentices:

1. Make available to potential members of Staff used in the performance of the Supplier's obligations information about the National Apprenticeship Service.

2. Disabled People:

1. Take steps to become a Disability Confident Employer.

2. Make appropriate use of Access to Work to support recruit and retain disabled workers.

3. Provide Employment Experience to Disabled People as members of staff used in the execution of the Supplier's obligations under the Contract, to develop their skills and experience and increase their employability.

3. Employment experience: provide employment experience to young people as members of staff used in the performance of the Supplier's obligations under the Contract to develop their skills and experience and increase their employability for:

1. Young People – Under 25

2. Older Workers – Over 50

3. Ex-Offenders

4. Black and Minority Ethnic People

6. Employee Vacancies: advertise all vacancies for staff via universal jobmatch in addition to any other recruitment agencies with whom the Supplier advertises such vacancies and any other actions the Supplier takes to recruit Staff.

7. The Supplier shall provide the Life Chances Workforce Monitoring template duly completed in full in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Supplier's obligations under the Contract), Six (6) months after the Service Commencement date and annually thereafter.

8. The Supplier shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.

## **12. QUALITY**

The Supplier must meet all quality standards and requirements as specified in the Campaigns Solutions 2 Framework

## **13. PRICE**

1. Prices are to be submitted via the e-Sourcing Suite Attachment 4 – Price Schedule excluding VAT and including all other expenses relating to Contract delivery.

## 14. STAFF AND CUSTOMER SERVICE

### 1. Complaints and Issue resolution:

1. The Supplier must ensure a robust complaints and issues resolution procedure is in place to deal with customer queries or complaints.
2. The Supplier must ensure that all complaints are acknowledged within one (1) working day of receipt from the customer.
3. The Supplier must ensure that all complaints are resolve, or a plan to resolve has been documented and agreed with the customer, no later than ten (10) working days from receipt of the original complaint.
4. The Supplier must ensure their designated Account Manager is aware of complaints which remain unresolved by the deadline of ten (10) working days from receipt, and must escalate to the Authority's contact in writing with a summary of actions taken to-date, for their awareness and review.
5. The Supplier is expected to provide a summary of complaints and issues at review meetings.

### 2. Escalation procedures:

1. The Supplier must ensure a robust escalation procedure is in place for any unresolved complaints and issues, to be reported to the appointed DWP Operational Supplier Manager.
2. The Authority's designated Operational Supplier Manager (OSM) for the contract will monitor the level of complaints and resolution times with a view to increasing customer satisfaction and improving Supplier performance.
3. The Supplier must ensure that all escalations from the Authority's OSM for unresolved complaints and issues, are acknowledged within one (1) working day of receipt.
3. The Supplier is expected to provide copies of detailed standard operating procedures for complaints and issues resolution and escalation within two (2) weeks of contact Award.
4. The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract to the required standard.

## 15. SERVICE LEVELS AND PERFORMANCE

1. The Authority will measure the quality of the Supplier's delivery by monitoring performance against the Key Performance Indicators / Service Level Agreement listed in the table below .
2. Key performance indicators (KPIs) will be used to assess performance in providing the requirement. Campaign specific KPIs may be agreed at the start of each project or sub-project.
3. Key Performance Indicators

KPI/SLA	Service Area	KPI/SLA description	Target
1	Delivery time-scales	The supplier is to fully adhere to the timescales / project plans unless otherwise agreed	100%
2	Service Delivery	The Supplier ensures that all services provided addresses the requirements of each brief.	100%
3	Resource capacity	The supplier must guarantee sufficient resource for each project and maintain the overarching resource to ensure deadlines don't slip	100%



4	Service Delivery	Response to queries and requests within 1 working day	98%
5	Account Management	The service should be consistent and ensure that key personnel remain on the account. Any changes to the individuals working on this account must be made known to the Customer within 24 hrs.	98%
6	Account Management	Acknowledgment of any complaints or issues within 24 hours for the duration of the contract, including the escalation of appropriate issues to the authority's representative.	98%
7	Account Management	Responding to queries and requests within 1 working day, including refining brief and granting access to systems and submission of MI.	99%

## 16. SECURITY AND CONFIDENTIALITY REQUIREMENTS

1. The Supplier must ensure to meet the minimum requirements as set out in the Framework agreement.
2. The Supplier must ensure to meet the minimum requirements as laid out in the DWP Procurement Security Policies and Standards for the duration of the contract: <https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>

## 17. PAYMENT AND INVOICING

### Payments and invoicing mechanism(s)

1. Invoices will be submitted after the work has been completed.

### Invoicing requirements and schedule

2. The Contracting Authority will provide all address and contact details for invoicing and related queries or escalations, during the implementation phase of the Contract.
3. The invoicing schedule will be agreed during the implementation phase of the Contract.

### Supporting Information

4. The Supplier must provide mandatory supporting information as a minimum to enable accurate and timely payment of invoices. Refer to table section 8.10 for a detailed list of invoicing requirements.

## 18. CONTRACT MANAGEMENT

### The Authority – what you can expect from us

1. The Authority will provide a designated contact within DWP Communications Directorate and a Contract Manager to manage the day-to-day running of the contract and performance monitoring activity.
2. The Authority will provide a definitive list of contacts for specific requirements of the contract during the implementation period.

3. The Authority may invite key internal stakeholders to review meetings to support specific contract and performance management-related activities, or continuous improvement projects.

### The Role of Agency

4. The agency will need to provide a sufficient level of resource throughout the duration of the contract in order to consistently deliver a quality service to all parties, ensuring delivery of individual campaign requirements. Over periods of agency office closure (for example, over Christmas), the agency must facilitate resource cover.
5. The agency's staff assigned to the contract shall have the relevant qualifications and experience to deliver the contract. The agency should aim for key personnel to remain on the account, and avoid frequent staff changes that might impact understanding of need.
6. The agency shall ensure that staff understand our vision and objectives and will provide excellent customer service throughout the duration of the contract.

### Supplier Personnel

7. The Supplier must provide a designated contact as the responsible Account Manager to the Authority.
8. The Supplier's designated Account Manager must be in attendance at all review meetings.
9. In the event of sub-contracting arrangements, the Supplier's designated Account Manager will have responsibility for ensuring the attendance of key delivery partners where required at review meetings.
10. The Supplier is expected to provide a list of key personnel who will be involved in the delivery of the services for this Agreement, and contact details within one (1) week of contract Award.

### Meetings

11. Operational performance reviews will be held on a monthly basis initially with a view to reducing this to Bi – Annually if there are no issues with the service
12. A formal contract review will be held on an annual basis.
13. Meetings may be conducted virtually, or in person.
14. If requested by DWP, the Supplier must provide copies of all appropriate Management Information as in section 8.10 – 8.14, and a summary of complaints and issues at review meetings.

## **19. LOCATION**

19.1 The services will be carried out at the supplier's premises. The Supplier may also be required to attend meetings at the DWP's premises, including at Caxton House, Tothill Street, London, SW1 H 9NA.

### **A Typical Brief – 24608**

Below is a typical DWP brief of work that we would expect the agency to deliver.

As part of the tender assessment we require the agency to provide a detailed solution how each piece of work (job) will be approached. This needs to include detailed

- Methodology
- Resource plan
- Timeline
- Example piece of previous work similar to that outlined
- Costs – to be included in attachment 4 price schedule

As part of assessment and future requirements, we require the agency to produce a short animation, 9:16 format with HMG logo based on Job 1 and specifically the **'Skills'** and **'Space Cat'** assets which are attached. The script and storyboard are outlined in Job1. This is to enable the technical quality of the work to be assessed.

In the questions and answers meeting on Tuesday 18 January, the idea is that this work will be briefed verbally and a two-way conversation can be had, like we expect to happen when ever any work is briefed to an agency.

### **Creative Versioning Brief for JobHelp assets**

#### **Background/problems to solve**

The Coronavirus emergency has had a big impact on service delivery in Jobcentre Plus, meaning that temporarily its sole focus has to be on benefit processing

It's a key time for the labour market with a whole new vacancy profile emerging - some sectors are shrinking, others expanding and there's a large and increasing volume of new, job ready people are looking for new or additional employment – some for this first time in many years.

The Jobhelp website aims to mitigate the gap left in Jobcentre Plus provision by providing help and support online for jobseekers that will increase the chances of good labour market outcomes. It will continue to run alongside local coach support for the foreseeable future.

#### **Target Audience**

All working aged adults who are:

- the newly unemployed
- those currently furloughed
- those at risk of redundancy / worried about unemployment
- existing benefit claimants
- fresh from education making choices / looking for a first job

#### **Key messages**

Our key message is: *We can help you launch your career*

#### **Any Brand Tone of Voice/Brand guidelines to consider?**

Our brand is vibrant, optimistic and colourful. We've attached our guidelines alongside this briefing form.

The design must be modern, fresh and bright – making full use of our colour palette (colours provided in brand guidelines). It must look consistent with the 'Skills' and 'Space Cat' assets but not identical.

We understand you may not own the exact font types used in 'Skills' and 'Space Cat' so something approximate is fine.

### **Objective of the assets**

Our main objective is to increase traffic to jobhelp in a bid to offer advice and guidance to all working aged adults who are unemployed, looking for their first job, or facing redundancy.

### **Job 1: Rich Media Content**

#### **3 x 10 second animated assets based on an existing design template**

- These will be used on social channels and YouTube
- Formats needed:
  - 9:16 x 2 versions (with and without HMG logo)
  - 1:1
  - YouTube bumper 16:9
- Please provide costs for all variation and formats

### **Script and storyboard for Job 1**

Please offer any thoughts and suggestions on the copy.

#### **1. Youth 'explore your options' (10 seconds)**

Similar to the 'Skills' and 'Space Cat' Snapchat ads, we would like to continue with the same look and feel with bold colours, impactful text, drawing on internet/gaming culture.

Here's the concept and copy:

First side	Second side	Third slide	Fourth slide
Wondering what to do next?	GIF of an <u>unsure dog (click for example)</u> or something else to represent confusion? Something playful and fun	We can help you explore your options	Swipe up Gov.uk/jobhelp

We require the agency to produce a short animation, 9:16 format with HMG logo based on Job 1 and specifically the ‘**Skills**’ and ‘**Space Cat**’ assets which are attached. The script and storyboard are outlined in Job1. This is to enable the technical quality of the work to be assessed.

### **Job 2: Static Asset**

#### **3 x static assets based on existing design templates**

- These will be used on social channels (Twitter, Instagram and Facebook)
- Formats needed for all 3 assets:
  - 1:1
  - 16:9
- Please provide costs for all variations and formats

### **Job 3: Versioning**

#### **Resize 2 x creatives into animated display assets.**

- Please provide costs for two creative variations in the below formats:
  - 970x250
  - 300x600
  - 160x600
  - 728x90
  - 300x50
  - 300x250
- We’ll need all assets supplied in GIF and MP4 file formats.

### **Job 4: Versioning**

#### **Resize 2 x creatives into digital audio assets**

- Please provide costs for two creative variations in the below formats:

- 640x640
- 1024x1024
- 300x250

### **Job 5: Translation**

Please provide costs for translating a single static into Welsh (20 words)

### **Job 6: Digital Asset System**

Please provide details of how a Digital Asset System could work for DWP and the costs involved. Please include, what will be stored on it, how it will be managed and how DWP can access it. Please note that DWP has strict access polies and uses Microsoft Edge.

### **Clarifications Log – v1**

Discussed 18/01/22 and issued 21/01/22

REDACTED COMMERCIALY SENSITIVE

Any schedule attached to this Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to this Statement of Work only applies to the relevant project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.

- i) Where a Statement of Work would result in:
  - a variation of the Services procured under this Call-Off Contract;
  - an increase in the Charges agreed under this Call-Off Contract; or

- a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Call-Off Contract, the relevant term(s) will be dealt with as a proposed Variation to this Call-Off Contract in accordance with the Variation procedure set out in Clause 24.

### Statement of Requirements for Individual Campaign Projects.

The above Statement of Works Annex B describes the overarching requirements of the Contract. The following Statement of Requirements template is to be used to outline the requirements of each individual Project: - (Remove yellow highlights once completed)

<b>Project:</b>	<i>Set out a short description of the Project.</i>
<b>Project start Date</b>	<i>Set out the start date for this Project and its duration and the likely end date if known– state whether for a fixed term or an initial term and then rolling subject to notice.</i>
<b>Notice period for cancellation</b>	
<b>[Project Notice Period]:</b>	
<b>Overarching Brand/Campaign</b>	<i>If this campaign is part of a wider overarching campaign, or uses specific Government owned brands (such as the GREAT Britain brand for example) please state them and what the relationship of this campaign will be to them.</i>

## Deliverables

Set out a description of the Deliverables to be supplied by the Agency for this Project.

State any specific activities agreed in the pitch that are to be delivered as part of this campaign.

Ensure you capture any work across distinct specialisms or channels, or example if you were working on an integrated campaign you may write:

- Creative for campaigns (service)
- Development and testing of creative propositions (deliverables)
- Creative assets for use on social media
- Delivery of creative assets for “Above the Line” media



- Seamless working with the client's media buyer to deliver assets in the correct format to required deadlines
- PR
- PR strategy that compliments the "Above the Line" approach
- Development and delivery of PR hooks/stunts in agreement with the client
- Development of three Op eds, case studies and three feature articles
- Management of media at up to seven events, working with departmental press office
- Evaluation in accordance with the HMG evaluation Framework

State if you require any specific requirements and ways of working such as third-party consents, licences, clearances that Agency needs to obtain and products or purchases.

State that Client's use of the Deliverables will be "subject to any third-party usage rights which are notified to the Client in accordance with this Call-Off Contract".

#### Inclusion of Additional Schedules

The following Schedules are incorporated into this Statement of Work

Schedule Name	Incorporated (Mark with 'X' if incorporated)
Creative Advertising Services (online and/or offline)	
Social Media Services	
Public Relations	
Simple Software/website/app development	
Below the line/experiential	

#### Project Plan:

*Set out the timing of each phase of the project, any key dates and/ or delivery of the Services and/or the Deliverables (if known)*

<b>Contract Charges:</b>	<p><i>Set out the calculation of the Contract Charges [(including rules for the recovery of expenses)] payable to Agency for this Project e.g. details of any fixed price, time and materials in which case Agency's Rate Card should be attached, together with invoice dates or milestones that trigger payment.</i></p> <p><i>All rates should be less than the maximum rates set out in the Agency rate card submitted as part of the original framework evaluation as set out in Framework Schedule 3.</i></p> <p><i>Set out any payment terms specific to the Project.</i></p> <p><b>Examples of different wording for Contract Charges:</b></p> <p><i>The Client shall pay the Agency the sum of £[...] for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third-party costs</i></p> <p><b>OR</b></p> <p><i>The Contract Charges shall be calculated using the hourly charge out rates shown in [the Agency's rate card, [provided that the total Contract Charges shall not exceed £ [...].] For the avoidance of doubt, the Contract Charges shall inclusive of all third-party costs.</i></p>
<b>Client Assets:</b>	<i>Set out details of the materials or information to be provided to the Agency.</i>
<b>International locations:</b>	<i>If Services are to be supplied outside the UK, specify additional territories here</i>
<b>Client Affiliates:</b>	<i>If relevant, set out any Client Affiliates which will be using Deliverables</i>
<b>Special Terms:</b>	<i>Set out any special terms that are intended to take precedence over the Call-Off Terms and/or the Schedules to the Call-Off Terms such as, security requirements, warranties, specific insurance requirements, any specific data reporting requirements etc..</i>
<b>Key Individuals:</b>	<i>Set out details of the key personnel from the Agency for this Project if relevant.</i>

<b>Authorised Agency Approver:</b>	<i>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Agency for this project.</i>
<b>Authorised Client Approver:</b>	<i>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Client for this Project.</i>

Signed by:.....

by (print name):.....

As Agency Authorised Approver for and on behalf of

[Agency]

Date.....

Signed by:.....

by (print name):.....

As Client Authorised Approver for and on behalf of

[Client]

Date.....

## Call-Off Schedule 1 (Transparency Reports)

1.1 The Agency recognises that the Client is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Agency shall comply with the provisions of this Schedule in order to assist the Client with its compliance with its obligations under that PPN.

1.2 Without prejudice to the Agency's reporting requirements set out in the Framework Contract, within three (3) Months of the Start Date the Agency shall submit to the Client for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.

1.3 If the Client rejects any proposed Transparency Report submitted by the Agency, the Agency shall submit a revised version of the relevant report for further Approval within

five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Client. If the Parties fail to agree on a draft Transparency Report the Client shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.

1.4 The Agency shall provide accurate and up-to-date versions of each Transparency Report to the Client at the frequency referred to in the Annex of this Schedule.

### **Call-Off Schedule 2 (Staff Transfer) Parts C and E Apply.**

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

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

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

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

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

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

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

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

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

## 1. Definitions

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

**"Acquired Rights Directive"** 1 the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

2

**"Employee Liability"** 3 all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;

	<p>f) employment claims whether in tort, contract or statute or otherwise;</p> <p>g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
<b>"Former Agency"</b>	a supplier supplying services to the Client before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);
<b>"New Fair Deal"</b>	<p>he revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including:</p> <ul style="list-style-type: none"> <li>(i) any amendments to that document immediately prior to the Relevant Transfer Date; and</li> <li>(ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Agency by the Client;</li> </ul>
<b>"Old Fair Deal"</b>	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the supplementary guidance <i>"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"</i> issued in June 2004;
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Client can end this contract) or 10.6 (When the Agency can end the contract);
<b>"Relevant Transfer"</b>	transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	n relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the Agency or a Subcontractor was the Former Agency and there is no

Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Agency (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

**"Staffing  
Information"**

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

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefits 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 Employment Regulations;

<b>"Agency's Final Agency Personnel List"</b>	list provided by the Agency of all Agency Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>"Agency's Provisional Agency Personnel List"</b>	a list prepared and updated by the Agency of all Agency Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Agency;
<b>"Term"</b>	the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;
<b>"Transferring Client Employees"</b>	those employees of the Client to whom the Employment Regulations will apply on the Relevant Transfer Date;
<b>"Transferring Former Agency Employees"</b>	in relation to a Former Agency, those employees of the Former Agency to whom the Employment Regulations will apply on the Relevant Transfer Date.

## 2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes any obligation on the Agency including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Agency shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Client, Former Agency, Replacement Agency or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Agency will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 2.2 The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together "Third Party Provisions") confer benefits on third parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- 2.3 Subject to Paragraph 2.2 above, a person who is not a Party to this Call-Off Contract has no right under the CRTPA to enforce any term of this Call-Off Contract but this



does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 2.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Client, which may, if given, be given on and subject to such terms as the Client may determine.
- 2.5 Any amendments or modifications to this Call-Off Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

### 3. Which parts of this Schedule apply

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

- *[Part A (Staff Transfer at the Start Date – Outsourcing from the Client)]* **NOT USED**
- *[Part B (Staff Transfer at the Start Date – Transfer from a Former Agency)]* **NOT USED**
- *[Part C (No Staff Transfer on the Start Date)]* **PART C APPLIES**
- *[Part D (Pensions)]* **NOT USED**
  - *[ - Annex D1 (CSPS)* ]
  - *[ - Annex D2 (NHSPS)* ]
  - *[ - Annex D3 (LGPS)* ]
  - *[ - Annex D4 (Other Schemes)* ]
- *Part E (Staff Transfer on Exit)* **PART E APPLIES**

## **Part A: Staff Transfer at the Start Date**

**NOT USED**

### **Outsourcing from the Client**

#### **1. What is a relevant transfer**

##### **1.1 The Client and the Agency agree that:**

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

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

1.2 The Client shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Client Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Client; and (ii) the Agency and/or any Subcontractor (as appropriate).

#### **2. Indemnities the Client must give**

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

2.1.1 any act or omission by the Client in respect of any Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee occurring before the Relevant Transfer Date;

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

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

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

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

- failure by the Client to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Client Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Client Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Client to the Agency and/or any Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Client to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Client Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Client other than a Transferring Client Employee for whom it is alleged the Agency and/or any Subcontractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee relating to any act or omission of the Client in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Agency or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Client Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the

Agency and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or

- 2.2.2 arising from the failure by the Agency or any Subcontractor to comply with its obligations under the Employment Regulations.

- 2.3 If any person who is not identified by the Client as a Transferring Client Employee claims, or it is determined in relation to any person who is not identified by the Client as a Transferring Client Employee, that his/her contract of employment has been transferred from the Client to the Agency and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Agency shall, or shall procure that the Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Client in writing; and

- 2.3.2 the Client may offer (or may procure that a third party may offer) employment to such person, or take such other reasonable steps as the Client considers appropriate to deal with the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Agency and/or any Subcontractor.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Client, the Agency shall, or shall procure that a Subcontractor shall, immediately release the person from his/her employment or alleged employment;

- 2.5 If by the end of the 15 Working Day period referred to in Paragraph 2.3.2:

- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,

the Agency and/or any Subcontractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

- 2.6 Subject to the Agency and/or any Subcontractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law and subject also to Paragraph 2.7, the Client will indemnify the Agency and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment pursuant to the provisions of Paragraph 2.5 provided that the Agency takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.7 The indemnity in Paragraph 2.6:

- 2.7.1 shall not apply to:
    - (a) any claim for:

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

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

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

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

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

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

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

- 3.1.1 any act or omission by the Agency or any Subcontractor in respect of any Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Agency or any Subcontractor on or after the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Client Employees; and/or
  - (b) any custom or practice in respect of any Transferring Client Employees which the Agency or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Client Employees arising from or connected with any

- failure by the Agency or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Agency or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Client Employees to their material detriment on or after their transfer to the Agency or the relevant Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Client Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Agency or any Subcontractor to, or in respect of, any Transferring Client Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Client in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Client Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Client Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Client to the Agency or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Agency or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Author Client ity Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Client Employee or any appropriate employee representative (as defined in the

Employment Regulations) of any Transferring Client Employee relating to any act or omission of the Agency or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Client's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

3.1.9 a failure by the Agency or any Sub-contractor to comply with its obligations under paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Client whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Client's failure to comply with its obligations under the Employment Regulations.

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

#### **4. Information the Agency must provide**

4.1 The Agency shall, and shall procure that each Subcontractor shall, promptly provide to the Client in writing such information as is necessary to enable the Client to carry out its duties under regulation 13 of the Employment Regulations. The Client shall promptly provide to the Agency and any Subcontractor in writing such information as is necessary to enable the Agency and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

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

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Agency of employees whose employment begins after the Relevant Transfer Date, and the Agency undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Agency shall, and shall procure that each Subcontractor shall, comply with any requirement notified to it by the Client relating to pensions in respect of any Transferring Client Employee as set down in:

- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
  - 5.2.2 Old Fair Deal; and/or
  - 5.2.3 The New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.
- 6. Pensions**
- 6.1 The Agency shall, and/or shall procure that each of its Subcontractors shall, comply with:
  - 6.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
  - 6.1.2 Part D: Pensions (and its Annexes) to this Schedule.



## **Part B: Staff transfer at the Start Date**

### **Transfer from a Former Agency**

**NOT USED**

#### **1. What is a relevant transfer**

##### **1.1 The Client and the Agency agree that:**

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Agency Employees; and

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

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

#### **2. Indemnities given by the Former Agency**

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

2.1.1 any act or omission by the Former Agency in respect of any Transferring Former Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Agency Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Agency arising before the Relevant Transfer Date of:

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

- (b) any custom or practice in respect of any Transferring Former Agency Employees which the Former Agency is contractually bound to honour;
- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Agency Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Agency to the Agency and/or any Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Agency 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 Agency Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Agency other than a Transferring Former Agency Employee for whom it is alleged the Agency and/or any Subcontractor as appropriate may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.6 any claim made by or in respect of a Transferring Former Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Agency Employee relating to any act or omission of the Former Agency in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Agency or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency or any

Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

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

takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

2.7.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees;

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

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

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

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

**3. Indemnities the Agency must give and its obligations**

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

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

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

- (a) any collective agreement applicable to the Transferring Former Agency Employee; and/or
  - (b) any custom or practice in respect of any Transferring Former Agency Employees which the Agency or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Agency Employees arising from or connected with any failure by the Agency or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Agency or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Agency Employees to their material detriment on or after their transfer to the Agency or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Agency or a Subcontractor to, or in respect of, any Transferring Former Agency Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Client and/or the Former Agency in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Former Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Former Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Agency to the Agency or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- 3.1.7 a failure of the Agency or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Agency Employees in respect of the period from (and including) the Relevant Transfer Date;
  - 3.1.8 any claim made by or in respect of a Transferring Former Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Agency Employee relating to any act or omission of the Agency or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Agency's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
  - 3.1.9 a failure by the Agency or any Subcontractor to comply with its obligations under Paragraph 2.8 above
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Agency whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Agency's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Agency shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of all the Transferring Former Agency Employees, on and from the Relevant Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Agency and the Former Agency.

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

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

## **5. Cabinet Office requirements**

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

- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.1.2 Old Fair Deal; and/or
- 5.1.3 The New Fair Deal.

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

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

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

## **7. Pensions**

7.1 The Agency shall, and shall procure that each Subcontractor shall, comply with:

- 7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; ; and
- 7.1.2 Part D: Pensions (and its Annexes) to this Schedule.

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

### PART C APPLIES

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

- 1.1 The Client and the Agency agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Client and/or any Former Agency.
- 1.2 If any employee of the Client and/or a Former Agency claims, or it is determined in relation to any employee of the Client and/or a Former Agency, that his/her contract of employment has been transferred from the Client and/or the Former Agency to the Agency and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Agency shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Client in writing and, where required by the Client, notify the Former Agency in writing; and
  - 1.2.2 the Client and/or the Former Agency may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the Agency or the Subcontractor (as appropriate) or take such other reasonable steps as the Client or Former Agency (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Client and/or the Former Agency),, the Agency shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period referred to in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved;the Agency may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 1.5 Subject to the Agency and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Client shall:
  - 1.5.1 indemnify the Agency and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment



of any of the Client's employees referred to in Paragraph 1.2 made

pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- 1.5.2 procure that the Former Agency indemnifies the Agency and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Agency referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.6 If any such person as is described in Paragraph 1.2 is neither re employed by the Client and/or the Former Agency as appropriate nor dismissed by the Agency and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Agency and/or the Subcontractor (as appropriate) and the Agency shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.

- 1.7 Where any person remains employed by the Agency and/or any Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the Agency and/or the Subcontractor and the Agency shall indemnify the Client and any Former Agency, and shall procure that the Subcontractor shall indemnify the Client and any Former Agency, against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Subcontractor.

- 1.8 The indemnities in Paragraph 1.5:

- 1.8.1 shall not apply to:

- (a) any claim for:

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

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

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

1.8.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Agency and/or any Subcontractor to the Client and, if applicable, Former Agency within 6 months of the Start Date.

1.9 If the Agency and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Agency and/or the Subcontractor and the Agency shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Client and any Former Agency against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Subcontractor.

## **2. Limits on the Former Agency's obligations**

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

## Part D: Pensions

### NOT USED

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

#### 1. Definitions

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

<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement (as defined in Annex D3: LGPS), as the context requires;
<b>"Best Value Direction"</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>"Broadly Comparable"</b>	<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 assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or</p> <p>(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 <b>"Broad Comparability"</b> shall be construed accordingly;</p>

<b>"CSPS"</b>	the schemes as defined in Annex D1 to this Part D;
<b>"Direction Letter/Determination"</b>	has the meaning in Annex D2 to this Part D;
<b>"Fair Deal Eligible Employees"</b>	each of the CSPS Eligible Employees, the NHSPS Eligible Employees and/or the LGPS Eligible Employees (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with paragraph 10 or 11 of this Part D);
<b>"Fair Deal Employees"</b>	<p>any of:</p> <ul style="list-style-type: none"> <li>(a) Transferring Client Employees;</li> <li>(b) Transferring Former Agency Employees;</li> <li>(c) employees who are not Transferring Client Employees or Transferring Former Agency Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Agency or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;</li> <li>(d) where the Agency or a Subcontractor was the Former Agency, the employees of the Agency (or Subcontractor);</li> </ul> <p>who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Client;</p>
<b>"Fund Actuary"</b>	a Fund Actuary as defined in Annex D3 to this Part D;
<b>"LGPS"</b>	the scheme as defined in Annex D3 to this Part D;

**"NHSPS"**

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

(a)

(b)

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

## **2. Agency obligations to participate in the pension schemes**

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- 2.2 The Agency undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/ Determination, if necessary) as may be required to enable the Agency to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Agency undertakes:
  - 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2 subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Agency is the Former Agency (or a Subcontractor is a Subcontractor of the Former Agency) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Agency (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Agency (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Agency (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Client<sup>1</sup>.

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

### **3. Agency obligation to provide information**

#### **3.1 The Agency undertakes to the Client:**

- 3.1.1 to provide all information which the Client may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Client (such consent not to be unreasonably withheld or delayed);
- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of the relevant Contract.

### **4. Indemnities the Agency must give**

#### **4.1 The Agency shall indemnify and keep indemnified CCS, [NHS Pensions], the Client and/or any Replacement Agency and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:**

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Agency of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Agency or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of the relevant Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Agency and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

#### **Subcontractor:**

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



before the date of termination or expiry of the relevant Contract; and/or

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

4.2 The indemnities in this Part D and its Annexes:

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

**5. What happens if there is a dispute**

5.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the CCS and/or the Client and/or the Agency or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Client and/or the Agency be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
- 5.1.2 whose decision will be final and binding on the CCS and/or the Client and/or the Agency; and
- 5.1.3 whose expenses shall be borne equally by the CCS and/or the Client and/or the Agency unless the independent Actuary shall otherwise direct.

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

**6. Other people's rights**

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

6.2 Further, the Agency must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

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

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

- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
- 7.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Client giving particulars of the breach and requiring the Agency to remedy it.

## **8. Transferring Fair Deal Employees**

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

- 8.1.1 notify the Client as far as reasonably practicable in advance of the transfer to allow the Client to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
- 8.1.2 consult with about, and inform those Fair Deal Eligible Employees of the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Agency" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

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

9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of the relevant Contract.

9.2 The Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Agency and/or NHS Pension and/or CSPA and/or the relevant Administering Client and/or the Client may reasonably require, to enable the Replacement Agency to participate in the appropriate Statutory Scheme in

respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

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

- 10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Agency must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Client.
- 10.2 Such Broadly Comparable pension scheme must be:
- 10.2.1 established by the Relevant Transfer Date<sup>2</sup>;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Agency's Broadly Comparable pension scheme (unless otherwise instructed by the Client);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Client); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Client).
- 10.3 Where the Agency has set up a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Agency shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 supply to the Client details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly

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

- Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Agency's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Client (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer<sup>3</sup>; and
- 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Agency and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Agency and/or Subcontractor's Broadly Comparable pension scheme is terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract:
- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in

relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Agency or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Agency's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4.1 been complied with, the Agency shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Client shall otherwise direct. The Agency shall indemnify the Client or the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Client directs) for any failure to pay the difference as required under this paragraph.

## **11. Broadly Comparable Pension Scheme in Other Circumstances**

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Agency must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Client.
- 11.2 Such Broadly Comparable pension scheme must be:
- 11.2.1 established by the date of cessation of participation in the Statutory Scheme<sup>4</sup>;
  - 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Client);

- 11.2.4 capable of paying a bulk transfer payment to the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Client); and
  - 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Client).
- 11.3 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Agency shall (and shall procure that any of its Subcontractors shall):
  - 11.3.1 supply to the Client details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 11.3.3 where required to do so by the Client, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Client (where applicable). The Agency must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Agency shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme<sup>5</sup>; and
  - 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Agency and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Agency and/or Subcontractor's

Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 11.4 Where the Agency has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Agency shall (and shall procure that any of its Subcontractors shall) prior to the termination of the relevant Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Agency or the Subcontractor (as agreed between them) must pay the Replacement Agency's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Agency and any Subcontractor, the Shortfall shall be paid by the Agency. The Agency shall indemnify the Client or the Replacement Agency's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Client directs) for any failure to pay the Shortfall under this paragraph.

## **12. Right of Set-off**

- 12.1 The Client shall have a right to set off against any payments due to the Agency under the relevant Contract an amount equal to:
- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
  - 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or

- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Agency or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

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

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



## **Annex D1:**

### **Civil Service Pensions Schemes (CSPS)**

#### **1. Definitions**

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

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any CSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPS under a CSPS Admission Agreement;
<b>"CSPS Fair Deal Employee"</b>	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

#### **2. Access to equivalent pension schemes after transfer**

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

- 2.2 If the Agency and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of the relevant Contract for any reason at a time when the Agency or Subcontractor still employs any CSPA Eligible Employees, the Agency shall (and procure that its Subcontractors shall) at no extra cost to the Client, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of paragraph 11 of Part D.

## Annex D2: NHS Pension Schemes

### 1. Definitions

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

<b>"Direction Letter/Determination"</b>	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Agency or a Subcontractor of the Agency (as appropriate) relating to the terms of participation of the Agency or Subcontractor in the NHSPS in respect of the NHSPS Fair Deal Employees;
<b>"NHS Broadly Comparable Employees"</b>	<p>each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <ul style="list-style-type: none"><li>(a) their employment with the Client, an NHS Body or other employer which participates automatically in the NHSPS; or</li><li>(b) their employment with a Former Agency who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Agency (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Client, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Agency),</li></ul> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Client has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.</p>

**"NHSPS Eligible Employees"**

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

**"NHSPS Fair Deal Employees"**

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

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

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

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

**"NHS Body"**

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by

	section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
<b>"NHS Pensions"</b>	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
<b>"NHSPS"</b>	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
<b>"NHS Pension Scheme Regulations"</b>	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
<b>"NHS Premature Retirement Rights"</b>	rights to which any NHS Fair Deal Employee (had they remained in the employment of the Client, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
<b>"Pension Benefits"</b>	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme.

## **2. Membership of the NHS Pension Scheme**

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

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

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

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

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

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

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

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

- 6.1 If the Agency (or its Subcontractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
- 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or
  - 6.1.2 a Broadly Comparable pension scheme,
- the Client may in its sole discretion permit the Agency (or any of its Subcontractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Agency (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Agency must meet (or must procure that the relevant

Subcontractor meets) the costs of the Client determining whether the level of compensation offered is reasonable in the circumstances.

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

**7. Indemnities that an Agency must give**

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



## Annex D3:

### Local Government Pension Schemes (LGPS)

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

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

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

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

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

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

#### 1. Definitions

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

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

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

## 7. Agency to become an LGPS Admission Body

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Agency and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of the relevant Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement on or before the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they

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

remain employed in connection with the delivery of the Services under the relevant Contract.

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

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

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

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

#### **OPTION 2**

[Any LGPS Fair Deal Employees whether:

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

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

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

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

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

## **8. Broadly Comparable Scheme**

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

## **9. Discretionary Benefits**

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

## **10. LGPS RISK SHARING<sup>8</sup>**

- 10.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of the relevant Contract the Administering Client, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Agency or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “Excess Amount”) shall be paid by the Agency or the Subcontractor, as the case may be, and the Agency shall be reimbursed by the Client.
- 10.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of the relevant Contract, the Administering Client, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Agency or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Agency shall reimburse the Client an amount equal to A–B (the “Refund Amount”) where:

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

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

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

- 10.3 Subject to paragraphs 5.4 to 5.10, where the Administering Client obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Agency or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Agency or any Subcontractor (as the case may be) and the Agency shall be reimbursed by the Client.
- 10.4 The Agency and any Subcontractors shall at all times be responsible for the following costs:
- 10.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
  - 10.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise<sup>9</sup>;
  - 10.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
  - 10.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Agency or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
  - 10.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Agency or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
  - 10.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Agency or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation

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

- (unless the Agency and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
- 10.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Agency or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
  - 10.4.8 any cost of the administration of the Fund that are not met through the Agency's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Client under Regulation 70 of the 2013 Regulations;
  - 10.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Agency or a Subcontractor from the Fund Actuary; and/or
  - 10.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 10.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Agency or Subcontractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 10.6 Where the Administering Client obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Agency or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Agency shall (or procure that any Subcontractor shall) reimburse the Client an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 10.7 The Agency shall (or procure that the Subcontractor shall) notify the Client in writing within twenty (20) Working Days:
- 10.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
  - 10.7.2 of being informed by the Administering Client of any Exit Payment or Exit Credit that is determined by as being due from or to the Agency or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.

- 10.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Client shall either:
- 10.8.1 notify the Agency in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
  - 10.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Agency; and/or
  - 10.8.3 request a meeting with the Agency to discuss or clarify the information or evidence provided.
- 10.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Client shall notify the Agency in writing. In the event that the Agency and the Client are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 10.10 Any Excess Amount or Exit Payment agreed by the Client or in accordance with the Dispute Resolution Procedure shall be paid by the Client within timescales as agreed between Client and Agency. The amount to be paid by the Client shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Agency or a Subcontractor.
- 10.11 Any Refund Amount agreed by the Client or in accordance with the Dispute Resolution Procedure as payable by the Agency or any Subcontractor to the Client, shall be paid by the Agency or any Subcontractor forthwith as the liability has been agreed. In the event the Agency or any Subcontractor fails to pay any agreed Refund Amount, the Client shall demand in writing the immediate payment of the agreed Refund Amount by the Agency and the Agency shall make payment within seven (7) Working Days of such demand.
- 10.12 This paragraph 5 shall survive termination of the relevant Contract.

## Annex D4: Other Schemes

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

### Part E: Staff Transfer on Exit

#### 1. Obligations before a Staff Transfer

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

- 1.1.1 receipt of a notification from the Client of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 receipt of a written request of the Client at any time (provided that the Client shall only be entitled to make one such request in any 6 Month period),

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

- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Agency shall provide to the Client or at the direction of the Client to any Replacement Agency and/or any Replacement Subcontractor (i) the Agency's Final Agency Personnel List, which shall identify the basis upon which they are Transferring Agency Employees and (ii) the Staffing Information in relation to the Agency's Final Agency Personnel List (insofar as such information has not previously been provided).
- 1.3 The Client shall be permitted to use and disclose information provided by the Agency under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Agency and/or Replacement Subcontractor.
- 1.4 The Agency warrants, for the benefit of The Client, any Replacement Agency, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Agency agrees that it shall not, and agrees to procure that each Subcontractor shall not, assign any person to the provision of the Services who is not listed on the Agency's Provisional Agency Personnel List and shall not without the approval of the Client (not to be unreasonably withheld or delayed):



- 1.5.1 replace or re-deploy any Agency Staff listed on the Agency Provisional Agency Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Agency Staff (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Agency Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Agency's Provisional Agency Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Agency's Provisional Agency Personnel List save by due disciplinary process;

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

1.6 On or around each anniversary of the Start Date and up to four times during the last 12 Months of the Term, the Client may make written requests to the Agency for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Agency shall provide, and shall procure that each Subcontractor shall provide, to the Client such information as the Client may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of employees engaged in providing the Services;
- 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up

pursuant to the provisions of any of the Annexes to Part D (Pensions) (as appropriate); and

1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Agency shall provide, and shall procure that each Subcontractor shall provide, all reasonable cooperation and assistance to the Client, any Replacement Agency and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Agency 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 Agency Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Agency shall provide, and shall procure that each Subcontractor shall provide, to the Client or, at the direction of the Client, to any Replacement Agency and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Agency's Final Agency Personnel List who is a Transferring Agency Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;

1.7.4 tax code;

1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

## **2. Staff Transfer when the contract ends**

2.1 The Client and the Agency acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of the relevant Contract or otherwise) resulting in the Services being undertaken by a Replacement Agency and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Client and the Agency agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Agency and the Transferring Agency Employees (except in relation to any contract terms disapplying through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Agency and/or a Replacement Subcontractor (as the case may be) and each such Transferring Agency Employee.

2.2 The Agency shall, and shall procure that each Subcontractor shall, comply with all its obligations in respect of the Transferring Agency Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor

shall perform and discharge, all its obligations in respect of all the Transferring Agency Employees arising in respect of the period up to (and including) the Service Transfer Date (including (without limit) the payment of all remuneration, benefits, entitlements, and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Agency and/or the Subcontractor (as appropriate); and (ii) the Replacement Agency and/or Replacement Subcontractor.

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

- 2.3.1 any act or omission of the Agency or any Subcontractor in respect of any Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Agency or any Subcontractor occurring on or before the Service Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Agency Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Agency Employees which the Agency or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Agency or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

- (b) in relation to any employee who is not identified in the Agency's Final Agency Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency to the Client and/or Replacement Agency and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
  - 2.3.5 a failure of the Agency or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period up to (and including) the Service Transfer Date);
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Agency or any Subcontractor other than a Transferring Agency Employee identified in the Agency's Final Agency Personnel List for whom it is alleged the Client and/or the Replacement Agency and/or any Replacement Subcontractor may be liable by virtue of the relevant Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.3.7 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Agency or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Client and/or Replacement Agency to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Agency and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Agency Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Agency and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
  - 2.4.2 arising from the Replacement Agency's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Agency's Final Agency Employee List claims, or it is determined in relation to any employees of the Agency, that his/her contract of employment has been transferred from the Agency to the Replacement Agency and/or Replacement Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

2.5.1 the Client shall procure that the Replacement Agency and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Client and the Agency in writing; and

2.5.2 the Agency may offer (or may procure that a Subcontractor may offer) employment to such person, or take such other reasonable steps as it considered appropriate to deal the matter provided always that such steps are in compliance with Law, within 15 Working Days of receipt of notice from the Replacement Agency and/or Replacement Subcontractor.

2.6 If such offer of is accepted, or if the situation has otherwise been resolved by the Agency or a Subcontractor, Client shall procure that the Replacement Agency shall, or procure that the and/or Replacement Subcontractor shall, immediately release or procure the release the person from his/her employment or alleged employment;

2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:

2.7.1 no such offer has been made:

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Client shall advise the Replacement Agency and/or Replacement Subcontractor (as appropriate) that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person;

2.8 Subject to the Replacement Agency's and/or Replacement Subcontractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7 and in accordance with all applicable proper employment procedures set out in applicable Law and subject to Paragraph 2.9 below, the Agency will indemnify the Replacement Agency and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Agency's employees pursuant to the provisions of Paragraph 2.7 provided that the Replacement Agency takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

(a) any claim for:

(i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and

maternity or sexual orientation, religion or belief; or

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

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

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Agency and/or Replacement Subcontractor to the Agency 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 Agency or any Subcontractor nor dismissed by the Replacement Agency and/or Replacement Subcontractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Agency Employee. .

2.11 The Agency shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Agency's Final Agency 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 Agency and/or any Subcontractor; and**

**(b) the Replacement Agency and/or the Replacement Subcontractor.**

2.12 The Agency shall, and shall procure that each Subcontractor shall, promptly provide the Client and any Replacement Agency and/or Replacement Subcontractor, in writing such information as is necessary to enable the Client, the Replacement Agency and/or

Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Client shall procure that the Replacement Agency and/or Replacement Subcontractor, shall promptly provide to the Agency and each Subcontractor in writing such information as is necessary to enable the Agency and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Client shall procure that the Replacement Agency indemnifies the Agency on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:

- 2.13.1 any act or omission of the Replacement Agency and/or Replacement Subcontractor in respect of any Transferring Agency Employee in the Agency's Final Agency Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Agency Employee;
- 2.13.2 the breach or non-observance by the Replacement Agency and/or Replacement Subcontractor on or after the Service Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Agency Employees identified in the Agency's Final Agency Personnel List; and/or
  - (b) any custom or practice in respect of any Transferring Agency Employees identified in the Agency's Final Agency Personnel List which the Replacement Agency and/or Replacement Subcontractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Agency Employees identified in the Agency's Final Agency Personnel List arising from or connected with any failure by the Replacement Agency and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Agency and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Agency Employees identified in the Agency's Final Agency Personnel List on or after their transfer to the Replacement Agency or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Agency's Final Agency Personnel List who would have been a Transferring Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.13.5 any statement communicated to or action undertaken by the Replacement Agency or Replacement Subcontractor to, or in respect of, any Transferring Agency Employee identified in the Agency's Final Agency Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Agency in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Agency Employee identified in the Agency's Final Agency Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Agency Employee identified in the Agency's Final Agency Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency or Subcontractor, to the Replacement Agency or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Agency or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees identified in the Agency's Final Agency Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Agency Employee identified in the Agency's Final Agency Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Agency Employee relating to any act or omission of the Replacement Agency or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the



Agency and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

## **Call-Off Schedule 3 (Continuous Improvement)**

### **1. Client's Rights**

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

### **2. Agency's Obligations**

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

Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.

- 2.5 The Client shall notify the Agency of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Agency shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Agency must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Agency shall provide any further information as requested.
- 2.7 If the Client wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Agency must implement such Variation at no additional cost to the Client or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
  - 2.8.1 the Agency shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Agency's progress against the Continuous Improvement Plan.
- 2.9 The Agency shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Agency's costs in providing the Deliverables to the Client be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Client by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.12 If at any time during the Term the Agency reduces its Framework Prices for Deliverables provided in accordance with the terms of the Framework Contract, the Agency shall immediately reduce the Charges for the Deliverables under the Call-Off Contract by the same amount. This obligation applies whether or not the Deliverables are offered in a catalogue provided under the Framework Contract.

#### **Call-Off Schedule 4 (Proposal) SEE ABOVE**

REDACTED COMMERCIAL SENSITIVE

## **Call-Off Schedule 5 (Pricing Details) SEE ABOVE**

This Schedule should be used to show further detailed pricing information, in addition to the pricing in the Order Form]

REDACTED COMMERCIAL SENSITIVE

## **Call-Off Schedule 6 (ICT Services) NOT USED**

### **Call-Off Schedule 7 (Key Agency Staff)**

- 1.1 The Order Form (Letter of Appointment) lists the key roles (“**Key Roles**”) and names of the persons who the Agency shall appoint to fill those Key Roles at the Start Date.
- 1.2 The Agency shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Client may identify any further roles as being Key Roles and, following agreement to the same by the Agency, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Agency shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Client or the Client Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person’s employment or contractual arrangement with the Agency or Subcontractor is terminated for material breach of contract by the employee.

1.5 The Agency shall:

- 1.5.1 notify the Client promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Agency shall ensure appropriate temporary cover for that Key Role);
- 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
- 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
- 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.

1.6 The Client may require the Agency to remove or procure that any Subcontractor shall remove any Key Staff that the Client considers in any respect unsatisfactory. The Client shall not be liable for the cost of replacing any Key Staff.

## Call-Off Schedule 8 (Business Continuity and Disaster Recovery)

### 1. Definitions

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

<b>"BCDR Plan"</b>	has the meaning given to it in Paragraph 2.2 of this Schedule;
<b>"Business Continuity Plan"</b>	has the meaning given to it in Paragraph 2.3.2 of this Schedule;
<b>"Disaster"</b>	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
<b>"Disaster Recovery Deliverables"</b>	the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Disaster Recovery Plan"</b>	has the meaning given to it in Paragraph 2.3.3 of this Schedule;
<b>"Disaster Recovery System"</b>	the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
<b>"Related Agency"</b>	any person who provides Deliverables to the Client which are related to the Deliverables from time to time;
<b>"Review Report"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule; and
<b>"Agency's Proposals"</b>	has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR Plan

2.1 The Client and the Agency recognise that, where specified in Schedule 4 (Framework Management), CCS shall have the right to enforce the Client's rights under this Schedule.

- 2.2 At least ninety (90) Working Days prior to the Start Date the Agency shall prepare and deliver to the Client for the Client's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the Agency shall follow to:
  - 2.2.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
  - 2.2.2 the recovery of the Deliverables in the event of a Disaster
- 2.3 The BCDR Plan shall be divided into three sections:
  - 2.3.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.3.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
  - 2.3.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.4 Following receipt of the draft BCDR Plan from the Agency, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **3. General Principles of the BCDR Plan (Section 1)**

- 3.1 Section 1 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 provision of the Deliverables and any goods and/or services provided to the Client by a Related Agency;
  - 3.1.3 contain an obligation upon the Agency to liaise with the Client and any Related Agencies with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Client and any of its other Related Agency in each case as notified to the Agency by the Client from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
  - 3.1.6 contain a risk analysis, including:
    - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
    - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;

- (c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Agency; and
- (d) a business impact analysis 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 for the Agency (and any Subcontractors) and for the Client;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Client 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 assistance to key contacts at the Client as required by the Client to inform decisions in support of the Client's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Agency shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Agency of this Contract.

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and

- 4.1.2 the steps to be taken by the Agency upon resumption of the provision of Deliverables in order to address the effect 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 Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.
- 5. **Disaster Recovery (Section 3)**
  - 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Agency ensures continuity of the business operations of the Client 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 Agency's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
    - 5.2.1 loss of access to the Client Premises;
    - 5.2.2 loss of utilities to the Client Premises;
    - 5.2.3 loss of the Agency's helpdesk or CAFM system;
    - 5.2.4 loss of a Subcontractor;
    - 5.2.5 emergency notification and escalation process;
    - 5.2.6 contact lists;
    - 5.2.7 staff training and awareness;
    - 5.2.8 BCDR Plan testing;
    - 5.2.9 post implementation review process;
    - 5.2.10 any applicable Performance Indicators (PI's) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;



- 5.2.11 details of how the Agency shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.12 access controls to any disaster recovery sites used by the Agency in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

## 6. Review and changing the BCDR Plan

- 6.1 The Agency shall review the BCDR Plan:
  - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
  - 6.1.3 where the Client requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Agency shall conduct such reviews in accordance with the Client's written requirements. Prior to starting its review, the Agency shall provide an accurate written estimate of the total costs payable by the Client for the Client's approval. The costs of both Parties of any such additional reviews shall be met by the Client except that the Agency shall not be entitled to charge the Client for any costs that it may incur above any estimate without the Client's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables 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 Agency within such period as the Client shall reasonably require.
- 6.3 The Agency shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Client a report (a "**Review Report**") setting out the Agency's proposals (the "**Agency's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Agency's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Agency's Proposals. If the Parties are unable to agree Review Report and the Agency's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Agency shall as soon as is reasonably practicable after receiving the approval of the Agency's Proposals effect any change in its practices or procedures necessary so

as to give effect to the Agency's Proposals. Any such change shall be at the Agency's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. Testing the BCDR Plan**

- 7.1 The Agency shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables
  - 7.1.3 at any time where the Client considers it necessary (acting in its sole discretion).
- 7.2 If the Client requires an additional test of the BCDR Plan, it shall give the Agency written notice and the Agency shall conduct the test in accordance with the Client's requirements and the relevant provisions of the BCDR Plan. The Agency's costs of the additional test shall be borne by the Client unless the BCDR Plan fails the additional test in which case the Agency's costs of that failed test shall be borne by the Agency.
- 7.3 The Agency shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Client and shall liaise with the Client in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Client.
- 7.4 The Agency shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Client. Copies of live test data used in any such testing shall be (if so required by the Client) destroyed or returned to the Client on completion of the test.
- 7.5 The Agency shall, within twenty (20) Working Days of the conclusion of each test, provide to the Client 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 Agency's proposals for remedying any such failures.
- 7.6 Following each test, the Agency shall take all measures requested by the Client to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Agency, at its own cost, by the date reasonably required by the Client.

## **8. Invoking the BCDR Plan**

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

**9. Circumstances beyond your control**

- 9.1 The Agency shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it *not failed to comply* with its obligations under this Schedule.

## Call-Off Schedule 9 (Security)

**Client** to Select whether or when Part A (Short Form Security Requirements) or Part B (Long Form Security Requirements) should apply. Part B should be considered where there is a high level of risk to personal or sensitive data.]

### Part A: Short Form Security Requirements

#### 1. Definitions

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

**"Breach of Security"** the occurrence of:

- a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Client and/or the Agency in connection with this Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Client and/or the Agency in connection with this Contract,

in either case as more particularly set out in the Security Policy where the Client has required compliance therewith in accordance with paragraph 2.2;

**"Security Management Plan"** the Agency's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Agency to the Client and as updated from time to time.

#### 2. Complying with security requirements and updates to them

**2.1** The Client and the Agency recognise that, where specified in Framework Schedule 4 (Framework Management), CCS shall have the right to enforce the Client's rights under this Schedule.

**2.2** The Agency shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Client that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Agency fully complies with the Security Policy.

- 2.3** Where the Security Policy applies the Client shall notify the Agency of any changes or proposed changes to the Security Policy.
- 2.4** If the Agency believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Client. In doing so, the Agency must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.5** Until and/or unless a change to the Charges is agreed by the Client pursuant to the Variation Procedure the Agency shall continue to provide the Deliverables in accordance with its existing obligations.

### **3. Security Standards**

- 3.1** The Agency acknowledges that the Client places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2** The Agency shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
  - 3.2.1** is in accordance with the Law and this Contract;
  - 3.2.2** as a minimum demonstrates Good Industry Practice;
  - 3.2.3** meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
  - 3.2.4** where specified by the Client in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
- 3.3** The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Agency from time to time.
- 3.4** In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Agency should notify the Client's Representative of such inconsistency immediately upon becoming aware of the same, and the Client's Representative shall, as soon as practicable, advise the Agency which provision the Agency shall be required to comply with.

### **4. Security Management Plan**

#### **4.1 Introduction**

- 4.1.1** The Agency shall develop and maintain a Security Management Plan in accordance with this Schedule. The Agency shall thereafter comply with its obligations set out in the Security Management Plan.

## **4.2 Content of the Security Management Plan**

### **4.2.1 The Security Management Plan shall:**

- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Agency;
- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Client with access to the Deliverables, processes associated with the provision of the Deliverables, the Client Premises, the Sites and any ICT, Information and data (including the Client's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Client Premises, the Sites, and any ICT, Information and data (including the Client's Confidential Information and the Government Data) to the extent used by the Client or the Agency in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- e) set out the security measures to be implemented and maintained by the Agency in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Agency to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
- g) be written in plain English in language which is readily comprehensible to the staff of the Agency and the Client engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

## **4.3 Development of the Security Management Plan**

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Agency shall prepare and deliver to the Client for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

- 4.3.2 If the Security Management Plan submitted to the Client in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Agency shall amend it within ten (10) Working Days of a notice of non-approval from the Client and re-submit to the Client 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 fifteen (15) Working Days from the date of its first submission to the Client. If the Client does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Client shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Client to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Client of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Agency of its obligations under this Schedule.

#### **4.4 Amendment of the Security Management Plan**

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Agency at least annually to reflect:
- a) emerging changes in Good Industry Practice;
  - b) any change or proposed change to the Deliverables and/or associated processes;
  - c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;
  - d) any new perceived or changed security threats; and
  - e) any reasonable change in requirements requested by the Client.
- 4.4.2 The Agency shall provide the Client with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Client. The results of the review shall include, without limitation:
- a) suggested improvements to the effectiveness of the Security Management Plan;
  - b) updates to the risk assessments; and

- c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Agency proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Client or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Client may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **5. Security breach**

- 5.1** Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2** Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Agency shall:
  - 5.2.1** immediately take all reasonable steps (which shall include any action or changes reasonably required by the Client) necessary to:
    - a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - b) remedy such Breach of Security to the extent possible and protect the integrity of the Client and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
    - c) prevent an equivalent breach in the future exploiting the same cause failure; and
    - d) as soon as reasonably practicable provide to the Client, where the Client so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Client.
- 5.3** In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Client.

## **Part B: Long Form Security Requirements**



## 1. Definitions

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

**"Breach of Security"** means the occurrence of:

- a) any unauthorised access to or use of the Goods and/or Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Client and/or the Agency in connection with this Contract; and/or
- b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Client and/or the Agency in connection with this Contract,

in either case as more particularly set out in the security requirements in the Security Policy where the Client has required compliance therewith in accordance with paragraph 3.4.3 d;

**"ISMS"**

the information security management system and process developed by the Agency in accordance with Paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule; and

**"Security Tests"**

tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

## 2. Security Requirements

2.1 The Client and the Agency recognise that, where specified in Framework Schedule 4 (Framework Management), CCS shall have the right to enforce the Client's rights under this Schedule.

2.2 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.

2.3 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

2.3.1 Security Representative of the Client is REDACTED DATA PROTECTION. Any Security issues to be first raised and discussed with the Project Manager. Any issues remaining will be raised by the Project Manager with DWP's Security Advice Centre.

2.4 Security Representative of the Agency is REDACTED DATA PROTECTION.

2.5 The Client shall clearly articulate its high-level security requirements so that the Agency can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

2.6 Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.

2.7 The Agency shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Government Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Government Data remains under the effective control of the Agency at all times.

2.8 The Agency shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Client.

2.9 The Client and the Agency acknowledge that information security risks are shared between the Parties and that a compromise of either the Agency or the Client's security provisions represents an unacceptable risk to the Client requiring immediate communication and co-operation between the Parties.

### **3. Information Security Management System (ISMS)**

3.1 The Agency shall develop and submit to the Client, within twenty (20) Working Days after the Start Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs 3.4 to 3.6.

3.2 The Agency acknowledges that the Client places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Agency shall be responsible for the effective performance of the ISMS.

3.3 The Client acknowledges that;

3.3.1 If the Client has not stipulated during a Further Competition that it requires a bespoke ISMS, the ISMS provided by the Agency may be an extant ISMS covering the Services and their implementation across the Agency's estate; and

3.3.2 Where the Client has stipulated that it requires a bespoke ISMS then the Agency shall be required to present the ISMS for the Client's Approval.

3.4 The ISMS shall:

3.4.1 if the Client has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Client Premises, the Sites, the Agency System, the Client System (to the extent that it is under the control of the Agency) and any ICT, information and data (including the Client's Confidential Information and the Government Data) to the extent used by

the Client or the Agency in connection with this Contract;

- 3.4.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph 7;
- 3.4.3 at all times provide a level of security which:
- a) is in accordance with the Law and this Contract;
  - b) complies with the Baseline Security Requirements;
  - c) as a minimum demonstrates Good Industry Practice;
  - d) where specified by a Client that has undertaken a Further Competition - complies with the Security Policy and the ICT Policy;
  - e) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)  
(<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>)
  - f) takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.cpni.gov.uk>)
  - g) complies with HMG Information Assurance Maturity Model and Assurance Framework  
(<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>)
  - h) meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;
  - i) addresses issues of incompatibility with the Agency's own organisational security policies; and
  - j) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph 7;
- 3.4.4 document the security incident management processes and incident response plans;
- 3.4.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Agency becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Client approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- 3.4.6 be certified by (or by a person with the direct delegated authority of) a Agency's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Client in advance of issue of the relevant Security Management Plan).

- 3.5 Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 3.4 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, as notified to the Agency from time to time.
- 3.6 In the event that the Agency becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Agency shall immediately notify the Client Representative of such inconsistency and the Client Representative shall, as soon as practicable, notify the Agency as to which provision the Agency shall comply with.
- 3.7 If the bespoke ISMS submitted to the Client pursuant to Paragraph 3.3.1 is Approved by the Client, it shall be adopted by the Agency immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Client, the Agency shall amend it within ten (10) Working Days of a notice of non-approval from the Client and re-submit it to the Client for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Client. If the Client does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Client pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.4 to 3.6 shall be deemed to be reasonable.
- 3.8 Approval by the Client of the ISMS pursuant to Paragraph 3.7 or of any change to the ISMS shall not relieve the Agency of its obligations under this Schedule.

#### **4. Security Management Plan**

- 4.1 Within twenty (20) Working Days after the Start Date, the Agency shall prepare and submit to the Client for Approval in accordance with Paragraph 4 fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
  - 4.2.2 comply with the Baseline Security Requirements and, where specified by the Client in accordance with paragraph 3.4.3 d, the Security Policy;
  - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Agency;
  - 4.2.4 detail the process for managing any security risks from Subcontractors and third parties authorised by the Client with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Client Premises, the Sites, the Agency System, the Client System (to the extent that it is under the control of the Agency) and any

ICT, Information and data (including the Client's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;

- 4.2.5 unless otherwise specified by the Client in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Client Premises, the Sites, the Agency System, the Client System (to the extent that it is under the control of the Agency) and any ICT, Information and data (including the Client's Confidential Information and the Government Data) to the extent used by the Client or the Agency in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- 4.2.6 set out the security measures to be implemented and maintained by the Agency in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
- 4.2.7 demonstrate that the Agency's approach to delivery of the Deliverables has minimised the Client and Agency effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);
- 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Start Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
- 4.2.9 set out the scope of the Client System that is under the control of the Agency;
- 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
- 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Agency and the Client engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 If the Security Management Plan submitted to the Client pursuant to Paragraph 4.1 is Approved by the Client, it shall be adopted by the Agency immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Client, the Agency shall amend it within ten (10) Working Days of a notice of non-approval from the Client and re-submit it to the Client for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than

fifteen (15) Working Days from the date of the first submission to the Client of the Security Management Plan. If the Client does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Client pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.4 Approval by the Client of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Agency of its obligations under this Schedule.

## **5. Amendment of the ISMS and Security Management Plan**

5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Agency and at least annually to reflect:

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the Agency System, the Deliverables and/or associated processes;
- 5.1.3 any new perceived or changed security threats;
- 5.1.4 where required in accordance with paragraph 3.4.3 d, any changes to the Security Policy;
- 5.1.5 any new perceived or changed security threats; and
- 5.1.6 any reasonable change in requirement requested by the Client.

5.2 The Agency shall provide the Client with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Client. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

5.3 Subject to Paragraph 5.4, any change which the Agency proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, a Client request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Client.

5.4 The Client may, acting reasonably, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than

set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **6. Security Testing**

- 6.1 The Agency shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Agency so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Client. Subject to compliance by the Agency with the foregoing requirements, if any Security Tests adversely affect the Agency's ability to deliver the Deliverables so as to meet the KPIs, the Agency shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Client shall be entitled to send a representative to witness the conduct of the Security Tests. The Agency shall provide the Client with the results of such Security Tests (in a form approved by the Client in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Client pursuant to this Contract, the Client and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Agency, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Agency's compliance with the ISMS and the Security Management Plan. The Client may notify the Agency of the results of such tests after completion of each such test. If any such Client's test adversely affects the Agency's ability to deliver the Deliverables so as to meet the KPIs, the Agency shall be granted relief against any resultant under-performance for the period of the Client's test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Agency shall promptly notify the Client of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Agency proposes to make in order to correct such failure or weakness. Subject to the Client's prior written Approval, the Agency shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Client or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Client.



6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

## **7. Complying with the ISMS**

7.1 The Client shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with paragraph 3.4.3 d.

7.2 If, on the basis of evidence provided by such security audits, it is the Client's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the Agency, then the Client shall notify the Agency of the same and give the Agency a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Agency does not become compliant within the required time then the Client shall have the right to obtain an independent audit against these standards in whole or in part.

7.3 If, as a result of any such independent audit as described in Paragraph the Agency is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the Agency shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Client in obtaining such audit.

## **8. Security Breach**

8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Agency shall:

8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Client) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Client Property and/or Client Assets and/or ISMS to the extent that this is within the Agency's control;
- c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Agency, if the mitigation adversely affects the Agency's ability to provide

the Deliverables so as to meet the relevant Service Level Performance Indicators, the Agency shall be granted relief against any resultant under-performance for such period as the Client, acting reasonably, may specify by written notice to the Agency;

- d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
- e) supply any requested data to the Client (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Client's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
- f) as soon as reasonably practicable provide to the Client full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Client.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Client.

## **9. Vulnerabilities and fixing them**

9.1 The Client and the Agency acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Client's information.

9.2 The severity of threat vulnerabilities for COTS Software shall be categorised by the Agency as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 The Agency shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:

- 9.3.1 the Agency can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Agency asserts cannot be exploited within the context of a Service must be remedied by the Agency within the above timescales if the vulnerability becomes exploitable within the context of the Service;
  - 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Agency's ability to deliver the Services in which case the Agency shall be granted an extension to such timescales of 5 days, provided the Agency had followed and continues to follow the security patch test plan agreed with the Client; or
  - 9.3.3 the Client agrees a different maximum period after a case-by-case consultation with the Agency under the processes defined in the ISMS.
- 9.4 The Specification and Mobilisation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- 9.4.1 where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or
  - 9.4.2 is agreed with the Client in writing.
- 9.5 The Agency shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;
  - 9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Agency) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
  - 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;
  - 9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Agency) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;
  - 9.5.5 from the date specified in the Security Management Plan provide a report to the Client within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control

of the Agency) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

- 9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
- 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
- 9.5.8 inform the Client when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.

9.6 If the Agency is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Agency shall immediately notify the Client.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Default, and the Agency shall comply with the Rectification Plan Process.

## **Part B – Annex 1:**

### **Baseline security requirements**

#### **1. Handling Classified information**

- 1.1 The Agency shall not handle Client information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Agency shall seek additional specific guidance from the Client.

#### **2. End user devices**

- 2.1 When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Government Data and services must be under the management authority of Client or Agency and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Client. Unless otherwise agreed with the Client in writing, all Agency devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Agency may wish to use, then these should be discussed with the Client and a joint decision shall be taken on whether the residual risks are acceptable. Where the Agency wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Client.

#### **3. Data Processing, Storage, Management and Destruction**

- 3.1 The Supplier and Buyer recognise the need for the Buyer's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with Clause 14 (Data protection).
- 3.3 The Supplier shall:
- 3.3.1 provide the Buyer with all Government Data on demand in an agreed open format;

- 3.3.2 have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer.

#### **4. Ensuring secure communications**

- 4.1 The Buyer requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA.
- 4.2 The Buyer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

#### **5. Security by design**

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.
- 5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

#### **6. Security of Supplier Staff**

- 6.1 Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Government Data.
- 6.3 The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Buyer in writing.
- 6.4 All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management

principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.

- 6.5 Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **7. Restricting and monitoring access**

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

## **8. Audit**

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

- 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
- 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

- 8.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

- 8.3 The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 Months.

## Part B – Annex 2 - Security Management Plan

[ ]



## Call-Off Schedule 10 (Exit Management)

### 1. Definitions

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

"Exclusive Assets"	4 Agency Assets used exclusively by the Agency [or a Key Subcontractor] in the provision of the Deliverables;
"Exit Information"	5 has the meaning given to it in Paragraph 3.1 of this Schedule;
"Exit Manager"	6 the person appointed by each Party to manage their respective obligations under this Schedule;
"Exit Plan"	7 the plan produced and updated by the Agency during the Initial Period in accordance with Paragraph 4 of this Schedule;
"Net Book Value"	8 the current net book value of the relevant Agency Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Agency (which the Agency shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	9 those Agency Assets used by the Agency [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Agency [or Key Subcontractor] for other purposes;
"Registers"	10 the register and configuration database referred to in Paragraph 2.2 of this Schedule;
"Replacement Goods"	11 any goods which are substantially similar to any of the Goods and which the Client receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Client internally and/or by any third party;
"Replacement Services"	12 any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the

	Services following the End Date, whether those goods are provided by the Client internally and/or by any third party;
<b>"Termination Assistance"</b>	13 the activities to be performed by the Agency pursuant to the Exit Plan, and other assistance required by the Client pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	14 has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	15 the period specified in a Termination Assistance Notice for which the Agency is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	16 Exclusive Assets which are capable of legal transfer to the Client ;
<b>"Transferable Contracts"</b>	17 Sub-Contracts, licences for the Agency's software, licences for third party software or other agreements which are necessary to enable the Client or any Replacement agency to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	18 has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	19 has the meaning given to it in Paragraph 8.2.3 of this Schedule.

## 2. Agency must always be prepared for contract exit

- 2.1 The Agency shall within 30 days from the Start Date provide to the Client a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Agency shall promptly:
  - 2.2.1 create and maintain a detailed register of all Agency Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

- 2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Agency provides the Deliverables

("Registers").

2.3 The shall:

- 2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
- 2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Client) at the request of the Client to the Client (and/or its nominee) and/or any Replacement Agency upon the Agency ceasing to provide the Deliverables (or part of them) and if the Agency is unable to do so then the Agency shall promptly notify the Client and the Client may require the Agency to procure an alternative Subcontractor or provider of Deliverables.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

2.5 The Agency shall ensure at no cost to the Client that all digital data that is the Existing IPR of the Client or New IPR to be assigned to the Client can be identified and returned to the Client in an open format on demand and advise the Client of any Transferable Contracts and technical information that would assist in the continued use of such data.

### 3. Assisting re-competition for Deliverables

- 3.1 The Agency shall, on reasonable notice, provide to the Client and/or its potential Replacement Agencies (subject to the potential Replacement Agencies entering into reasonable written confidentiality undertakings), such information (including any access) as the Client shall reasonably require in order to facilitate the preparation by the Client of any invitation to tender and/or to facilitate any potential Replacement Agencies undertaking due diligence (the "**Exit Information**").
- 3.2 The Agency acknowledges that the Client may disclose the Agency's Confidential Information (excluding the Agency's or its Subcontractors' prices, trade secrets or costs) to an actual or prospective Replacement Agency to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Agency shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Client within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Client in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those

Deliverables; and not be disadvantaged in any procurement process compared to the Agency.

#### **4. Exit Plan**

- 4.1 The Agency shall, within three (3) Months after the Start Date, deliver to the Client an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Client.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
  - 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.2 how the Deliverables will transfer to the Replacement Agency and/or the Client;
  - 4.3.3 details of any contracts which will be available for transfer to the Client and/or the Replacement Agency upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.4 proposals for the training of key members of the Replacement Agency's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.5 proposals for providing the Client or a Replacement Agency copies of all documentation (including without limitation database schema and any other digital resources) relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.6 proposals for the assignment or novation of all services utilised by the Agency in connection with the supply of the Deliverables;
  - 4.3.7 proposals for the identification and return, or transfer to the Replacement Agency, of all Client Assets in the possession of and/or control of the Agency or any third party;
  - 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.9 how the Agency will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.10 any other information or assistance reasonably required by the Client or a Replacement Agency.

#### 4.4 The Agency shall:

4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:

- (a) every [six (6) months] throughout the Contract Period; and
- (b) no later than [twenty (20) Working Days] after a request from the Client for an up-to-date copy of the Exit Plan;
- (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;
- (d) as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and

4.4.2 jointly review and verify the Exit Plan if required by the Client and promptly correct any identified failures.

4.5 Only if (by notification to the Agency in writing) the Client agrees with a draft Exit Plan provided by the Agency under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Agency.

### 5. Termination Assistance

5.1 The Client shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Agency (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Client shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and

5.2.2 the Client shall notify the Agency of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.

- 5.3 The Client shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Agency.
- 5.4 In the event that Termination Assistance is required by the Client but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Agency will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Client approved version of the Exit Plan (insofar as it still applies).

## **6. Termination Assistance Period**

- 6.1 Throughout the Termination Assistance Period the Agency shall:
  - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Client, provide the Termination Assistance;
  - 6.1.2 provide to the Client and/or its Replacement Agency any reasonable assistance and/or access requested by the Client and/or its Replacement Agency including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Client and/or its Replacement Agency;
  - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Client;
  - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Key Performance Indicators (KPI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Agency's obligations under this Contract;
  - 6.1.5 at the Client's request and on reasonable notice, deliver up-to-date Registers to the Client;
  - 6.1.6 seek the Client's prior written consent to access any Client Premises from which the de-installation or removal of Agency Assets is required.
- 6.2 If it is not possible for the Agency to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Client, any additional costs incurred by the Agency in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Agency demonstrates to the Client's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Agency's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels accordingly.

## **7. Obligations when the contract is terminated**

- 7.1 The Agency shall comply with all of its obligations contained in the Exit Plan.

- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Agency's performance of the Deliverables and the Termination Assistance), the Agency shall:
- 7.2.1 vacate any Client Premises;
  - 7.2.2 remove the Agency Equipment together with any other materials used by the Agency to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Agency is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Agency;
  - 7.2.3 provide access during normal working hours to the Client and/or the Replacement Agency for up to twelve (12) Months after expiry or termination to:
    - (a) such information relating to the Deliverables as remains in the possession or control of the Agency; and
    - (b) such members of the Agency Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Agency, provided that the Client and/or the Replacement Agency shall pay the reasonable costs of the Agency actually incurred in responding to such requests for access.
  - 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Client to the Agency in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## 8. Assets, Sub-contracts and Software

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Agency shall not, without the Client's prior written consent:
- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
  - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Agency Assets or acquire any new Agency Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Agency, the Client shall notify the Agency setting out:
- 8.2.1 which, if any, of the Transferable Assets the Client requires to be transferred to the Client and/or the Replacement Agency ("**Transferring Assets**");
  - 8.2.2 which, if any, of:
    - (a) the Exclusive Assets that are not Transferable Assets; and
    - (b) the Non-Exclusive Assets,

the Client and/or the Replacement Agency requires the continued use of;  
and

- 8.2.3 which, if any, of Transferable Contracts the Client requires to be assigned or novated to the Client and/or the Replacement Agency (the "**Transferring Contracts**"),

in order for the Client and/or its Replacement Agency to provide the Deliverables from the expiry of the Termination Assistance Period. The Agency shall provide all reasonable assistance required by the Client and/or its Replacement Agency to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, the Agency shall sell the Transferring Assets to the Client and/or the Replacement Agency for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Client or the Replacement Agency (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5 Where the Client and/or the Replacement Agency requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Agency shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Client and/or the Replacement Agency to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- 8.5.2 procure a suitable alternative to such assets, the Client or the Replacement Agency to bear the reasonable proven costs of procuring the same.
- 8.6 The Agency shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Client and/or the Replacement Agency. The Agency shall execute such documents and provide such other assistance as the Client reasonably requires to effect this novation or assignment.
- 8.7 The Client shall:
- 8.7.1 accept assignments from the Agency or join with the Agency in procuring a novation of each Transferring Contract; and
- 8.7.2 once a Transferring Contract is novated or assigned to the Client and/or the Replacement Agency, 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 Agency does the same.
- 8.8 The Agency shall hold any Transferring Contracts on trust for the Client until the transfer of the relevant Transferring Contract to the Client and/or the Replacement Agency has taken place.



- 8.9 The Agency shall indemnify the Client (and/or the Replacement Agency, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Client (and/or Replacement Agency) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## **9. No charges**

- 9.1 Unless otherwise stated, the Client shall not be obliged to pay for costs incurred by the Agency in relation to its compliance with this Schedule.

## **10. Dividing the bills**

- 10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Client and/or the Replacement and the Agency as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 10.1.2 the Client or Replacement Agency (as applicable) 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
  - 10.1.3 the Agency shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **Call-Off Schedule 13 (Implementation Plan and Testing)**

Implementation requirements to be discussed with the Authority in advance of the issue of an implementation Plan. Any Implementation Plan will be subject to the Authorities approval.

### **Part A - Implementation**

#### **1. Definitions**

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

<b>"Delay"</b>	<p>a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
<b>"Deliverable Item"</b>	<p>20 an item or feature in the supply of the Deliverables delivered or to be delivered by the Agency at or before a Milestone Date listed in the Implementation Plan;</p>
<b>"Milestone Payment"</b>	<p>21 a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;</p>
<b>Implementation Period"</b>	<p>22 has the meaning given to it in Paragraph 7.1;</p>

## 2. Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Agency shall provide a further draft Implementation Plan **[Insert number of days]** days after the Call-Off Contract Start Date.
- 2.2 The draft Implementation Plan:
  - 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Client may otherwise require; and
  - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Agency.
- 2.3 Following receipt of the draft Implementation Plan from the Agency, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.4 The Agency shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Agency shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Client on such performance.

### **3. Reviewing and changing the Implementation Plan**

- 3.1 Subject to Paragraph 4.3, the Agency shall keep the Implementation Plan under review in accordance with the Client's instructions and ensure that it is updated on a regular basis.

- 3.2 The Client shall have the right to require the Agency to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Agency to comply with the Implementation Plan shall be a material Default.

#### **4. Security requirements before the Start Date**

- 4.1 The Agency shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Agency Staff have the necessary security clearance in place before the Call-Off Start Date. The Agency shall ensure that this is reflected in their Implementation Plans.
- 4.2 The Agency shall ensure that all Agency Staff and Subcontractors do not access the Client's IT systems, or any IT systems linked to the Client, unless they have satisfied the Client's security requirements.
- 4.3 The Agency shall be responsible for providing all necessary information to the Client to facilitate security clearances for Agency Staff and Subcontractors in accordance with the Client's requirements.
- 4.4 The Agency shall provide the names of all Agency Staff and Subcontractors and inform the Client of any alterations and additions as they take place throughout the Call-Off Contract.
- 4.5 The Agency shall ensure that all Agency Staff and Subcontractors requiring access to the Client Premises have the appropriate security clearance. It is the Agency's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Client, the Agency shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Agency Staff or Subcontractors to be accompanied by the Client's Authorised Representative, the Client must be given reasonable notice of such a requirement, except in the case of emergency access.

#### **5. What to do if there is a Delay**

- 5.1 If the Agency becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
  - 5.1.1 notify the Client as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;

- 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
- 5.1.3 comply with the Client's instructions in order to address the impact of the Delay or anticipated Delay; and
- 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## 6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Agency shall pay to the Client such Delay Payments (calculated as set out by the Client in the Implementation Plan) and the following provisions shall apply:
  - 6.1.1 the Agency acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Client as a result of the Agency's failure to Achieve the corresponding Milestone;
  - 6.1.2 Delay Payments shall be the Client's exclusive financial remedy for the Agency's failure to Achieve a Milestone by its Milestone Date except where:
    - (a) the Client is entitled to or does terminate this Contract pursuant to Clause 10.4 (When CCS or the Client can end this contract); or
    - (b) the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
  - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
  - 6.1.4 no payment or other act or omission of the Client shall in any way affect the rights of the Client to recover the Delay Payments or be deemed to be a waiver of the right of the Client to recover any such damages; and
  - 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 11 (How much you can be held responsible for).

## 7. Implementation Plan

- 7.1 The Implementation Period will be a [six (6)] Month period.
- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Call-Off Start Date or as

otherwise formally agreed with the Client. The Agency's full service obligations shall formally be assumed on the Call-Off Start Date as set out in Order Form.

7.3 In accordance with the Implementation Plan, the Agency shall:

- 7.3.1 work cooperatively and in partnership with the Client, incumbent supplier, and other Framework Agency(s), where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
- 7.3.2 work with the incumbent supplier and Client to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
- 7.3.3 liaise with the incumbent Agency to enable the full completion of the Implementation Period activities; and
- 7.3.4 produce a Implementation Plan, to be agreed by the Client, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.

7.4 The Implementation Plan will include detail stating:

- 7.4.1 how the Agency will work with the incumbent Agency and the Client Authorised Representative to capture and load up information such as asset data ; and
- 7.4.2 a communications plan, to be produced and implemented by the Agency, but to be agreed with the Client, including the frequency, responsibility for and nature of communication with the Client and end users of the Services.

7.5 In addition, the Agency shall:

- 7.5.1 appoint a Agency Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Client;
- 7.5.2 mobilise all the Services specified in the Specification within the Call-Off Contract;
- 7.5.3 produce a Implementation Plan report for each Client Premises to encompass programmes that will fulfil all the Client's obligations to landlords and other tenants:
  - (a) the format of reports and programmes shall be in accordance with the Client's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Client's approval; and

- (b) the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Agency to the Client, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain a Implementation risk and issue register in conjunction with the Client detailing how risks and issues will be effectively communicated to the Client in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Order Form) in accordance with the Client's requirements during the Implementation Period. Implementation meetings shall be chaired by the Client and all meeting minutes shall be kept and published by the Agency; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent provider and the Agency.]

## Annex 1: Implementation Plan

The Implementation Plan is set out below and the Milestones to be Achieved are identified below:

Milest one	Deliver able Items	Duration	Miles tone Date	Client Responsibili ties	Milestone Payments	Delay Payments
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Milestones will be Achieved in accordance with this Call-Off Schedule 13: (Implementation Plan and Testing) the purposes of Paragraph 9.1.2 the Delay Period Limit shall be [insert number of days].						

## Part B - Testing



## 1. Definitions

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

<b>"Component"</b>	23 any constituent parts of the Deliverables;
<b>"Material Test Issue"</b>	24 a Test Issue of Severity Level 1 or Severity Level 2;
<b>"Satisfaction Certificate"</b>	25 a certificate materially in the form of the document contained in Annex 2 issued by the Client when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
<b>"Severity Level"</b>	26 the level of severity of a Test Issue, the criteria for which are described in Annex 1;
<b>"Test Issue Management Log"</b>	27 a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
<b>"Test Issue Threshold"</b>	28 in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
<b>"Test Reports"</b>	29 the reports to be produced by the Agency setting out the results of Tests;
<b>"Test Specification"</b>	30 the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
<b>"Test Strategy"</b>	31 a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
<b>"Test Success Criteria"</b>	32 in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
<b>"Test Witness"</b>	33 any person appointed by the Client pursuant to Paragraph 9 of this Schedule; and

## **"Testing Procedures"**

34 the applicable testing procedures and Test Success Criteria set out in this Schedule.

### **2. How testing should work**

- 2.1 All Tests conducted by the Agency shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Agency shall not submit any Deliverable for Testing:
  - 2.2.1 unless the Agency is reasonably confident that it will satisfy the relevant Test Success Criteria;
  - 2.2.2 until the Client has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
  - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Agency shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Client shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

### **3. Planning for testing**

- 3.1 The Agency shall develop the final Test Strategy as soon as practicable after the Start Date but in any case no later than twenty (20) Working Days after the Start Date.
- 3.2 The final Test Strategy shall include:
  - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
  - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
  - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
  - 3.2.4 the procedure to be followed to sign off each Test;
  - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
  - 3.2.6 the names and contact details of the Client and the Agency's Test representatives;

- 3.2.7 a high level identification of the resources required for Testing including Client and/or third party involvement in the conduct of the Tests;
- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

#### **4. Preparing for Testing**

- 4.1 The Agency shall develop Test Plans and submit these for Approval as soon as practicable but in any case no later than twenty (20) Working Days prior to the start date for the relevant Testing as specified in the Implementation Plan.
- 4.2 Each Test Plan shall include as a minimum:
  - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
  - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Client shall not unreasonably withhold or delay its approval of the Test Plan provided that the Agency shall implement any reasonable requirements of the Client in the Test Plan.

#### **5. Passing Testing**

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

#### **6. How Deliverables will be tested**

- 6.1 Following approval of a Test Plan, the Agency shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
  - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Client and the extent to which it is equivalent to live operational data;
  - 6.2.2 a plan to make the resources available for Testing;
  - 6.2.3 Test scripts;
  - 6.2.4 Test pre-requisites and the mechanism for measuring them; and

- 6.2.5 expected Test results, including:
  - (a) a mechanism to be used to capture and record Test results; and
  - (b) a method to process the Test results to establish their content.

## **7. Performing the tests**

- 7.1 Before submitting any Deliverables for Testing the Agency shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Agency shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Agency shall notify the Client at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Client shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Client may raise and close Test Issues during the Test witnessing process.
- 7.5 The Agency shall provide to the Client in relation to each Test:
  - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
  - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
  - 7.6.1 an overview of the Testing conducted;
  - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Agency's explanation of why any criteria have not been met;
  - 7.6.3 the Tests that were not completed together with the Agency's explanation of why those Tests were not completed;
  - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
  - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Agency has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.

- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Client shall be entitled to recover from the Agency, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.9 If the Agency successfully completes the requisite Tests, the Client shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Agency shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

## **8. Discovering Problems**

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Agency shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 The Agency shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Agency shall make the Test Issue Management Log available to the Client upon request.
- 8.3 The Client shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Agency. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

## **9. Test witnessing**

- 9.1 The Client may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Client, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Agency shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
  - 9.3.1 shall actively review the Test documentation;
  - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Client so as to enable the Client to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
  - 9.3.3 shall not be involved in the execution of any Test;

- 9.3.4 shall be required to verify that the Agency conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Client to assess whether the Tests have been Achieved;
- 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Agency to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

## **10. Auditing the quality of the test**

- 10.1 The Client or an agent or contractor appointed by the Client may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Agency shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Client will give the Agency at least 5 Working Days' written notice of the Client's intention to undertake a Testing Quality Audit.
- 10.4 The Agency shall provide all reasonable necessary assistance and access to all relevant documentation required by the Client to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Client concern in respect of the Testing Procedures or any Test, the Client shall prepare a written report for the Agency detailing its concerns and the Agency shall, within a reasonable timeframe, respond in writing to the Client's report.
- 10.6 In the event of an inadequate response to the written report from the Agency, the Client (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Client.

## **11. Outcome of the testing**

- 11.1 The Client will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Client shall notify the Agency and:
  - 11.2.1 the Client may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
  - 11.2.2 the Client may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Agency

- to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Agency to meet a Milestone, then without prejudice to the Client's other rights and remedies, such failure shall constitute a material Default.
- 11.3 The Client shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Agency any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.
- 11.4 The Client shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 11.4.1 the issuing by the Client of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- 11.4.2 performance by the Agency to the reasonable satisfaction of the Client of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Agency to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Client shall promptly issue a report to the Agency setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Client shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Client shall refuse to issue a Satisfaction Certificate and, without prejudice to the Client's other rights and remedies, such failure shall constitute a material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Client may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Client agrees otherwise (in which case the Agency shall submit a Rectification Plan for approval by the Client within 10 Working Days of receipt of the Client's report pursuant to Paragraph 10.5); and

- 11.9.2 where the Client issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

## **12. Risk**

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
- 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Client's requirements for that Deliverable or Milestone; or
  - 12.1.2 affect the Client's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

### **Annex 1: Test Issues – Severity Levels**

#### **1. Severity 1 Error**

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

#### **2. Severity 2 Error**

- 2.1 This is an error for which, as reasonably determined by the Client, there is no practicable workaround available, and which:
- 2.1.1 causes a Component to become unusable;
  - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
  - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables;

#### **3. Severity 3 Error**

- 3.1 This is an error which:
- 3.1.1 causes a Component to become unusable;
  - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
  - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;
- but for which, as reasonably determined by the Client, there is a practicable workaround available;



#### 4. Severity 4 Error

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

#### 5. Severity 5 Error

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

#### Annex 2: Satisfaction Certificate

To: [insert name of Agency]

From: [insert name of Client]

[insert Date dd/mm/yyyy]

Dear Sirs,

##### Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Call-Off Contract**") [insert Call-Off Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [insert Client name] ("**Client**") and [insert Agency name] ("**Agency**") dated [insert Call-Off Start Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in the Call-Off Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in

respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Client]

## Call-Off Schedule 14 (Service Levels)

### 1. Definitions

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

**"Critical Service Level Failure"** has the meaning given to it in the Order Form;

**"Service Level Failure"** 35 means a failure to meet the Service Level Performance Measure in respect of a Service Level;

**"Service Level Performance Measure"** 36 shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and

**"Service Level Threshold"** 37 shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

### 2. What happens if you don't meet the Service Levels

- 2.1 The Agency shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.

- 2.2 The Agency shall send Performance Monitoring Reports to the Client detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.3 Not more than once in each Contract Year, the Client may, on giving the Agency at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Agency shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
  - 2.3.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
  - 2.3.2 the principal purpose of the change is to reflect changes in the Client's business requirements and/or priorities or to reflect changing industry standards; and

### **3. Critical Service Level Failure**

On the occurrence of a Critical Service Level Failure:

- 3.1 the Client shall be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Agency in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph 3 shall be without prejudice to the right of the Client to terminate this Contract and/or to claim damages from the Agency for material Default.

## **Part A: Service Levels**

### **1. Service Levels**

If the level of performance of the Agency:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Failure to occur,

the Agency shall immediately notify the Client in writing and the Client, in its absolute discretion and without limiting any other of its rights, may:

- 1.a.1 require the Agency to immediately take all remedial action that is reasonable to mitigate the impact on the Client and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 1.a.2 instruct the Agency to comply with the Rectification Plan Process;
- 1.a.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Agency to the Client; and/or

- 1.a.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

#### **Annex A to Part A: Services Levels**

The Milestones and deliverables will be agreed for each individual call-off made by the Client

The following Contract milestones/deliverables shall apply:

<b>Milestone</b>	<b>Requirement, provision of:</b>	<b>Timeframe for delivery</b>
1	Implementation Plan	Within two (2) weeks of Initial Start-Up Meeting if not already provided in proposal
2	Key personnel / teams contact details and Detailed standard operating procedures for complaints and issues resolution and escalation.	Within one (1) week of contract Award if not already provided in proposal
3	Life Chances workforce monitoring	Within Six (6) months of contract Award and then annually

The Authority will measure the quality of the Supplier's delivery by monitoring performance against the Key Performance Indicators / Service Level Agreement listed in the table below .

Key performance indicators (KPIs) will be used to assess performance in providing the requirement. Campaign specific KPIs may be agreed at the start of each project or sub-project.

#### **Key Performance Indicators**

<b>KPI/SLA</b>	<b>Service Area</b>	<b>KPI/SLA description</b>	<b>Target</b>
1	Delivery timescales	The supplier is to fully adhere to the timescales / project plans unless otherwise agreed	100%
2	Service Delivery	The Supplier ensures that all services provided addresses the requirements of each brief.	100%

3	Resource capacity	The supplier must guarantee sufficient resource for each project and maintain the overarching resource to ensure deadlines don't slip	100%
4	Service Delivery	Response to queries and requests within 1 working day	98%
5	Account Management	The service should be consistent and ensure that key personnel remain on the account. Any changes to the individuals working on this account must be made known to the Customer within 24 hrs.	98%
6	Account Management	Acknowledgment of any complaints or issues within 24 hours for the duration of the contract, including the escalation of appropriate issues to the authority's representative.	98%
7	Account Management	Responding to queries and requests within 1 working day, including refining brief and granting access to systems and submission of MI.	99%

## Part B: Performance Monitoring

### 2. Performance Monitoring and Performance Review

- 2.1 Within twenty (20) Working Days of the Start Date the Agency shall provide the Client with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 2.2 The Agency shall provide the Client with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
  - 2.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
  - 2.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;

- 2.2.3 details of any Critical Service Level Failures;
  - 2.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 2.2.5 such other details as the Client may reasonably require from time to time.
- 2.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Agency and the Client of the Performance Monitoring Reports. The Performance Review Meetings shall:
- 2.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Agency at such location and time (within normal business hours) as the Client shall reasonably require;
  - 2.3.2 be attended by the Agency's Representative and the Client's Representative; and
  - 2.3.3 be fully minuted by the Agency and the minutes will be circulated by the Agency to all attendees at the relevant meeting and also to the Client's Representative and any other recipients agreed at the relevant meeting.
- 2.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Agency's Representative and the Client's Representative at each meeting.
- 2.5 The Agency shall provide to the Client such documentation as the Client may reasonably require in order to verify the level of the performance by the Agency for any specified Service Period.

### **3. Satisfaction Surveys**

- 3.1 The Client may undertake satisfaction surveys in respect of the Agency's provision of the Deliverables. The Client shall be entitled to notify the Agency of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## Call-Off Schedule 15 (Call-Off Contract Management)

### 1. Definitions

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

<b>"Contract Manager"</b>	the manager appointed in accordance with paragraph 2.1 of this Schedule;
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### 2. Managing the contract

2.1 The Agency and the Client shall each appoint a Contract Manager for the purposes of this Contract through whom the provision of the Deliverables shall be managed day-to-day.

2.2 The Parties shall ensure that appropriate resource and expertise is made available to deliver the aims, objectives and specific provisions of the Contract. The Client will give the Agency instructions as to its requirements for the Deliverables. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Deliverables.

2.3 During the Contract Period, the Agency will:

2.3.1 keep the Client fully informed as to the progress and status of all Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties; and

2.3.2 promptly inform the Client of any actual or anticipated problems relating to provision of the Deliverables. Receipt of communication from the Agency by the Client does not absolve the Agency from its responsibilities, obligations or liabilities under the Contract.

2.4 During the Contract Period, the Parties' respective Contract Managers will arrange and attend meetings to review the status and progress of the Deliverables and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the Parties.

2.5 Unless otherwise agreed in the Statement of Work, the Agency will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Client does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

### **3. Approvals and Authority**

3.1 For the purposes of this Contract, any reference to Client Approval means written approval in one of the following ways:

3.1.1 the Client issuing a purchase order bearing the signature of an Authorised Client Approver, or

3.1.2 e-mail from the individual business e-mail address of an Authorised Client Approver, or

3.1.3 the signature of an Authorised Client Approver on the Agency's documentation.

3.2 Any reference to Agency Approval means written approval in one of the following ways:

3.2.1 e-mail from the individual business e-mail address of an Authorised Agency Approver, or

3.2.2 the signature of an Authorised Agency Approver on the Client's documentation.

3.3 The Agency will seek the Client's prior Approval of:

3.3.1 any estimates or quotations for any costs to be paid by the Client that are not agreed in a Statement of Work; and

3.3.2 any creative treatments, including but not limited to scripts, messaging, storyboards, copy, layouts, design, artwork, or proposed marketing activity.

3.4 The Agency will seek the Client's prior Approval of any draft Deliverables. The Client's Approval will be the Agency's authority to proceed with the use of the relevant Deliverables.

3.5 If the Client does not approve of any matter requiring Approval, it must notify the Agency of its reasons for disapproval within 14 days of the Agency's request.

3.6 If the Client delays approving or notifying the Agency as to its disapproval, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Statement of Work.

### **4. Monitoring Campaign Performance**

4.1 The Agency agrees to provide access to data and support for Audits undertaken by the Client and its Auditors under the CRTPA relating to campaign performance under the Contract during and after campaigns.

4.2 The Agency will fully comply with all remote access requests.

4.3 The Auditor may share data with relevant key stakeholders as necessary to complete the work. Where the Client carries out an Audit it will own the resulting report and may share non-sensitive outcomes as appropriate.

4.4 The Agency and the Client will agree a plan to address Audit findings to optimise campaign performance.



## 5. Contract Risk Management

5.1 Both Parties will proactively manage risks attributed to them under the terms of this Contract.

5.2 The Agency will develop, operate, maintain and amend, as agreed with the Client, processes for:

- 5.2.1 the identification and management of risks;
- 5.2.2 the identification and management of issues; and
- 5.2.3 monitoring and controlling project plans.

## 6. International Work

6.1 The management and process for Client billing under Statements of Work including international work is to be agreed prior to the commencement of the Statement of Work and set out in the Statement of Work or Letter of Appointment.

Annex: Contract Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

[Guidance note: Details of additional boards to be inserted.]

## Call-Off Schedule 16 (Benchmarking)

### 1. DEFINITIONS

1.1 In this Schedule, the following expressions shall have the following meanings:

<b>"Benchmark Review"</b>	38	a review of the Deliverables carried out in accordance with this Schedule to determine whether those Deliverables represent Good Value;
<b>"Benchmarked Deliverables"</b>	39	any Deliverables included within the scope of a Benchmark Review pursuant to this Schedule;
<b>"Comparable Rates"</b>	40	the Charges for Comparable Deliverables;
<b>"Comparable Deliverables"</b>	41	deliverables that are identical or materially similar to the Benchmarked Deliverables (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Deliverables exist in the market, the Agency shall propose an approach for developing a comparable Deliverables benchmark;

<b>"Comparison Group"</b>	42	a sample group of organisations providing Comparable Deliverables which consists of organisations which are either of similar size to the Agency or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Agency or which, are best practice organisations;
<b>"Equivalent Data"</b>	43	data derived from an analysis of the Comparable Rates and/or the Comparable Deliverables (as applicable) provided by the Comparison Group;
<b>"Good Value"</b>	44	that the Benchmarked Rates are within the Upper Quartile; and
<b>"Upper Quartile"</b>	45	in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Deliverables, are within the top 25% in terms of best value for money for the recipients of Comparable Deliverables.

## 2. When you should use this Schedule

- 2.1 The Agency acknowledges that the Client wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.
- 2.2 This Schedule sets to ensure the Contracts represent value for money throughout and that the Client may terminate the Contract by issuing a Termination Notice to the Agency if the Agency refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.
- 2.3 Amounts payable under this Schedule shall not fall with the definition of a Cost.

## 3. Benchmarking

### 3.1 How benchmarking works

- 3.1.1 The Client and the Agency recognise that, where specified in Framework Schedule 4 (Framework Management), the Client may give CCS the right to enforce the Client's rights under this Schedule.
- 3.1.2 The Client may, by written notice to the Agency, require a Benchmark Review of any or all of the Deliverables.
- 3.1.3 The Client shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Contract Commencement Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.

- 3.1.4 The purpose of a Benchmark Review will be to establish whether the Benchmarked Deliverables are, individually and/or as a whole, Good Value.
- 3.1.5 The Deliverables that are to be the Benchmarked Deliverables will be identified by the Client in writing.
- 3.1.6 Upon its request for a Benchmark Review the Client shall nominate a benchmarker. The Agency must approve the nomination within ten (10) Working Days unless the Agency provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Client may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
- 3.1.7 The cost of a benchmarker shall be borne by the Client (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Deliverables are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Agency and the relevant portion shall be reimbursed by the Client.

### **3.2 Benchmarking Process**

- 3.2.1 The benchmarker shall produce and send to the Client, for Approval, a draft plan for the Benchmark Review which must include:
  - (a) a proposed cost and timetable for the Benchmark Review;
  - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
  - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Client must give notice in writing to the Agency within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Agency whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.

3.2.5 Once it has received the Approval of the draft plan, the benchmarker shall:

- (a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Agency's professional judgment using:
  - (i) market intelligence;
  - (ii) the benchmarker's own data and experience;
  - (iii) relevant published information; and
  - (iv) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;
- (b) by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
- (c) using the Equivalent Data, calculate the Upper Quartile;
- (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

3.2.6 The Agency shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Agency agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates;
- (c) any other factors reasonably identified by the Agency, which, if not taken into consideration, could unfairly cause the Agency's pricing to appear non-competitive.

### 3.3 Benchmarking Report

3.3.1 For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;

- 3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Client, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:
- (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
  - (b) if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
  - (c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Agency has calculated whether or not the Benchmarked Deliverables are, individually or as a whole, Good Value.
- 3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Client in accordance with Clause 24 (Changing the contract).

**Call-Off Schedule 17 (MOD Terms) NOT USED**

**Call-Off Schedule 18 (Background Checks) NOT USED**

**Call-Off Schedule 19 (Scottish Law) NOT USED**

### **Call-Off Schedule 20 (Call-Off Specification)**

This Schedule sets out the characteristics of the Deliverables that the Agency will be required to make available to the Buyer under this Call-Off Contract

#### **BRIEF TEMPLATE**

Department/Organisation:

Contact name:

Contact email:

Framework ref:

Date issued:

Response deadline:

#### **Summary**

- a) The problem
- b) Mandatory constraints/ services required
- c) Constraints that may preclude agencies from accepting this brief
- d) Budget
- e) Timescales

#### **The Problem (and Objectives)**

- a) Outcome goals
- b) Business/ brand/ channel objectives
- c) SMART objective/ policy objective

#### **Context (Insight)**

- a) About our organisation
- b) Outline of the policy context

- c) Data, research and useful links
- d) Previous communications activity

### **Audiences**

- a) Audience data
- b) Current audience insight
- c) Customer journey
- d) Stakeholders and influencers
- e) Think/ feel/ do

### **Strategy**

- a) Existing strategy
- b) Known sensitivities
- c) Branding arrangements
- d) Constraints – for example if the strategy must include a certain channel (eg TV)
- e) Conflicts of interest/ reputational constraints

### **Agency requirement (Implementation)**

- a) Requirements
- b) Role of the agency
- c) Management and staffing
- d) OASIS outline Key delivery milestones

### **Agency response (Evaluation)**

- a) OASIS outline
- b) Marking scheme
- c) Further stage(s)

### **Appointment and timings (Scoring / Evaluation)**

- a) Timescales for tender (stages/ award)

- b) Contract length
- c) Total contract value

**Call-Off Schedule 21 (Northern Ireland Law) NOT USED**

**Call-Off Schedule 23 (HMRC) NOT USED**