

SCHEDULE 26

TERMINATION SERVICES AND MSA TRANSITION AGREEMENT

(Clause 11.6)

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SCHEDULE 26**TERMINATION SERVICES AND MSA TRANSITION AGREEMENT****1. INTRODUCTION**

1.1 On either:

1.1.1 the expiry of this Agreement; or

1.1.2 following receipt of the notice by the CONTRACTOR that the AUTHORITY intends to terminate this Agreement,

the parties shall comply with their respective obligations as outlined in Appendix 1 of this Schedule 26.

1.2 The CONTRACTOR shall enter into the MSA Transition Agreement substantially in the form set out in Appendix 1 of this Schedule 26 at the request of the AUTHORITY and shall not unreasonably delay entering into such agreement.

1.3 In the event the AUTHORITY chooses not to retender the provision of the Services and elects to provide the Services in-house, the parties shall, at the request of the AUTHORITY, enter into the MSA Transition Agreement substantially in the form set out in Appendix 1 of this Schedule 26 (and the CONTRACTOR shall not unreasonably delay entering into such agreement) and the AUTHORITY shall be deemed to be the "Replacement Contractor" for the purposes of such agreement.

SCHEDULE 26
TERMINATION SERVICES AND MSA TRANSITION AGREEMENT
APPENDIX 1

Dated

(1) ATOS ORIGIN IT SERVICES UK LIMITED
and
(2) SECRETARY OF STATE FOR WORK AND PENSIONS
and
(3) [REPLACEMENT CONTRACTOR]

MSA TRANSITION AGREEMENT

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THIS AGREEMENT IS MADE ON**BETWEEN:**

- (1) **ATOS ORIGIN IT UK SERVICES LIMITED** a company incorporated in England and Wales under registration number 01245534, whose registered office is at 4 Triton Square, London NW1 3HG (the “**CONTRACTOR**”); and
- (2) **SECRETARY OF STATE FOR WORK AND PENSIONS** (the “**AUTHORITY**”); and
- (3) [*REPLACEMENT CONTRACTOR*] a company incorporated in England and Wales under registration number [*to be inserted*], whose registered office is at [*full address to be inserted*] (the “**REPLACEMENT CONTRACTOR**”),

together (the “**Parties**”).

WHEREAS:

- A) on 15 March 2005, the **AUTHORITY** and the **CONTRACTOR** entered into the Medical Service Agreement (the “**MSA Agreement**”) for the provision of the Services (as defined herein);
- B) on the date hereof the **AUTHORITY** and the **REPLACEMENT CONTRACTOR** have entered into the [*to be inserted*] (the “**Replacement Agreement**”) to perform the Replacement Services (as defined herein); and
- C) the Parties now wish to provide for transition from the provision of the Services by the **CONTRACTOR** to the provision of the Replacement Services by the **REPLACEMENT CONTRACTOR**.

IT IS HEREBY AGREED AS FOLLOWS:**1. DEFINITIONS AND INTERPRETATION**

- 1.1 As used in this Agreement, the capitalised expressions shall have the following meanings, unless the context otherwise requires:

“**Acceptance Criteria**” means the criteria for the acceptance of the Replacement Services as set out in Schedule B and as further specified in the Detailed Transition Plan;

“**Agreement**” means this MSA Transition Services Agreement, comprised of the Clauses and Schedules hereof;

“**Assets**” means those assets from the BAFO Asset List which the **REPLACEMENT CONTRACTOR** has indicated in Schedule C it wishes to purchase from the **CONTRACTOR**;

“**Asset Value**” means the net book value of the Assets as specified as the Exit Net Book Value in Appendix 2 of Schedule 12 of the MSA Agreement;

“**AUTHORITY Data**” means all data, information, text, drawings, diagrams, images or sounds which are embodied in any electronic or tangible medium, and which are supplied or in respect of which access has been granted to the **CONTRACTOR** by the **AUTHORITY** pursuant to the MSA Agreement, or which the **CONTRACTOR** has been required to generate under the MSA Agreement other than for the **CONTRACTOR**’s internal business information;

“**AUTHORITY Forms**” means any forms licensed to the **CONTRACTOR** by the **AUTHORITY** pursuant to the MSA Agreement;

“AUTHORITY Properties” means those properties provided to the CONTRACTOR by the AUTHORITY pursuant to the MSA Agreement which the REPLACEMENT CONTRACTOR has indicated in Schedule 10 of the Replacement Agreement it wishes to use to provide the Replacement Services;

“AUTHORITY Software” means software owned by the AUTHORITY and required by the REPLACEMENT CONTRACTOR and which is set out in Schedule D;

“BAFO” means the best and final offer submitted by the REPLACEMENT CONTRACTOR;

“BAFO Asset List” means the list of assets which the CONTRACTOR uses to provide the Services and which the REPLACEMENT CONTRACTOR has indicated it wishes to purchase in Schedule C;

“BAFO Software List” means the list of software which the CONTRACTOR uses to provide the Services and which the REPLACEMENT CONTRACTOR has indicated it wishes to purchase in Schedule D;

“Broadly Comparable” means in accordance with paragraph 14 of Annex A to the Cabinet Office document ‘Staff Transfers in the Public Sector’ Statement of Practice dated January 2000;

“Charges” means the charges paid by the AUTHORITY to the CONTRACTOR in accordance with Clause 6 of the MSA Agreement;

“Charges Change Request” means the procedure described in Clause 6.13;

“Confidential Information” means all information designated as such by any Party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of any Party, medical records or personal data of any claimant, or information which may reasonably be regarded as the confidential information of the disclosing Party;

“CONTRACTOR Properties” means those properties provided by the CONTRACTOR for the provision of the Services which the REPLACEMENT CONTRACTOR has indicated in Schedule K it wishes to use to provide the Replacement Services;

“CONTRACTOR Schemes” means the CS Scheme and the Sema Scheme;

“CS Scheme” means the Atos Origin CS Pension Scheme;

“Data Transfer Plan” means the plan described in Clause 4.8.2;

“Default” means any breach of the obligations of any Party or any default, act, omission, negligence or statement of any Party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable (by way of indemnity or otherwise) to the other Parties.

“Detailed Transition Plan” means the plan for the transition of the Services to the REPLACEMENT CONTRACTOR to be prepared by the REPLACEMENT CONTRACTOR pursuant to Clause 3.1.1 and to be approved by the AUTHORITY and CONTRACTOR pursuant to Clause 3.2;

“Dispute Resolution Procedure” means the procedure described in Clause 10;

“Effective Date” means the date of award of the Replacement Agreement to the REPLACEMENT CONTRACTOR;

“Fee Paid Doctors” means a doctor, who is not a Transferring Employee, who provides any element of the Services for which he receives payment;

“Fit for Purpose” means a medical report which meets the standards set out in Schedule 4 of the MSA Agreement;

“Intellectual Property Rights” means patents, trade marks, service marks, rights in data bases, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);

“Key Transition Staff” means the individuals nominated as key staff by the CONTRACTOR and REPLACEMENT CONTRACTOR who have know-how and expertise necessary for the successful transition of the Services, as listed in Schedule J;

“MSA Agreement” means the agreement dated 15 March 2005 between the AUTHORITY and the CONTRACTOR for the provision of the Services;

“Outline Transition Plan” means the transition plan provided by the REPLACEMENT CONTRACTOR as part of its BAFO which has been approved by the AUTHORITY and the CONTRACTOR as contained in Schedule A;

“Party” means a party to this Agreement;

“Payment Date” means the date ten (10) days after the date on which the Transfer Amount has been determined, calculated and verified in accordance with Clauses 16.12.6 to 16.12.10 or such other date as may be agreed by the CONTRACTOR and REPLACEMENT CONTRACTOR.

“Planned Retender Cutover Date” means the date specified for the cutover of the Services from the CONTRACTOR to the REPLACEMENT CONTRACTOR as stated in the Detailed Transition Plan;

“Planned Transition Period” means the period from the date of execution of this Agreement until the Planned Retender Cutover Date;

“Preliminary Prescribed Particulars” means the information contained in Schedule E to this Agreement relating to potential Transferring Employees provided by the CONTRACTOR to the AUTHORITY and REPLACEMENT CONTRACTOR;

“Prescribed Particulars” means the information contained in Schedule F to this Agreement in respect of any person employed by the CONTRACTOR or any of its Subcontractors and who are assigned to the provision of the Services;

“Property Agreements” means the agreements copies of which are set out in Schedule 10 of the MSA Agreement;

“Replacement Agreement” means the agreement dated the date hereof between the AUTHORITY and the REPLACEMENT CONTRACTOR for the provision of the Replacement Services;

“Replacement Services” means the services to be provided by the REPLACEMENT CONTRACTOR pursuant to the Replacement Agreement;

“Retender Cutover Date” means the date on which the provision of the Replacement Services is commenced by a REPLACEMENT CONTRACTOR, such date to be decided in accordance with the provisions of Clause 3.4;

“Sema Scheme” means the Atos Origin (Sema) Pension Scheme;

“Services” means the services currently provided by the CONTRACTOR under the MSA Agreement which will, after the Retender Cutover Date be provided in substantial part by the REPLACEMENT CONTRACTOR under the Replacement Agreement;

“Shortfall” means the amount that the Transfer Amount is less than the bulk transfer liability to the REPLACEMENT CONTRACTOR’s pension scheme as specified in Clause 16.12.16;

“Software” means the AUTHORITY Software and the Third Party Software;

“Subcontractor” means (i) the subcontractors of the CONTRACTOR as specified in the MSA Agreement and (ii) the subcontractors of the REPLACEMENT CONTRACTOR as specified in the Replacement Agreement. The term "Subcontract" shall be similarly construed;

“Third Party Agreements” means all maintenance agreements, support agreements, equipment leases and all other supply or service agreements from the BAFO Asset List which the REPLACEMENT CONTRACTOR has elected to novate from the CONTRACTOR;

“Third Party Software” means software used by the CONTRACTOR in the provision of the Services and owned by third parties which is required by the REPLACEMENT CONTRACTOR and which is set out in Schedule D;

“Timing Adjustment” has the meaning given to it in Appendix 1 of Schedule G;

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981;

“Transferring Employees” means employees of the CONTRACTOR (or its Subcontractors) who are wholly or substantially employed in the provision of the Services as at the Retender Cutover Date;

“Transferring Member” means a Transferring Employee who is:

- (a) a member of the CONTRACTOR’S pension schemes immediately before the Retender Cutover Date; and
- (b) commences membership of the REPLACEMENT CONTRACTOR’S final salary schemes with effect on and from the Retender Cutover Date and;
- (c) accepts the offer contained in the Transfer Letter to transfer his or her rights to the REPLACEMENT CONTRACTOR’S Schemes in respect of pensionable service accrued up to the Retender Cutover Date;

“Transfer Shortfall” means the amount equal to the Transfer Amount less the amount or value of assets actually received by the REPLACEMENT CONTRACTOR’S Scheme at the date of the written demand;

“Transition Period” means the period specified in Clause 2;

“Transition Review Process” means the formal reviews undertaken by the AUTHORITY in conjunction with the REPLACEMENT CONTRACTOR in accordance with Schedule B and as further set out in the Detailed Transition Plan;

“Transition Services” means the services provided by the CONTRACTOR and REPLACEMENT CONTRACTOR hereunder and any services provided by the

REPLACEMENT CONTRACTOR pursuant to Schedule 7 of the Replacement Agreement;
and

“**Working Day**” means Monday to Friday (inclusive) and excludes statutory bank holidays in England and Wales.

1.2 General

1.2.1 As used in this Agreement:

1.2.1.1 the masculine includes the feminine and the neuter; and

1.2.1.2 the singular includes the plural and vice versa.

1.2.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.2.3 The Parties shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referenced in this Agreement.

1.2.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.2.5 References to Clauses and Schedules are, unless otherwise provided, references to clauses of and schedules to this Agreement.

1.2.6 Except as otherwise expressly provided in this Agreement, all remedies available to any Party under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

1.2.7 The Party receiving the benefit of an indemnity under this Agreement shall use its reasonable endeavours to mitigate its loss covered by the indemnity.

2. TERM OF THE AGREEMENT

2.1 This Agreement shall come into force on the Effective Date and, unless earlier terminated in accordance with Clause 11, shall expire on the date which is the later of:

2.1.1 the date on which the obligations of the Parties have been discharged pursuant to this Agreement; or

2.1.2 six (6) months after the Retender Cutover Date,

(the “**Transition Period**”).

3. PERFORMANCE OF TRANSITION ACTIVITIES AND SERVICES

3.1 Provision of the Detailed Transition Plan

3.1.1 The REPLACEMENT CONTRACTOR shall, within two (2) weeks of the Effective Date, prepare a plan for the Transition Services (the “**Detailed Transition Plan**”) such that all of the obligations of the Parties are completed by the expiry of the Transition Period. The Detailed Transition Plan shall also include full details of the Acceptance Criteria and the detail and timetable of the Transition Review Process.

The Detailed Transition Plan shall be based on the Outline Transition Plan and shall be submitted to the AUTHORITY and the CONTRACTOR for approval.

- 3.1.2 The CONTRACTOR and the AUTHORITY shall provide reasonable assistance to the REPLACEMENT CONTRACTOR in the preparation of the Detailed Transition Plan.

3.2 Approval of the Detailed Transition Plan

- 3.2.1 The AUTHORITY shall, within ten (10) Working Days of receipt of the Detailed Transition Plan either:

3.2.1.1 approve the Detailed Transition Plan; or

3.2.1.2 reject the Detailed Transition Plan, giving reasons for such rejection.

- 3.2.2 The AUTHORITY may only reject the Detailed Transition Plan pursuant to Clause 3.2.1.2 if, in the reasonable opinion of the AUTHORITY, it is not consistent with the Outline Transition Plan and/or all provisions of the Replacement Agreement.

- 3.2.3 The CONTRACTOR shall, within ten (10) Working Days of receipt of the Detailed Transition Plan either:

3.2.3.1 approve the Detailed Transition Plan; or

3.2.3.2 reject the Detailed Transition Plan, giving reasons for such rejection.

- 3.2.4 The CONTRACTOR may only reject the Detailed Transition Plan pursuant to Clause 3.2.3.2, if in the reasonable opinion of the CONTRACTOR, it is not consistent with the Outline Transition Plan and imposes additional obligation on the CONTRACTOR which are, in the reasonable opinion of the CONTRACTOR, onerous.

- 3.2.5 If the Parties fail to agree the Detailed Transition Plan in accordance with this Clause 3.2, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3.3 Transition Services

- 3.3.1 The Parties shall perform the Transition Services and all other obligations in accordance with the Detailed Transition Plan and, unless otherwise specified herein, each Party shall bear its own costs and expenses in carrying out its obligations hereunder.

- 3.3.2 The CONTRACTOR and REPLACEMENT CONTRACTOR shall provide at no additional charge all additional assistance as is reasonably required by the AUTHORITY for the transition of the Services from the MSA Agreement to the Replacement Agreement.

- 3.3.3 The CONTRACTOR shall be responsible for developing new management information reports and changing existing management information reports to allow the REPLACEMENT CONTRACTOR to provide the Replacement Services. For the avoidance of doubt any work undertaken by the CONTRACTOR in developing new management reports will be charged to the AUTHORITY by the CONTRACTOR in accordance with Schedule 12 of the MSA Agreement.

3.4 Transition Review Process

- 3.4.1 The AUTHORITY shall transfer responsibility from the CONTRACTOR to the REPLACEMENT CONTRACTOR for the provision of the Services on the Retender Cutover Date if the REPLACEMENT CONTRACTOR has either:
- 3.4.1.1 complied fully with the Transition Review Process pursuant to this Clause 3.4 and met all of the Acceptance Criteria; or
 - 3.4.1.2 demonstrated to the satisfaction of the AUTHORITY (whose determination in such matter shall be final) its capacity to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.
- 3.4.2 The REPLACEMENT CONTRACTOR shall commence provision of the Replacement Services at one (1) minute past midnight on the day immediately following the Retender Cutover Date.
- 3.4.3 The AUTHORITY shall undertake the Transition Review Process in order to determine whether the Acceptance Criteria have been met or satisfy itself in accordance with Clause 3.4.1.2 of the REPLACEMENT CONTRACTOR's capacity to deliver the Replacement Services after the Retender Cutover Date in accordance with the provisions of the Replacement Agreement.
- 3.4.4 The Transition Review Process shall be recorded as successful in respect of any of the Replacement Services and the REPLACEMENT CONTRACTOR notified by the AUTHORITY accordingly where all of the Acceptance Criteria are met in respect of such Replacement Services in accordance with the Transition Review Process and/or the AUTHORITY is satisfied that the REPLACEMENT CONTRACTOR is able to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.
- 3.4.5 The Transition Review Process shall be recorded as unsuccessful in respect of any of the Replacement Services and the REPLACEMENT CONTRACTOR notified by the AUTHORITY accordingly where any of the Acceptance Criteria are not met in respect of such Replacement Services and the REPLACEMENT CONTRACTOR has failed to satisfy the AUTHORITY that it is able to deliver the Replacement Services in accordance with the provisions of the Replacement Agreement.
- 3.4.6 If the Transition Review Process has not been recorded as successful in respect of any Replacement Services pursuant to Clause 3.4.4 by the Planned Retender Cutover Date, the AUTHORITY shall have the right without prejudice to its other rights and remedies:
- 3.4.6.1 to transfer responsibility to the REPLACEMENT CONTRACTOR pursuant to Clause 3.4.1 for the provision of any Replacement Services in respect of which the Transition Review Process has been recorded as successful; and/or
 - 3.4.6.2 to extend the Transition Period for up to three (3) consecutive additional periods of the same duration or of such shorter duration as the AUTHORITY may notify to the REPLACEMENT CONTRACTOR and the CONTRACTOR, during which the REPLACEMENT CONTRACTOR shall use all reasonable endeavours to correct the deficiency which caused the Transition Review Process to be recorded as unsuccessful in respect of any Replacement Services.
- 3.4.7 In the event that the AUTHORITY extends the Planned Transition Period for a period pursuant to Clause 3.4.6.2 and the Transition Review Process has not been

recorded as successful in respect of any Replacement Services by the end of that period, the AUTHORITY shall have the right without prejudice to its other rights and remedies:

- 3.4.7.1 to transfer responsibility to the REPLACEMENT CONTRACTOR pursuant to Clause 3.4.1 for the provision of any Replacement Services in respect of which the Transition Review Process has been recorded as successful; and/or
- 3.4.7.2 to terminate, in accordance with the terms of the Replacement Agreement, any Replacement Services in respect of which the Transition Review Process has been recorded as unsuccessful; and/or
- 3.4.7.3 to terminate this Agreement pursuant to Clause 11.1.

3.5 Failure to Comply with the Detailed Transition Plan

3.5.1 If, due to the Default of the REPLACEMENT CONTRACTOR, the Parties fail to achieve the Planned Retender Cutover Date the REPLACEMENT CONTRACTOR shall, without prejudice to the Parties' other rights and remedies:

3.5.1.1 pay to the AUTHORITY all actual additional costs which are incurred by the AUTHORITY for the provision of the Services by the CONTRACTOR (to the extent that such costs are not caused by a Default of the AUTHORITY); and

3.5.1.2 pay any reasonable additional costs of the AUTHORITY and/or the CONTRACTOR incurred as a direct result in the delay to the Planned Retender Cutover Date to the extent that such reasonable additional costs have not already been recovered pursuant to Clause 3.5.1.1 and to the extent that such costs are not caused by a Default of the REPLACEMENT CONTRACTOR.

3.5.2 If, due to the Default of the CONTRACTOR, the Parties fail to achieve the Planned Retender Cutover Date the CONTRACTOR shall, without prejudice to the Parties other rights and remedies pay any reasonable additional costs of the AUTHORITY and/or the REPLACEMENT CONTRACTOR incurred as a direct result in the delay to the Planned Retender Cutover Date (to the extent that such costs are not caused by a Default of the AUTHORITY and/or the REPLACEMENT CONTRACTOR).

3.5.3 If the performance of this Agreement by the REPLACEMENT CONTRACTOR be delayed by a Default of the AUTHORITY or the CONTRACTOR the REPLACEMENT CONTRACTOR shall be entitled to a reasonable extension of time and any reasonable additional costs incurred which it can show was directly incurred as a result of the delay, provided always that notwithstanding the AUTHORITY's or CONTRACTOR's Default the REPLACEMENT CONTRACTOR shall use all reasonable endeavours to continue to perform its obligations under this Agreement and shall notify the AUTHORITY and CONTRACTOR in writing of the Default as soon as it becomes aware of such Default.

3.5.4 The Parties shall use their reasonable endeavours to mitigate the impact of any such delays.

3.6 Key Transition Staff

3.6.1 The CONTRACTOR and the REPLACEMENT CONTRACTOR shall not remove any Key Transition Staff from the provision of the Transition Services without the AUTHORITY's prior written consent, such consent not to be withheld or delayed if the following conditions are met:

- 3.6.1.1 the CONTRACTOR or REPLACEMENT CONTRACTOR finds a suitable replacement ("Replacement Key Transition Staff") whose abilities, expertise and qualifications are similar to or in excess of those of the replaced individual (the "Departing Key Transition Staff"); and
- 3.6.1.2 the AUTHORITY shall be entitled, at its discretion, to attend interviews and/or review the CV's of any proposed Replacement Key Transition Staff prior to giving such consent.
- 3.6.2 The CONTRACTOR shall use all reasonable endeavours to make available for interview by the REPLACEMENT CONTRACTOR during the Transition Period any former Key Transition Staff who have been replaced in accordance with Clause 3.6.1.
- 3.6.3 If, in the AUTHORITY'S reasonable opinion, an employee of the CONTRACTOR or REPLACEMENT CONTRACTOR (whether Key Transition Staff or otherwise) is unsuitable to perform the Transition Services under this Agreement for reasons of incompatibility with other staff, incompetence, unprofessional behaviour or similar circumstances, the AUTHORITY may request that such an employee be removed from the performance of the Transition Services. In this event, the CONTRACTOR or REPLACEMENT CONTRACTOR shall remove the employee and replace him or her with a suitable replacement, such replacement to be approved by the AUTHORITY (whose approval shall not be unreasonably withheld or delayed).

4. TRANSFER OF ASSETS, THIRD PARTY AGREEMENTS AND SOFTWARE

4.1 Assets

- 4.1.1 The CONTRACTOR shall make the Assets available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties).
- 4.1.2 Where the REPLACEMENT CONTRACTOR elects to move any of the Assets it shall be responsible for the collection and shipping of such Assets and all associated costs.
- 4.1.3 The CONTRACTOR shall arrange for the removal from the AUTHORITY Properties and the CONTRACTOR Properties, by the dates specified in the Detailed Transition Plan for such removal of all assets which are not being purchased by the REPLACEMENT CONTRACTOR in accordance with this Clause 4.1.
- 4.1.4 The CONTRACTOR shall provide to the REPLACEMENT CONTRACTOR all instructions necessary for the proper installation of any computer hardware that has been used in relation to the provision of the Services and which form part of the Assets.
- 4.1.5 The REPLACEMENT CONTRACTOR shall pay the CONTRACTOR the Asset Value in relation to the transfer of the Assets. The Asset Value shall be paid in accordance with Clause 7.
- 4.1.6 Risk in the Assets shall pass immediately on transfer to the REPLACEMENT CONTRACTOR.
- 4.1.7 Title in the Assets shall pass to the REPLACEMENT CONTRACTOR upon payment of the Asset Value in accordance with the provisions of Clause 4.1.5.
- 4.1.8 The CONTRACTOR shall use its reasonable endeavours to ensure that the BAFO Asset List is updated during the Transition Period to reflect any changes to the

Assets listed therein resulting from the replacement of such Assets as soon as reasonably practicable after such change occurs.

4.2 **Third Party Agreements**

- 4.2.1 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties) all of the assets for which Third Party Agreements are to be novated to the REPLACEMENT CONTRACTOR as specified in the BAFO Asset List by the REPLACEMENT CONTRACTOR.
- 4.2.2 The CONTRACTOR shall arrange for the removal from the AUTHORITY Properties and the CONTRACTOR Properties by the dates specified in the Detailed Transition Plan for such removal of all assets for which Third Party Agreements are not to be novated to the REPLACEMENT CONTRACTOR.
- 4.2.3 The CONTRACTOR shall novate all rights and obligations in such Third Party Agreements to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed by the Parties) and, for the avoidance of doubt, the CONTRACTOR shall be responsible for all costs and/or expenses incurred by the CONTRACTOR in procuring such novations (including but not limited to any payments required to be made to the relevant third parties).
- 4.2.4 The CONTRACTOR shall continue to be liable for its obligations and liabilities incurred or due to be performed, incurred or satisfied up to the Retender Cutover Date as if the novation had not occurred and the REPLACEMENT CONTRACTOR shall have no liability or obligation in respect of such Third Party Agreements during this period. For the avoidance of doubt, the CONTRACTOR shall have no liability or obligation in respect of such Third Party Agreements after this date.
- 4.2.5 The REPLACEMENT CONTRACTOR shall release and discharge the CONTRACTOR from all obligations and liabilities of the CONTRACTOR in respect of the Third Party Agreements that are due to be performed, incurred or satisfied on or after the date such Third Party Agreement is novated in accordance with Clause 4.2.3 and all claims and demands whatsoever in respect of those obligations and liabilities. For the avoidance of doubt, the CONTRACTOR shall remain liable for all payments due prior to the date such Third Party Agreement is novated in accordance with Clause 4.2.3 notwithstanding that such payments are invoiced to the REPLACEMENT CONTRACTOR after that date. The Parties shall agree detailed procedures for dealing with such invoices in the Detailed Transition Plan.

4.3 **Software**

AUTHORITY Software

- 4.3.1 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) the source code and object code held by the CONTRACTOR in respect of the AUTHORITY Software and all documentation relating thereto (as identified in the Detailed Transition Plan).
- 4.3.2 Risk and title in any media on which the AUTHORITY Software is supplied shall pass on delivery to the REPLACEMENT CONTRACTOR.

AUTHORITY Third Party Software

- 4.3.3 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) the source code and object code held by the

CONTRACTOR in respect of the AUTHORITY Third Party Software and all documentation relating thereto (as identified in the Detailed Transition Plan)..

Specially Written Software

- 4.3.4 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) the source code and object code held by the CONTRACTOR in respect of the Specially Written Software and all documentation relating thereto (as identified in the Detailed Transition Plan).

Essential CONTRACTOR Software

- 4.3.5 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) a copy of the source code and object code held by the CONTRACTOR in respect of the Essential CONTRACTOR Software and all documentation relating thereto.
- 4.3.6 The CONTRACTOR hereby grants to the REPLACEMENT CONTRACTOR and the REPLACEMENT CONTRACTOR hereby accepts a non-exclusive, royalty-free, non-transferable licence for the duration of the Replacement Agreement solely for the performance of the Replacement Services to use, copy and modify the Essential CONTRACTOR Software.
- 4.3.7 For the avoidance of doubt, the licence granted in Clause 4.3.6 to the REPLACEMENT CONTRACTOR shall inure to the benefit of its Subcontractors solely for the purposes of providing the Replacement Services.
- 4.3.8 The CONTRACTOR shall retain all Intellectual Property Rights in the Essential CONTRACTOR Software (including any in any modifications or enhancements thereto).

CONTRACTOR Software

- 4.3.9 The CONTRACTOR shall make available to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) a copy of the object code held by the CONTRACTOR in respect of the CONTRACTOR Software and all documentation relating to the CONTRACTOR Software.
- 4.3.10 The CONTRACTOR hereby grants to the REPLACEMENT CONTRACTOR and the REPLACEMENT CONTRACTOR hereby accepts a non-exclusive, royalty-free, non-transferable licence for the duration of the Replacement Agreement solely for the performance of the Replacement Services to use the CONTRACTOR Software.
- 4.3.11 For the avoidance of doubt, the licence granted in Clause 4.3.10 to the REPLACEMENT CONTRACTOR shall inure to the benefit of its Subcontractors solely for the purposes of providing the Replacement Services.
- 4.3.12 The CONTRACTOR shall retain all Intellectual Property Rights in the CONTRACTOR Software.

CONTRACTOR Third Party Software

- 4.3.13 The CONTRACTOR shall use all reasonable endeavours to novate all rights and obligations in the CONTRACTOR Third Party Software to the REPLACEMENT CONTRACTOR at the time or times set out in the Detailed Transition Plan (or as otherwise agreed in writing by the Parties) and, for the avoidance of doubt, the

CONTRACTOR shall be responsible for all costs and/or expenses incurred by the CONTRACTOR in procuring such novations (including but not limited to any payments required to be made to the relevant third parties).

- 4.3.14 The CONTRACTOR shall continue to be liable for its obligations and liabilities incurred or due to be performed or satisfied up to the Retender Cutover Date as if the novation had not occurred and the REPLACEMENT CONTRACTOR shall have no liability or obligations in respect of such CONTRACTOR Third Party Software during this period.
- 4.3.15 The REPLACEMENT CONTRACTOR shall release and discharge the CONTRACTOR from all obligations and liabilities in respect of the CONTRACTOR Third Party Software that are due to be performed or satisfied on or after the date such CONTRACTOR Third Party Software is novated in accordance with Clause 4.3.5 and all claims and demands whatsoever in respect of those obligations and liabilities. For the avoidance of doubt, the CONTRACTOR shall remain liable for all payments due prior to the date such CONTRACTOR Third Party Software is novated in accordance with Clause 4.3.5 in respect of such CONTRACTOR Third Party Software.
- 4.3.16 Risk and title in any media on which the CONTRACTOR Third Party Software is supplied shall pass on delivery to the REPLACEMENT CONTRACTOR.

4.4 Indemnity

The CONTRACTOR shall indemnify the AUTHORITY and the REPLACEMENT CONTRACTOR from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any liabilities of the REPLACEMENT CONTRACTOR with respect to the Assets (including the leased equipment), Third Party Agreements, AUTHORITY Software and AUTHORITY Third Party Software which accrued or arose from events, or acts or omissions of the CONTRACTOR during the period prior to the Retender Cutover Date except to the extent that any claim, action, cost or expense arising out of, or in connection with any liability arises as a result of the CONTRACTOR acting on the instruction of the AUTHORITY or the REPLACEMENT CONTRACTOR or arises from the Default of the AUTHORITY and/or the REPLACEMENT CONTRACTOR.

4.5 Incident Log

- 4.5.1 On the date(s) specified in the Detailed Transition Plan, the CONTRACTOR shall provide the REPLACEMENT CONTRACTOR with a full and complete copy of the incident log book in relation to the Services and all associated documentation recorded by the CONTRACTOR in respect of any incidents in relation to the Software and any AUTHORITY Software that have arisen during the three (3) months prior to that date which shall include information relating to the status of such incidents, the steps taken to resolve such incidents and the proposed date for resolution of such incidents.
- 4.5.2 The CONTRACTOR undertakes that during the Transition Period it shall continue to comply with its obligations under the MSA Agreement with regards to the resolution of incidents specified in the Incident Log.

4.6 Work in Progress

- 4.6.1 The CONTRACTOR shall continue to provide the Services during the Transition Period in accordance with the provisions of the MSA Agreement (or as otherwise agreed in writing with the AUTHORITY).

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- 4.6.2 The Parties shall agree how the work-in-progress of the CONTRACTOR under the MSA Agreement is to be actioned, and the required activities shall be addressed in the Detailed Transition Plan.
- 4.6.3 The REPLACEMENT CONTRACTOR shall assume all of the obligations of the CONTRACTOR as of the Retender Cutover Date in respect of any work-in-progress provided that the CONTRACTOR has complied with all of its obligations pursuant to the MSA Agreement.
- 4.6.4 Subject to Clause 4.6.5, where the CONTRACTOR has failed to comply with its obligations pursuant to the MSA Agreement (or as otherwise agreed in writing with the AUTHORITY) in respect of any work-in-progress it shall reimburse the REPLACEMENT CONTRACTOR any reasonable additional costs in completing the work-in-progress.
- 4.6.5 The CONTRACTOR shall continue to be paid (in accordance with the terms of the MSA Agreement or as otherwise agreed in writing with the AUTHORITY) for any Fit for Purpose medical reports which are produced after the Retender Cutover Date as a result of a medical examination or as a result of a scrutiny of documentary evidence, which is carried out by the CONTRACTOR before the Retender Cutover Date. Where some residual administrative tasks are still required to clear the case, the REPLACEMENT CONTRACTOR will not be paid for the medical report or any residual work completed by the REPLACEMENT CONTRACTOR.
- 4.6.6 The REPLACEMENT CONTRACTOR will be paid for all Fit for Purpose written medical reports, produced by the REPLACEMENT CONTRACTOR, either as result of a medical examination or as a result of a scrutiny of documentary evidence which is carried out by the REPLACEMENT CONTRACTOR after the Retender Cutover Date in accordance with the terms of the Replacement Agreement.

4.7 Forms

The CONTRACTOR shall, not later than five (5) working days after the Retender Cutover Date, at the sole option of the AUTHORITY, either return to the AUTHORITY, or provide to the REPLACEMENT CONTRACTOR or destroy, all unused AUTHORITY Forms. For the avoidance of doubt, the CONTRACTOR shall not destroy any AUTHORITY Forms without the prior written permission of the AUTHORITY.

4.8 Data

- 4.8.1 The CONTRACTOR shall, in accordance with the Outline Transition Plan, deliver to the AUTHORITY and to the REPLACEMENT CONTRACTOR an inventory of the AUTHORITY Data. The AUTHORITY and REPLACEMENT CONTRACTOR will provide such assistance as is reasonably required to produce the inventory.
- 4.8.2 The REPLACEMENT CONTRACTOR shall, in accordance with the Outline Transition Plan, deliver to the AUTHORITY and to the CONTRACTOR:
- 4.8.2.1 proposals for the transfer of the AUTHORITY Data to the REPLACEMENT CONTRACTOR; and
- 4.8.2.2 proposals for testing the integrity and completeness of the AUTHORITY Data which is being transferred,
- (the “**Data Transfer Plan**”).
- 4.8.3 The AUTHORITY shall, within ten (10) Working Days of receipt of the Data Transfer Plan either:

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- 4.8.3.1 approve the Data Transfer Plan; or
 - 4.8.3.2 reject the Data Transfer Plan, giving reasons for such rejection.
 - 4.8.4 The AUTHORITY may only reject the Data Transfer Plan pursuant to Clause 4.8.3.2 if it is not consistent with the Outline Transition Plan and all provisions of the Replacement Agreement.
 - 4.8.5 The CONTRACTOR shall, within ten (10) Working Days of receipt of the Data Transfer Plan either:
 - 4.8.5.1 approve the Data Transfer Plan; or
 - 4.8.5.2 reject the Data Transfer Plan, giving reasons for such rejection.
 - 4.8.6 The CONTRACTOR may only reject the Data Transfer Plan pursuant to Clause 4.8.5.2 if it is not consistent with the Outline Transition Plan.
 - 4.8.7 If the parties fail to agree the Data Transfer Plan in accordance with this Clause 4.8, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
 - 4.8.8 Within two (2) weeks of delivering the Data Transfer Plan the CONTRACTOR shall provide, at no additional charge, all reasonable assistance to the AUTHORITY and the REPLACEMENT CONTRACTOR in complying with the Data Transfer Plan.
 - 4.8.9 Risk in the AUTHORITY Data shall pass to the REPLACEMENT CONTRACTOR at the later of:
 - 4.8.9.1 three (3) months after the actual transfer date of the AUTHORITY Data to the REPLACEMENT CONTRACTOR; or
 - 4.8.9.2 the actual date where the CONTRACTOR has satisfied the AUTHORITY of the integrity and completeness of the AUTHORITY Data to be transferred.

4.9 **Documentation**

On the dates specified in the Detailed Transition Plan, the CONTRACTOR shall provide to the REPLACEMENT CONTRACTOR all the documentation referred to in Schedule H of this Agreement, and any other information which is in the possession of the CONTRACTOR and which is relevant to the provision of the Services.

4.10 **Warranties by the CONTRACTOR in relation to the Assets and Software**

- 4.10.1 The CONTRACTOR hereby warrants and represents to the AUTHORITY and the REPLACEMENT CONTRACTOR:
 - 4.10.1.1 except as noted in the BAFO Asset List and the BAFO Software List, no consents or agreements of third parties are required for the transfer of any Asset or Software to the REPLACEMENT CONTRACTOR;
 - 4.10.1.2 each of the Assets to be transferred hereunder are owned legally and beneficially by the CONTRACTOR and shall be transferred to the REPLACEMENT CONTRACTOR with full title guarantee or the CONTRACTOR will be able to procure its sale to the CONTRACTOR with full title guarantee;

- 4.10.1.3 each of the Assets capable of possession is in the possession of the CONTRACTOR or subject to its control;
 - 4.10.1.4 with respect to any Software, use of the Software for the Replacement Services shall not infringe any third party's Intellectual Property Rights provided that no warranty is given with respect to any use outside the provision of such services; and
 - 4.10.1.5 that the CONTRACTOR shall use all reasonable endeavours to ensure that information supplied to the AUTHORITY or the REPLACEMENT CONTRACTOR pursuant to this Agreement is materially accurate and complete.
- 4.10.2 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

5. PROVISION OF ACCOMMODATION

- 5.1 The Parties shall comply with the provisions of the Detailed Transition Plan which shall outline the timetable for the vacation of the AUTHORITY Properties and CONTRACTOR Properties by the CONTRACTOR and the occupation of such AUTHORITY Properties and CONTRACTOR Properties by the REPLACEMENT CONTRACTOR.
- 5.2 The REPLACEMENT CONTRACTOR confirms that it has had the opportunity to inspect the AUTHORITY Properties and the CONTRACTOR Properties and to carry out surveys and valuations of the AUTHORITY Properties and the CONTRACTOR Properties in order to satisfy itself that the AUTHORITY Properties and the CONTRACTOR Properties are suitable for the provision of the Replacement Services.
- 5.3 The AUTHORITY and the CONTRACTOR shall provide all reasonable assistance to the REPLACEMENT CONTRACTOR in order that the REPLACEMENT CONTRACTOR may occupy the AUTHORITY Properties and the CONTRACTOR Properties (including, where appropriate, the assignment of any lease or licence for the CONTRACTOR Properties listed in Appendix 1 of Schedule K) to provide the Replacement Services from the Retender Cutover Date or such earlier date specified in the Detailed Transition Plan or as the AUTHORITY may require.

AUTHORITY Properties

- 5.4 The CONTRACTOR shall be responsible for all costs associated with the CONTRACTOR's vacation of the AUTHORITY Properties including the removal of the CONTRACTOR's equipment and furnishings, transfer of CONTRACTOR's staff, termination of arrangements with Subcontractors and service suppliers and restoration of such properties to the condition stated within the relevant existing Property Agreements.
- 5.5 The REPLACEMENT CONTRACTOR shall be responsible for its own legal and surveyors' costs of procuring the REPLACEMENT CONTRACTOR's legal occupation of the AUTHORITY Properties pursuant to the terms of the Replacement Agreement.

CONTRACTOR Properties

- 5.6 The CONTRACTOR shall be responsible for all costs associated with CONTRACTOR's vacation of the CONTRACTOR Properties including, where appropriate, the removal of the CONTRACTOR's equipment and furnishings, transfer of CONTRACTOR's staff, termination of arrangements with subcontractors and service suppliers and restoration of such properties in accordance with the provision of the existing leases and/or licences applicable thereto.

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- 5.7 The CONTRACTOR shall be responsible for all costs and/or expenses incurred by the CONTRACTOR in procuring any assignment (including but not limited to any payments required to be made to the relevant landlords) of the CONTRACTOR Properties listed in Appendix 1 of Schedule K. The REPLACEMENT CONTRACTOR shall be responsible for all costs and/or expenses in procuring the occupation of the CONTRACTOR Properties listed in Appendix 2 of Schedule K.
- 5.8 Each Party shall be responsible for their own legal and surveyors' costs in procuring the REPLACEMENT CONTRACTOR's occupancy of the CONTRACTOR Properties.
- 5.9 The CONTRACTOR shall continue to be liable for its obligations and liability pursuant to any leases and/or licences in relation to the CONTRACTOR Properties up to the date of assignment as if the assignment had not occurred and the REPLACEMENT CONTRACTOR shall have no liability or obligations prior to the assignment.
- 5.10 The REPLACEMENT CONTRACTOR shall release and discharge the CONTRACTOR from all obligations and liabilities of the CONTRACTOR in respect of the assigned CONTRACTOR Properties that are due to be performed or satisfied on or after the date of assignment and all claims and demands whatsoever in respect of those obligations and liabilities. For the avoidance of doubt the CONTRACTOR shall remain liable for all payments due prior to the date of assignment in respect of such CONTRACTOR Properties.

6. TRANSFER OF EMPLOYEES

- 6.1 The CONTRACTOR and the REPLACEMENT CONTRACTOR shall each comply (and shall each procure that its Subcontractors comply) with their obligations under the Transfer Regulations and any then current applicable Government guidance (including but not limited to the Cabinet Office Guidance on Staff Transfers in the Public Sector – Statement of Practice (January 2000) as amended from time to time) in relation to any of the Transferring Employees.
- 6.2 Without limitation to the foregoing, the CONTRACTOR shall comply (and shall procure that its Subcontractors comply) with any then current applicable public policy guidance and all other applicable provisions of this Agreement in relation to the retender of the Services, and the CONTRACTOR shall further co-operate at no additional charge (and procure co-operation from its contractors, Subcontractors and agents) in the orderly transfer of employment of the Transferring Employees if and to the extent reasonably requested by the AUTHORITY or the REPLACEMENT CONTRACTOR.
- 6.3 The Parties shall negotiate in good faith to agree a list of Transferring Employees within two (2) weeks of the date of execution of this Agreement which shall be based on the Preliminary Prescribed Particulars previously provided to the REPLACEMENT CONTRACTOR and contained in Schedule E.
- 6.4 If the Parties fail to agree the list of Transferring Employees pursuant to Clause 6.3, such dispute shall be resolved pursuant to the Dispute Resolution Procedure.
- 6.5 The CONTRACTOR shall:
- 6.5.1 within two (2) weeks of agreeing a list of Transferring Employees in accordance with Clause 6.3, provide all of the Prescribed Particulars in respect of the Transferring Employees to the AUTHORITY and the REPLACEMENT CONTRACTOR and shall thereafter provide a monthly update of the Prescribed Particulars of the Transferring Employees; and
 - 6.5.2 no later than four (4) weeks prior to the Retender Cutover Date, provide a final list of all of the Prescribed Particulars of the Transferring Employees to the AUTHORITY and the REPLACEMENT CONTRACTOR.

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- 6.6 The CONTRACTOR shall further at no additional charge:
- 6.6.1 use its reasonable endeavours to clarify any matter concerning the Prescribed Particulars and/or Transferring Employees on which clarification is reasonably requested by the AUTHORITY or the REPLACEMENT CONTRACTOR as soon as reasonably practicable after having received such request and in any event within twenty eight (28) days of such request; and
 - 6.6.2 co-operate with any other reasonable requests made by the AUTHORITY or the REPLACEMENT CONTRACTOR concerning the Prescribed Particulars as soon as reasonably practicable after having received such request and in any event within twenty eight (28) days of such request.
- 6.7 The CONTRACTOR shall ensure that information supplied to the AUTHORITY or the REPLACEMENT CONTRACTOR pursuant to Clauses 6.5 and 6.6 is accurate and complete and agrees to indemnify the AUTHORITY and/or the REPLACEMENT CONTRACTOR from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any omission or inaccuracy in the information or guidance provided by the CONTRACTOR pursuant to Clauses 6.5 and 6.6.
- 6.8 In accordance with their obligations under the Transfer Regulations, the AUTHORITY and the REPLACEMENT CONTRACTOR shall provide the CONTRACTOR in writing with such information and at such time as will enable the CONTRACTOR to carry out its duties under Regulation 10 of the Transfer Regulations concerning measures envisaged by the AUTHORITY and/or the REPLACEMENT CONTRACTOR, in relation to the Transferring Employees.
- 6.9 The REPLACEMENT CONTRACTOR shall indemnify the CONTRACTOR (or its Subcontractors) and the AUTHORITY from and against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any and all claims or proceedings brought or threatened by any of the Transferring Employees arising out of or in connection with:
- 6.9.1 any act or omission by the REPLACEMENT CONTRACTOR (or its Subcontractors) following the Retender Cutover Date including a failure by the REPLACEMENT CONTRACTOR (or its Subcontractors) to employ such employee; or
 - 6.9.2 any changes in the working conditions of such employees occurring on or after the Retender Cutover Date; or
 - 6.9.3 the fact that any such employees will not be employed on the same terms and conditions as those enjoyed immediately prior to the Retender Cutover Date or with benefits equivalent to those enjoyed immediately prior to the Retender Cutover Date.
- 6.10 The CONTRACTOR shall indemnify the AUTHORITY and REPLACEMENT CONTRACTOR (or its Subcontractors) against all claims, actions, costs, expenses (including reasonable legal fees) and demands arising out of or in connection with any claim by any employee or former employee of the CONTRACTOR (or any personnel or former personnel of the CONTRACTOR's Subcontractors or agents) or any claim submitted on their behalf by a trade union or employee representative or otherwise, whether in contract or in tort or under statute (including the Treaty of Rome and any Directives made under that Treaty) for any remedy including without limitation, pursuant to the Employment Rights Act 1996 or for sex, race or disability discrimination or discrimination on the basis of sexual orientation, religion or belief or pursuant to the Working Time or National Minimum Wage Regulations as a result of any act or omission by the CONTRACTOR (or its Subcontractors or agents) prior to the Retender Cutover Date.

6.11 The Transferring Employees shall become employed by the REPLACEMENT CONTRACTOR (or its Subcontractors) from the Retender Cutover Date pursuant to the Transfer Regulations and the terms of this Agreement.

6.12 Pensions

6.12.1 The REPLACEMENT CONTRACTOR shall with effect from the Retender Cutover Date provide pension schemes ("the REPLACEMENT CONTRACTOR Schemes") to the Transferring Employees which are certified by the Government Actuary's Department (GAD) as providing Broadly Comparable benefits to those provided by the CONTRACTOR Schemes as appropriate and offer to each Transferring Employee with effect from the Retender Cutover Date membership of the REPLACEMENT CONTRACTOR Schemes.

6.12.2 The REPLACEMENT CONTRACTOR shall procure that each Transferring Employee (who is a member of the CONTRACTOR Schemes) who joins the REPLACEMENT CONTRACTOR Schemes with effect on and from the Retender Cutover Date shall have the option to elect to transfer payment to be made from the CONTRACTOR Schemes to the REPLACEMENT CONTRACTOR Schemes for the purpose of acquiring additional rights in the REPLACEMENT CONTRACTOR Schemes.

6.12.3 The CONTRACTOR shall provide for each Transferring Employee who is a member of the Sema Scheme the amount of each individual's PMF (as defined in the trust deed and rules of the Sema Scheme) as at the Retender Cutover Date (or such other date in the preceding thirty (30) days as the Parties may agree). This amount shall be provided no later than five (5) days after the Retender Cutover Date so that it may be included in the Transfer Letter referred to in Clause 16.2.4 below.

6.12.4 Details of the option to transfer described in paragraph 16.12.2 above, shall be contained in the transfer letter ("Transfer Letter"), which shall have attached to it an appropriate form of acceptance for completion by Transferring Employees. The Transfer Letter and acceptance forms shall be in a form prepared by the CONTRACTOR and agreed by the REPLACEMENT CONTRACTOR and the AUTHORITY to whom a draft shall be produced at least twenty one (21) days before dispatch. The Transfer Letter shall be sent to Transferring Employees no later than thirty (30) days after the Retender Cutover Date. The election to transfer will expire no later than sixty (60) days after dispatch of the Transfer Letter.

6.12.5 The REPLACEMENT CONTRACTOR agrees to provide that subject to receipt of the full amount of the bulk transfer value calculated under clauses 16.12.6 to 16.12.10 ("Transfer Amount") any Transferring Employee who elects to be transferred on a bulk transfer basis will be granted credit on a year for year or other adjusted period of service basis which is agreed by the Parties (and approved by GAD) to be of equivalent or better actuarial value in a scheme that provides benefits for the Transferring Employees which are Broadly Comparable to the benefits for that in-scope employee provided by the scheme from which it has taken receipt of the bulk transfer value calculated in accordance with Appendix 1 of Schedule G and Clauses 16.12.6 to 16.12.16.

6.12.6 The Transfer Amount for Transferring Members shall be calculated in accordance with the actuarial assumptions and method set out and agreed in Appendix 1 of Schedule G and Clauses 16.12.7 to 16.12.10.

6.12.7 The REPLACEMENT CONTRACTOR shall provide the CONTRACTOR with a complete and accurate list of the Transferring Members within thirty (30) days of the

expiry of the option to transfer given in the Transfer Letter in accordance with paragraph 16.12.4 above.

- 6.12.8 Subject to 16.12.9 below, the CONTRACTOR shall use all its reasonable endeavours to procure that within ninety (90) days of the provision of the list of Transferring Members in accordance with clause 16.12.8 above, the CONTRACTOR's Actuary's shall calculate the Transfer Amount and notify such calculation to the REPLACEMENT CONTRACTOR's Actuary.
- 6.12.9 The REPLACEMENT CONTRACTOR shall use all reasonable endeavours to procure that within sixty (60) days of receipt of the notification of the calculation in clause 16.12.8, the REPLACEMENT CONTRACTOR's Actuary shall confirm and verify that the Transfer Amount has been calculated in accordance with the actuarial assumptions and methods set out and agreed in Appendix 1 of Schedule G.
- 6.12.10 The CONTRACTOR and the REPLACEMENT CONTRACTOR undertake to procure that all information and data (which shall be true, complete and accurate in all respects) necessary in order to permit the CONTRACTOR's Actuary to calculate and the REPLACEMENT CONTRACTOR's Actuary to verify the Transfer Amount shall be given to those actuaries as soon as practicable and without unreasonable delay.
- 6.12.11 Subject to the calculation of the Transfer Amount having been determined by the CONTRACTOR'S Actuary and verified by the REPLACEMENT CONTRACTOR'S Actuary, the CONTRACTOR shall procure that the Transfer Amount will be paid by the trustees of the CONTRACTOR Schemes to the trustees of the REPLACEMENT CONTRACTOR Schemes (provided pursuant to Clause 16.12.1) by the Payment Date. This payment will be made by way of a transfer to the REPLACEMENT CONTRACTOR Scheme of such assets as the trustees of the REPLACEMENT CONTRACTOR Scheme and CONTRACTOR Scheme may agree, provided that in default of agreement it will be paid in cash.
- 6.12.12 To the extent the trustees of the Sema Scheme and CS Scheme fail to pay their respective parts of the Transfer Amount to the trustees of the REPLACEMENT CONTRACTOR Scheme, the CONTRACTOR shall immediately pay to the REPLACEMENT CONTRACTOR (but not later than ten (10) days after receipt of a written demand from the REPLACEMENT CONTRACTOR) the Transfer Shortfall as adjusted by the Timing Adjustment from the Payment Date to the actual payment under this paragraph.
- 6.12.13 To the extent the CONTRACTOR fails to pay the Transfer Shortfall, the AUTHORITY shall be responsible for making any additional payments necessary to the REPLACEMENT CONTRACTOR to make up the Transfer Shortfall.
- 6.12.14 The REPLACEMENT CONTRACTOR shall procure that any sums received in accordance with Clauses 16.12.12 and 16.12.13 shall be paid to the trustees of the relevant REPLACEMENT CONTRACTOR Scheme as soon as reasonably possible.
- 6.12.15 Any Transfer Shortfall shall be reduced by such percentage as is agreed by the REPLACEMENT CONTRACTOR'S Actuary and the CONTRACTOR'S Actuary to be appropriate to reflect the value to the REPLACEMENT CONTRACTOR (at the time of payment of the Transfer Shortfall) of the tax deductions which the REPLACEMENT CONTRACTOR would obtain assuming it were to pay an amount equal to the Transfer Shortfall into the REPLACEMENT CONTRACTOR Schemes forthwith upon the receipt of the Transfer Shortfall.

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- 6.12.16 The Parties agree that if the Transfer Amount is less than the bulk transfer liability to the REPLACEMENT CONTRACTOR's pension scheme of providing Broadly Comparable benefits under Clause 16.12.5 (such amount to be defined as the "Shortfall") but based on the REPLACEMENT CONTRACTOR's actuarial assumptions as set out in Appendix 2 of Schedule G, the provision of Clause 16.12.17 shall apply.
- 6.12.17 The CONTRACTOR shall not be responsible for any Shortfall and the AUTHORITY shall, at its sole discretion and subject to any cap specified in the Replacement Agreement, pay to the REPLACEMENT CONTRACTOR the amount of such Shortfall in accordance with the provisions of the Replacement Agreement.
- 6.12.18 The REPLACEMENT CONTRACTOR shall procure the observance of the provisions of Clause 6.12 by any Sub-contractors to the effect that the Sub-contractors provide the same pension rights, options and benefits to Transferring Employees or Transferring Members (as appropriate) who at any time or from time to time become employed by a Sub-contractor as the REPLACEMENT CONTRACTOR is required to provide under this Agreement from the date at which they become employed by a Sub-contractor and for so long as they remain so.
- 6.13 Charges Change Request**
- 6.13.1 The REPLACEMENT CONTRACTOR and the AUTHORITY shall each be entitled to request a change to the charges under the Replacement Agreement in accordance with the Change Control Procedures (as defined therein) in respect of costs or claims arising from any change to the number, grades, salary or allowances of Transferring Employees on the Retender Cutover Date as against the number, grades, salary or allowances of potential Transferring Employees as set out in the Preliminary Prescribed Particulars in Schedule E.
- 6.13.2 Charges Change Request may be requested where:
- 6.13.2.1 the Charges Change Request is made within six (6) months of the Retender Cutover Date; and
 - 6.13.2.2 the party making the Charges Change Request adduces reasonable evidence in support of such Charges Change Request; and
 - 6.13.2.3 the Charges Change Request is made with respect to any costs or claims arising from the circumstances set out in Clause 6.13.1 above; and
 - 6.13.2.4 the total cost of the changes over the term of this Agreement exceeds one tenth of a percent (0.1%) of the Charges paid and payable during the first year of the Replacement Agreement from the Retender Cutover Date.
- 6.14 The CONTRACTOR shall provide all necessary information to all personnel, and obtain from all personnel all necessary consents under the Data Protection Act 1998 (or otherwise) to all disclosures to and other contacts with the AUTHORITY and/or the REPLACEMENT CONTRACTOR which may be required in connection with the transition of the Services including in particular (but not limited to) in connection with the obligations set out in Clause 6.5 above.
- 6.15 During the Transition Period, in relation to any Fee Paid Doctors whose services were engaged by the CONTRACTOR at any time during the twelve (12) months prior to the start of the Transition Period, the CONTRACTOR shall use all reasonable endeavours to encourage

such Fee Paid Doctors to accept offers of engagement by the AUTHORITY or the REPLACEMENT CONTRACTOR (as the case may be) to perform similar services after that date.

- 6.16 The CONTRACTOR shall not solicit, offer employment to, nor use the services of, any of the Transferring Employees (otherwise than by general advertising) for a period of twelve (12) months from the Retender Cutover Date.
- 6.17 The CONTRACTOR shall not solicit, offer employment to, offer a contract for the provision of services to, nor use the services of any Fee Paid Doctor whose services were engaged by the CONTRACTOR or any Subcontractor of the CONTRACTOR in the delivery of the MSA Agreement at any time in the twelve (12) month period prior to the Effective Date (otherwise than by general advertising or where there is an existing contract between the CONTRACTOR and the Fee Paid Doctor which is not related to the MSA Agreement) for a period of twelve (12) months from the Retender Cutover Date.

7. **INVOICING**

- 7.1 The Parties shall pay all sums due within thirty (30) days of receipt of a valid invoice.
- 7.2 Interest shall be payable on any late payments under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

8. **CONFIDENTIALITY**

- 8.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the CONTRACTOR and the REPLACEMENT CONTRACTOR acknowledge that any Confidential Information obtained from or relating to the Crown, its servants or agents is the property of the Crown.
- 8.2 Each Party hereby warrants that:
- 8.2.1 any person employed or engaged by that Party (in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information for the purposes of this Agreement;
 - 8.2.2 any person employed or engaged by that Party (in connection with this Agreement in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without the prior written consent of both of the other Parties;
 - 8.2.3 that Party shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the purposes of this Agreement by its employees, servants, agents or Subcontractors; and
 - 8.2.4 neither it nor any person engaged by it, whether as a servant or a consultant or otherwise, shall use the Confidential Information for the solicitation of business from the other or from the other Party's servants or consultants or otherwise.
- 8.3 The provisions of Clauses 8.1 and 8.2 shall not apply to any information which:
- 8.3.1 is or becomes public knowledge other than by breach of this Clause 8; or
 - 8.3.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party; or

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- 8.3.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 8.3.4 is independently developed without access to the Confidential Information; or
- 8.3.5 is required to be disclosed by law or by any judicial, arbitral, regulatory or other authority of competent jurisdiction.
- 8.4 Nothing in this Clause 8 shall be deemed or construed to prevent the AUTHORITY from disclosing any Confidential Information obtained from the CONTRACTOR or from the REPLACEMENT CONTRACTOR:
- 8.4.1 to any other department, office or agency of the Crown ("Crown Bodies"), provided that that recipient Crown Body and its servant and agents shall treat all such Confidential Information as confidential. All Crown Bodies in receipt of such Confidential Information shall be considered as parties to this Agreement within Section 1(1)(a) of the Contracts (Rights of Third Parties) Act 1999 for the purpose only of being entitled to further disclose the Confidential Information to other Crown Bodies on such terms; and
- 8.4.2 to any consultant, contractor or other person engaged by the AUTHORITY in connection herewith, provided that the AUTHORITY shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 8 and the AUTHORITY shall notify the relevant Party of the identity of such consultant, contractor or other person as soon as practicable.
- 8.5 Nothing in Clause 8.2 shall prevent any Party from using data processing techniques, ideas and know how gained during the performance of this Agreement in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information.

9. **WARRANTIES AND LIABILITY**

9.1 **General Warranties**

- 9.1.1 The CONTRACTOR warrants and represents that:
- 9.1.1.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the CONTRACTOR; and
- 9.1.1.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.
- 9.1.2 The REPLACEMENT CONTRACTOR warrants and represents that:
- 9.1.2.1 it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the REPLACEMENT CONTRACTOR; and

9.1.2.2 its obligations hereunder shall be performed by appropriately experienced, qualified and trained personnel with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

9.1.3 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

9.2 Limitation of Liability

9.2.1 None of the Parties exclude or limit their liability for death or personal injury resulting from negligence, or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

9.2.2 Nothing in this Agreement shall exclude or limit the liability of any Party in respect of fraud or fraudulent misrepresentation.

9.2.3 Subject always to Clauses 9.2.1 and 9.2.2, any liability of the CONTRACTOR to the AUTHORITY or of the AUTHORITY to the CONTRACTOR for all claims arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to twenty five million pounds (£25,000,000).

9.2.4 Subject always to Clauses 9.2.1 and 9.2.2, any liability of the REPLACEMENT CONTRACTOR to the AUTHORITY or of the AUTHORITY to the REPLACEMENT CONTRACTOR for all claims arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to twenty five million pounds (£25,000,000).

9.2.5 Subject always to Clause 9.2.1 and 9.2.2, the liability of the CONTRACTOR to the REPLACEMENT CONTRACTOR or of the REPLACEMENT CONTRACTOR to the CONTRACTOR for all claims (by way of indemnity or otherwise) arising whether in contract, tort (including negligence), misrepresentation (other than where made fraudulently), breach of statutory duty or otherwise under this Agreement shall be limited to twenty five million pounds (£25,000,000).

9.2.6 For the avoidance of doubt, the aggregate liability cap of the CONTRACTOR (specified in Clause 10.10 of the MSA Agreement) shall be inclusive of any liability to AUTHORITY or REPLACEMENT CONTRACTOR hereunder.

9.2.7 For the avoidance of doubt, the aggregate liability cap of the REPLACEMENT CONTRACTOR (specified in Clause 10.11.3.2 of the Replacement Agreement) shall be inclusive of any liability to the AUTHORITY or the CONTRACTOR hereunder.

9.2.8 Subject always to Clause 9.2.1 and 9.2.2 and except in respect of liability under Clause 6 in no event shall any Party be liable for:

9.2.8.1 indirect or consequential loss or damage; and/or

9.2.8.2 loss of profits, business, revenue, goodwill or anticipated savings.

9.2.9 Subject always to Clauses 9.2.3, 9.2.4 and 9.2.5 the provisions of Clause 9.2.8 shall not be taken as limiting:

- 9.2.9.1 the right of each Party to claim from any other Party for additional operational and administrative costs and expenses; and/or
- 9.2.9.2 the right of each Party to claim from any other Party for any costs or expenses rendered nugatory.

10. **DISPUTE RESOLUTION PROCEDURE**

- 10.1 All disputes between any of the Parties arising out of or relating to this Agreement shall be referred, by any Party involved in the dispute, to the parties specified in the Detailed Transition Plan acting as a joint body for dispute resolution.
- 10.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 10.1 within a maximum of seven (7) days (or such other time as otherwise agreed in writing by the Parties) after it has been referred to them under Clause 10.1 then:
 - 10.2.1 if the dispute is of a technical nature or is expressed by this Agreement to be subject to expert determination, by agreement between the Parties it may be referred for final determination to an expert (referred to in this Clause as the "Neutral Adviser") who shall be deemed to act as expert and not as arbitrator; or
 - 10.2.2 the Parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure or failing that it shall be determined pursuant to Clause 12.10.
- 10.3 The Neutral Adviser shall be selected by the agreement of the Parties or, failing agreement, within seven (7) days after a request by one Party to the others, shall be chosen at the request of any Party by the President for the time being of the Chartered Institute of Arbitrators who shall be requested to choose a suitably qualified and experienced Neutral Adviser for the dispute in question.
- 10.4 Seven (7) days after the Neutral Adviser has accepted the appointment the relevant Parties shall submit a written report on the dispute to the Neutral Adviser and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Neutral Adviser and to each other.
- 10.5 The relevant Parties will then afford the Neutral Adviser all necessary assistance which the Neutral Adviser requires to consider the dispute.
- 10.6 The Neutral Adviser shall be instructed to deliver their determination to the relevant Parties within seven (7) days (or such other period as may be agreed between the Parties) after the submission of the written reports pursuant to Clause 10.4.
- 10.7 Decisions of the Neutral Adviser shall be final and binding and not subject to appeal except in the case of fraud or manifest error.
- 10.8 The Neutral Adviser shall have the same powers to require any relevant Party to produce any documents or information to him and the other relevant Parties as an arbitrator and each relevant Party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 10.9 The fees of the Neutral Adviser shall be borne by the Parties in the proportions determined by the Neutral Adviser having regard (amongst other things) to the conduct of the relevant Parties in relation to the dispute in question.
- 10.10 Work and activity to be carried out under this Agreement shall not cease or be delayed by this Dispute Resolution Procedure.

11. TERMINATION AND CONSEQUENCES OF TERMINATION

11.1 Termination

11.1.1 The AUTHORITY has the right to terminate this Agreement at any time by notice in writing to the CONTRACTOR and REPLACEMENT CONTRACTOR whenever the AUTHORITY has the right to terminate the MSA Agreement.

11.1.2 The AUTHORITY has the right to terminate this Agreement at any time by notice in writing to the CONTRACTOR and REPLACEMENT CONTRACTOR whenever the AUTHORITY has the right to terminate the Replacement Agreement.

11.1.3 The AUTHORITY may at any time by notice in writing terminate this Agreement if the CONTRACTOR or REPLACEMENT CONTRACTOR is in Default of any obligation under this Agreement and:

11.1.3.1 such Default is capable of remedy and the CONTRACTOR or REPLACEMENT CONTRACTOR, as appropriate, shall have failed to remedy the Default within thirty (30) days written notice (or such other reasonable period as may be agreed by the parties) to the CONTRACTOR or REPLACEMENT CONTRACTOR specifying the Default and requiring its remedy; or

11.1.3.2 such Default is not capable of remedy and where:

(i) the defaulting Party has failed to take action to prevent the breach from recurring ("Preventative Action"), such action to be taken within the period of thirty (30) days (or such other reasonable period as may be agreed by the parties) of the AUTHORITY having served a written notice specifying the breach (the "Preventative Action Period") or the AUTHORITY has agreed that no Preventative Action is required; or

(ii) notwithstanding the taking or non-taking of Preventative Action by the defaulting Party, there is a further recurrence of the breach within the ninety (90) day period immediately following the end of the Preventative Action Period.

11.2 Consequences of Termination

11.2.1 Subject to any other right or remedy of the Parties:

11.2.1.1 the CONTRACTOR and the AUTHORITY shall continue to comply with their respective obligations under the MSA Agreement following the termination of this Agreement; and

11.2.1.2 the REPLACEMENT CONTRACTOR and the AUTHORITY shall continue to comply with their respective obligations under the Replacement Agreement following the termination of this Agreement.

11.2.2 Except as expressly provided in this Agreement, termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement.

12. GENERAL PROVISIONS

12.1 Force Majeure

12.1.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster, or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its servants, agents or employees. For the avoidance of doubt, any industrial dispute affecting the employees of any of the Parties shall not be considered an event of Force Majeure.

12.1.2 No Party shall in any circumstances be liable to the other Parties for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by such Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, all of the Parties shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event. The CONTRACTOR shall remain liable to perform any contingency services pursuant to the MSA Agreement, save where such contingency services are themselves also affected by the Force Majeure event.

12.1.3 If any Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other Parties by the most expeditious method then available and shall inform the other Parties of the period which it is estimated that such failure or delay shall continue.

12.2 Assignment and Subcontracting

12.2.1 Subject to Clause 12.2.2, neither the CONTRACTOR nor the REPLACEMENT CONTRACTOR shall assign, sub-license or declare a trust in respect of its rights under all or a part of this Agreement or the benefit or advantage hereof without the consent of the AUTHORITY first being obtained in writing.

12.2.2 Any subcontractors of the REPLACEMENT CONTRACTOR identified in the Outline Transition Plan and/or the Detailed Transition Plan are permitted to perform those elements of the Transition Services identified in the Detailed Transition Plan to be performed by such subcontractors.

12.3 Notices

12.3.1 Any notice or other communication in connection with this Agreement shall be deemed to have been properly delivered if sent by recorded or registered post or by fax and shall be deemed for the purposes of this Agreement to have been given or made at the time the letter would, in the ordinary course of post, be delivered or at the time shown on the sender's fax transmission report.

12.3.2 For the purposes of Clause 12.3.1 above the address of each of the Parties shall be those specified in the Detailed Transition Plan.

12.4 Further Assurance

The CONTRACTOR shall carry out at its own cost whatever further actions the AUTHORITY and/or the REPLACEMENT CONTRACTOR reasonably requires from time to time (including execution of further documents) for the purpose of giving the AUTHORITY and/or the REPLACEMENT CONTRACTOR the full benefit of the provisions of this Agreement.

12.5 Entire Agreement

12.5.1 This Agreement, together with the MSA Agreement and Replacement Agreement, constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter.

12.5.2 Each Party acknowledges that in entering into this Agreement it is not relying on, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of, any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by any other Party to this Agreement.

12.6 Rights of Third Parties

12.6.1 This Agreement shall not create any rights that shall be enforceable by anyone other than the Parties, except that the following clauses may be enforced by the following third party beneficiaries:

Clause:	Third Party Beneficiary:
6.9	Subcontractors of the CONTRACTOR
6.10	Subcontractors of the REPLACEMENT CONTRACTOR
8.4	Crown Bodies

12.6.2 Any rights created pursuant to Clause 12.6.1 may be altered or extinguished by the Parties pursuant to Clause 12.8 without the consent of any third party beneficiary of such rights.

12.7 Severability

If any Clause, or part of a Clause, of this Agreement, is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable, and the provision in question is not of a fundamental nature to the Agreement as a whole, the legality, validity or enforceability of the remainder of this Agreement (including the remainder of the Clause which contains the relevant provision) shall not be affected.

12.8 Change Control Procedures

No variation of this Agreement (including its Schedules) shall be effective unless made in accordance with the Change Control Procedures set out in Schedule L.

12.9 No waiver

The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.

12.10 Jurisdiction

This Agreement is governed by English law and, subject to Clause 10, the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

Signed:

Signed by:

Full name (capitals):

Position:

FOR AND ON BEHALF OF THE AUTHORITY

Signed by:

Full name (capitals):

Position:

FOR AND ON BEHALF OF THE CONTRACTOR

Signed by:

Full name (capitals):

Position:

FOR AND ON BEHALF OF THE REPLACEMENT CONTRACTOR