

SCHEDULE 11

PAYMENT MECHANISM

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless otherwise defined in this Schedule, capitalised terms used in this Schedule shall have the meanings given to them in Schedule 1.

Actual Annual Binary Rate means the 'actual re-offending rate' (or any official rate replacing it) for those Allocated Persons within the Applicable Annual Cohort, published by the Authority in the relevant 'Proven re-offending statistics quarterly bulletin' at <http://www.gov.uk/government/collections/proven-reoffending-statistics> (or such other webpage as may be notified to the Contractor by the Authority in writing from time to time);

Actual FFU has the meaning given to it in paragraph 12.7(b);

Actual NPS Services has the meaning given to it in paragraph 12.7(a);

Actual Quarterly Binary Rate means the 'actual re-offending rate' (or any official rate replacing it) for those Allocated Persons within the Applicable Quarterly Cohort, published by the Authority in the relevant 'Proven re-offending statistics quarterly bulletin' at <http://www.gov.uk/government/collections/proven-reoffending-statistics> (or such other webpage as may be notified to the Contractor by the Authority in writing from time to time);

Actual Re-Offending Frequency means the 'actual re-offending frequency' (or any official rate replacing it) for those Allocated Persons within the Applicable Annual Cohort, published by the Authority in the relevant 'Proven re-offending statistics quarterly bulletin' at <http://www.gov.uk/government/collections/proven-reoffending-statistics> (or such other webpage as may be notified to the Contractor by the Authority in writing from time to time);

Actual WAV means the WAV calculated following the end of the Applicable Contract Year on the basis of the WAV Data that relates to that Applicable Contract Year;

Actual WAV Band has the meaning given to it in paragraph 2.8;

Actual WAV Notification has the meaning given to it in paragraph 2.7(b);

Annual Binary Amount means the amount calculated in accordance with paragraph 8.4;

Annual Binary Calculation Date means, for the Applicable Annual Cohort, the last day of the month that is the eighteenth month after the last day of the period during which that Applicable Annual Cohort was established (by way of example only, if the Applicable Quarterly Cohort was established between 1 April 2015 and 31 March 2015, the Annual Binary Calculation Date would be 30 September 2016);

Annual Binary Metric Table means the table set out in Appendix 4 Part 2;

Annual Reduction in Binary Re-Offending Rate means the figure calculated in accordance with paragraphs 8.5 and 8.6;

Annual Cohort means the aggregate of the Quarterly Cohorts established during a Contract Year;

Applicable Annual Cohort has the meaning given to it in paragraph 8.1;

Applicable Contract Year has the meaning given to it in paragraph 2.1;

Applicable Quarterly Cohort has the meaning given to it in paragraph 7.1;

Binary PbR Amount means the amount calculated in accordance with paragraph 7.3;

Binary PbR Top-up Amount means the amount calculated in accordance with paragraph 8.3;

Change in Re-Offending Frequency means the figure calculated in accordance with paragraph 9.3;

Cohort Start Date means the first 1 April, 1 July, 1 October or 1 January date that is at least six months after the Amendment Date (by way of example only, if the Amendment Date is 9 November 2014, the Cohort Start Date is 1 July 2015).

Corresponding Fee for Service means the first Fee for Service to be invoiced by the Contractor after the date on which the Contractor receives the relevant PbR Notification;

Enter into a Cohort means the date on which each Allocated Person becomes included in a cohort which: (a) for Allocated Persons who have been sentenced to a Community Order or Suspended Sentence Order, means the date on which that Allocated Person was sentenced; and (b) for Allocated Persons who have been sentenced to a custodial sentence, means the date on which that Allocated Person was discharged from custody, in each case whether that date is on, after or before the date on which the Allocated Person was allocated to the Contractor under Schedule 10;

Fee for Service has the meaning given to it in paragraph 2.1;

Fee for Service Table means the table for the Applicable Contract Year in Appendix 3;

Fee for Use has the meaning given to it in paragraph 12.1;

FFU Adjustment Amount has the meaning given to it in paragraph 12.7;

Fixed FFS means the amount calculated in accordance with paragraph 2.6;

Fixed FFS Adjustment Amount has the meaning given to it in paragraph 2.9;

Frequency PbR Amount means the amount calculated in accordance with paragraph 9.2;

GDP Deflator means the relevant GDP deflator at market prices, and monies GDP published by the Office for National Statistics (or any official index replacing it);

Interest Rate means the statutory rate of interest from time to time under the Late Payment of Commercial Debts (Interest) Act 1998;

Maximum Annual Binary Amount has the meaning given to it in paragraph 2.3(b) of Appendix 5;

Maximum Frequency Amount has the meaning given to it in paragraph 2.3(a) of Appendix 5;

Maximum Quarterly Binary Amount has the meaning given to it in paragraph 2.3(c) of Appendix 5;

NPS Priced Purchased Services means those services included in the rate card set out in Appendix 7;

NPS Rate Card means the rate card set out in Appendix 7;

PbR Notification has the meaning given to it in paragraph 7.11;

Pension Contribution Adjustment Amount has the meaning given to it in Schedule 22;

Per Offence Amount means, subject to paragraph 15, £1,000;

Per Offender Amount means, subject to paragraph 15, £4,000;

Predicted WAV means, subject to paragraph 2.5, in respect of a Contract Year, the WAV calculated on the basis of the WAV Data for the 12 month period ending on the last day of the third Quarter of the previous Contract Year;

Predicted WAV Notification has the meaning given to it in paragraph 2.4(b);

Previous Binary PbR Amount means the total aggregate of the Binary PbR Amounts paid or payable for any previous Quarterly Cohorts that comprise the same Annual Cohort as the Applicable Quarterly Cohort;

Predicted WAV Band has the meaning given to it in paragraph 2.6;

Projected FFU has the meaning given to it in paragraph 12.4(a);

Quarter means:

- (a) the period of three months commencing on the Cohort Start Date; and
- (b) each subsequent three month period except for the final Quarter which shall end on the last day of the Exit Period;

Quarterly Binary Calculation Date means for the Applicable Quarterly Cohort, the last day of the month that is the eighteenth month after the last day of the period during which that Applicable Quarterly Cohort was established (by way of example only, if the Applicable Quarterly Cohort was established between 1 April 2015 and 30 June 2015, the Quarterly Binary Calculation date would be 31 December 2016);

Quarterly Binary Band has the meaning given to it in paragraph 7.1;

Quarterly Binary Metric Table means the table set out in Appendix 4, Part 1;

Quarterly Reduction in Binary Re-Offending Rate means the figure calculated in accordance with paragraphs 7.4 and 7.5;

Quarterly Cohort means each group of Allocated Persons whose Enter into a Cohort date falls during the same Quarter;

Subsequent Invoice has the meaning given to it in paragraph 2.13(a)2.14(a);

WAV means the weighted annual volume calculated in accordance with Appendix 1; and

WAV Data means the data available on the following Authority ICT systems (to which the Contractor will have access): Prison NOMIS and nDelius relating to the Allocated Persons who have been allocated to the Contractor under Schedule 10 and that are used to calculate the WAV.

- 1.2 For the purposes of this Schedule 11, the definition of Allocated Persons for the purposes of determining Quarterly Cohorts and Annual Cohorts excludes: (a) those persons who have been sentenced to a Community Order that consists only of an Unpaid Work Requirement; (b) those persons who have been sentenced to a Suspended Sentence Order where the only requirement is an Unpaid Work Requirement; and (c) those persons subject to an Enforcement Order.
- 1.3 For the purposes of this Schedule 11:
- (a) for Allocated Persons who have been sentenced to a Community Order or a Suspended Sentence Order, the Actual Annual Binary Rate, the Actual Quarterly Binary Rate and the Actual Re-Offending Frequency each measure re-offending from the date on which that Allocated Person's sentence was imposed; and
 - (b) for Allocated Persons who have been sentenced to a custodial sentence, the Actual Annual Binary Rate, the Actual Quarterly Binary Rate and the Actual Re-Offending Frequency Rate each measure re-offending from the date on which that Allocated Person was released from custody (excluding any time in which they are released on Release on Temporary Licence)
- in each case, whether this is on, after or before the date on which that Allocated Person was allocated to the Contractor under this Agreement.
- 1.4 An Allocated Person who transfers out of the Contractor's Contract Package Area (including an Allocated Person who moves out of England and Wales or who becomes a Retained Person) shall continue to be included in the Quarterly Cohort (and, accordingly, the Annual Cohort) in which they were originally included. For the avoidance of doubt, Allocated Persons who transfer into the Contractor's Contract Package Area from another Community Rehabilitation Company, from outside of England and Wales or who were previously Retained Persons shall not form part of any Quarterly Cohort or Annual Cohort.

2. FEE FOR SERVICE

Monthly Fee

- 2.1 The Authority shall pay to the Contractor for a Contract Year (**Applicable Contract Year**) monthly amounts calculated in accordance with paragraph 2.3 (**Fee for Service**).
- 2.2 The Contractor shall issue invoices to the Authority, monthly in arrears, for the Fee for Service in accordance with paragraph 16.
- 2.3 The Fee for Service shall be calculated by dividing the Fixed FFS for the Applicable Contract Year into 12 equal monthly instalments. The Fixed FFS for the Applicable Contract Year shall be calculated in accordance with paragraph 2.6.

Predicted WAV Calculation

- 2.4 For the Applicable Contract Year, other than the First Contract Year and Contract Year 2, during the three month period prior to the commencement of that Applicable Contract Year, the Authority shall:
- (a) calculate the Predicted WAV for the Applicable Contract Year; and
 - (b) notify the Contractor in writing of:
 - (i) the Predicted WAV for the Applicable Contract Year; and

- (ii) details of the calculation of that Predicted WAV

(Predicted WAV Notification).

- 2.5 For the First Contract Year, the Predicted WAV shall, subject to paragraph 4.1, be [*insert annualised amount*] and for Contract Year 2, the Predicted WAV shall be [*insert annualised amount*]. [*Explanatory Note: These annualised amounts will be completed following selection of the preferred bidders*]

Fixed FFS Calculation

- 2.6 Subject to paragraph 15, the **Fixed FFS** for the Applicable Contract Year shall be the amount that is set out in the relevant band of the “Fixed FFS” column of the relevant Fee for Service Table. The relevant band for that Applicable Contract Year shall be the band which represents the volume range into which the Predicted WAV falls for that Applicable Contract Year (**Predicted WAV Band**).

By way of example only:

If in Contract Year 2, the Predicted WAV is 100,002, the Fixed FFS is £1,000 i.e. the amount shown in band 5 of the “Fixed FFS” column of the Fee for Service Table for Contract Year 2.

If in Contract Year 2, the Predicted WAV is 110,700, the Fixed FFS is £1,100 i.e. the amount shown in band 5 of the “Fixed FFS” column of the Fee for Service Table for Contract Year 2.

Actual WAV Calculation

- 2.7 Within four months after the end of the Applicable Contract Year, the Authority shall:

- (a) calculate the Actual WAV for that Applicable Contract Year; and
- (b) notify the Contractor in writing of:
 - (i) the Actual WAV for that Applicable Contract Year; and
 - (ii) details of the calculation of that Actual WAV

(Actual WAV Notification).

Fixed FFS Adjustment Calculation

- 2.8 If, for the Applicable Contract Year, the band in the relevant Fee for Service Table which represents the volume range into which the Actual WAV falls (**Actual WAV Band**) is different from the Predicted WAV Band, the Authority shall make an adjustment to the Fixed FFS for that Applicable Contract Year in accordance with paragraph 2.9.

By way of example only:

If the Predicted WAV for Contract Year 2 is 100,500 then, in accordance with the relevant Fee for Service Table, the Predicted WAV Band for that Applicable Contract Year is band 5.

If the Actual WAV for Contract Year 2 is 115,073 then, in accordance with the relevant Fee for Service Table, the Actual WAV Band for that Applicable Contract Year is band 6.

As the Predicted WAV Band and the Actual WAV Band are not the same, the Authority shall make an adjustment to the Fixed FFS for the Applicable Contract Year in accordance with paragraph 2.9.

- 2.9 The **Fixed FFS Adjustment Amount** for each Applicable Contract Year shall, subject to paragraph 4, be calculated as follows:

$$A - B$$

Where:

A = the Adjusted WAV Amount calculated in accordance with paragraph 2.10; and

B = the Fixed FFS.

- 2.10 The **Adjusted WAV Amount** for each Applicable Contract Year shall be calculated as follows:

$$D * E * F$$

Where:

D = subject to paragraph 3, the Fixed FFS for the Applicable Contract Year;

E = 0.5; and

F = the FFS Percentage Change calculated in accordance with paragraph 2.11.

- 2.11 The **FFS Percentage Change** for each Applicable Contract Year shall be calculated as follows:

$$(A/B) * 100$$

Where:

A = the amount in the "Volume Mid-Point" column of the relevant Fee for Service Table for the Actual WAV Band minus the amount in the "Volume Mid-Point" column of the relevant Fee for Service Table for the Predicted WAV Band; and

B = the Fixed FFS.

- 2.12 The Authority shall specify in the Actual WAV Notification for the Applicable Contract Year details of the Fixed FFS Adjustment Amount (if any).

Consequences of a Fixed FFS Adjustment Amount

- 2.13 If the Fixed FFS Adjustment Amount is:

- (a) a positive figure, the Contractor shall include an amount equal to the Fixed FFS Adjustment Amount as a separate line item on the next invoice the Contractor issues following receipt of the Actual WAV Notification (the **Subsequent Invoice**); or
- (b) a negative figure, the Contractor shall apply a credit for an amount equal to the Fixed FFS Adjustment Amount (expressed as a positive figure) as a separate line item on the Contractor's Subsequent Invoice.

By way of example only:

If the Fixed FFS Adjustment Amount is -£1,000, the Contractor shall apply a total of £1,000 as a credit to the Contractor's Subsequent Invoice, in accordance with paragraph 2.13(b).

2.14 If the Termination Date occurs for any reason before the Fixed FFS Adjustment Amount has been paid or becomes payable:

- (a) in the case of paragraph 2.13(a), the Contractor may issue an invoice (in accordance with paragraph 16) for an amount equal to Fixed FFS Adjustment Amount; or
- (b) in the case of paragraph 2.13(b), the Authority may issue an invoice (in accordance with paragraph 16) for an amount equal to Fixed FFS Adjustment Amount.

3. MAXIMUM FEE FOR SERVICE

3.1 Subject to paragraph 15, if the Actual WAV for an Applicable Contract Year is:

- (a) more than the amount in band 14 of the “Upper Volume Boundary” column of the relevant Fee for Service Table, for the purposes of calculating the Fixed FFS Adjusted Amount, the amount in band 14 of the “Fixed FFS” column of the relevant Fee for Service Table shall be used; and
- (b) more than the amount in band 14 of the “Upper Volume Boundary” column of the relevant Fee for Service Table or less than the amount in band 1 of the “Lower Volume Boundary” column of the relevant Fee for Service Table, in each case, the Authority and the Contractor shall (each acting reasonably and in good faith) negotiate amendments to the Charges for those Contract Years after that Applicable Contract Year (as agreed between the Parties) that reflect the fact that the Actual WAV is significantly higher, or lower, than was contemplated in this Agreement.

4. FIRST CONTRACT YEAR AND FINAL CONTRACT YEAR

4.1 Notwithstanding paragraph 2.5, if the First Contract Year or the Final Contract Year is not a period of 12 months, the provisions of paragraph 4.2 shall apply.

4.2 If paragraph 4.1 applies, the Authority shall:

- (a) when determining the Actual WAV Band under paragraph 2.8, apply the following formula to the Actual WAV for the First Contract Year or the Final Contract Year, as the case may be:

$$(A/B) * 365$$

Where:

A = the Actual WAV for the First Contract Year or the Final Contract Year, as the case may be; and

B = the number of days in the First Contract Year or the Final Contract Year, as the case may be.

and the resulting figure shall be used to determine the Actual WAV Band for the First Contract Year or the Final Contract Year, as the case may be; and

- (b) calculate the Fixed FFS Adjustment Amount as follows:

$$C - D$$

Where:

C = the result of the following calculation:

$$(E/365) * F$$

Where:

E = the amount in the Actual WAV Band (determined under paragraph (a) above) of the “Fixed FFS” column of the relevant Fee for Service Table; and

F = the number of days in the First Contract Year or the Final Contract Year, as the case may be; and

D = the total aggregate amount of the Fee for Service payments that have been paid or become payable for the First Contract Year or the Final Contract Year, as relevant.

5. PENSION CONTRIBUTION ADJUSTMENT

Notification of Pension Contribution Adjustment Amount

5.1 Within four months after the end of each Applicable Contract Year, the Authority shall:

- (a) calculate the amount of the Pension Contribution Adjustment Amount in accordance with paragraph 2.4 of Schedule 22; and
- (b) include in the Actual WAV Notification provided to the Contractor under paragraph 2.7:
 - (i) the Pension Contribution Adjustment Amount; and
 - (ii) details of the calculation of that Pension Contribution Adjustment Amount.

Consequences of the Pension Contribution Adjustment Amount

5.2 Subject to paragraph 2.6 of Schedule 22, if the Pension Contribution Adjustment Amount is:

- (a) a positive figure, the Contractor shall include an amount equal to the Pension Contribution Adjustment Amount as a separate line item on the Contractor's Subsequent Invoice; or
- (b) a negative figure, the Contractor shall apply a credit for an amount equal to the Pension Contribution Adjustment Amount (expressed as a positive figure) as a separate line item on the Contractor's Subsequent Invoice.

5.3 Subject to paragraph 2.6 of Schedule 22, if the Termination Date occurs for any reason before the Pension Contribution Adjustment Amount has been paid or becomes payable:

- (a) in the case of paragraph 5.2(a), the Contractor may issue an invoice (in accordance with paragraph 16) for an amount equal to Pension Contribution Adjustment Amount; or
- (b) in the case of paragraph 5.2(b), the Authority may issue an invoice (in accordance with paragraph 16) for an amount equal to Pension Contribution Adjustment Amount.

6. AUTHORITY ADJUSTMENTS TO FEE FOR SERVICE

Volume Changes

6.1 If, for any period of three consecutive months in the Applicable Contract Year (**Calculation Period**), the annualised Actual WAV based on the WAV Data for that Calculation Period falls within a band that is two or more bands:

- (a) above the Predicted WAV Band, paragraph 6.2 shall apply; or
- (b) below the Predicted WAV Band, paragraph 6.3 shall apply,

the (**Adjusted WAV Band**).

The annualised Actual WAV for the purposes of this paragraph 6.1 shall be calculated by multiplying the WAV for the Calculation Period by four.

6.2 If paragraph 6.1(a) applies, the Authority may, in its discretion and by written notice to the Contractor, increase the Fee for Service for the remaining months of that Applicable Contract Year, so that the Fee for Service for those remaining months is the amount that the Authority would have paid had the Predicted WAV for the Applicable Contract Year fallen into the Adjusted WAV Band.

6.3 If paragraph 6.1(b) applies, the Authority may, in its discretion and by written notice to the Contractor, decrease the Fee for Service for the remaining months of that Applicable Contract Year so that the Fee for Service for those remaining months is the amount that the Authority would have paid had the Predicted WAV for the Applicable Contract Year fallen into the Adjusted WAV Band.

By way of example only:

If:

- (a) *the Predicted WAV Band is band 5;*
- (b) *during the Calculation Period, the annualised Actual WAV would fall within band 7 or any higher band then the Authority may, at its discretion, increase the Fee for Service in accordance with paragraph 6.1(a) for the remaining months of that Applicable Contract Year; or*
- (c) *during the Calculation Period, the annualised Actual WAV would fall within band 3 or any lower band then the Authority may, at its discretion, decrease the Fee for Service in accordance with paragraph 6.1(b) for the remaining months of that Applicable Contract Year.*

6.4 If the Authority intends to exercise its discretion under paragraphs 6.2 or 6.3, it shall notify the Contractor in writing in advance (**Volume Change Notice**). The Contractor may make representations to the Authority and request that these be taken into account by the Authority when exercising its discretion under those paragraphs. The Authority shall include in each Volume Change Notice a date by which the Contractor's representations must be received by the Authority. The Authority shall reasonably consider any representations made by the Contractor under this paragraph 6.4 on or before that date in good faith and shall provide its reasons to the Contractor for its decision.

6.5 Without prejudice to paragraph 6.4, if at any time, the Contractor reasonably believes that paragraph 6.1(a) or 6.1(b) applies, the Contractor may make representations to the Authority in writing and request that the Authority exercises its discretion under paragraph 6.2 or 6.3, as the case may be. The

Authority shall reasonably consider any representations made by the Contractor under this paragraph 6.4 in good faith and shall provide its reasons to the Contractor for its decision.

Rent and Licence Fees

- 6.6 In accordance with Clause 31 of this Agreement, the Authority shall deduct from each Fee for Service the amount payable by the Contractor under the Colocation Agreement for the month to which that Fee for Service relates.

Redundancy Reconciliation

- 6.7 For each month of the First Contract Year, other than the first and second months of that First Contract Year, the Fee for Service shall be reduced by an amount equal to the Monthly Redundancy Adjustment Amount (calculated in accordance with paragraph 6.8).
- 6.8 The **Monthly Redundancy Adjustment Amount** shall be calculated by dividing the Redundancy Adjustment Amount (calculated in accordance with paragraph 6.9) by the number of months in the First Contract Year, excluding the first and second months of that First Contract Year.
- 6.9 Promptly following the Amendment Date and, in any event, prior to the end of the second month following the Amendment Date, the Authority shall notify the Contractor in writing of the number and grade of people made redundant by the Authority in the Contractor's Contract Package Area between 1 April 2014 and the Amendment Date (both dates inclusive) (**Redundant Persons**). The **Redundancy Adjustment Amount** shall be the sum of the amounts paid to the Redundant Persons calculated in accordance with the voluntary redundancy terms set out in Part 2 of Schedule 25.

7. PAYMENT BY RESULTS – BINARY

Quarterly Binary Calculation

- 7.1 Within five months after the Quarterly Binary Calculation Date for a Quarterly Cohort (**Applicable Quarterly Cohort**), the Authority shall, for that Applicable Quarterly Cohort use the Actual Quarterly Binary Rate to determine the consequence for the Contractor in accordance with the relevant band of the Quarterly Binary Metric Table for the Contract Year in which the Applicable Quarterly Cohort was established. The relevant band for that Applicable Quarterly Cohort shall be the band which represents the percentage range into which the Actual Quarterly Binary Rate falls (**Quarterly Binary Band**).

Consequences of Quarterly Binary Calculation

- 7.2 If the Actual Quarterly Binary Rate for the Applicable Quarterly Cohort falls into:
- (a) **Band 1:** the Actual Quarterly Binary Rate shall be deemed to be the percentage that is in the “Upper Boundary” column of Band 2 of the Quarterly Binary Metric Table for the Contract Year in which the Applicable Quarterly Cohort was established and paragraph 7.2(b) shall apply;
 - (b) **Band 2:** the Authority shall pay to the Contractor, subject to paragraph 7.9, an amount equal to the Binary PbR Amount in accordance with paragraph 7.6.
 - (c) **Band 3:**
 - (i) the Contractor shall not be entitled to charge and the Authority shall have no obligation to pay a Binary PbR Amount; and

- (ii) there shall be no adjustment to the Corresponding Fee for Service; or
- (d) **Band 4:** the Corresponding Fee for Service shall be reduced by an amount equal to the Binary PbR Amount in accordance with paragraph 7.7.

Calculation of the Binary PbR Amount

- 7.3 The **Binary PbR Amount** for each Applicable Quarterly Cohort shall, subject to paragraph 7.9 be an amount in pounds sterling calculated as follows:

$$A * B * C$$

Where:

A = the Quarterly Reduction in Binary Re-Offending Rate for the Applicable Quarterly Cohort, calculated in accordance with paragraphs 7.4 and 7.5;

B = the Per Offender Amount; and

C = the number of Allocated Persons who Enter into a Cohort during the Quarter in which the Applicable Quarterly Cohort was established.

Quarterly Reduction in Binary Re-Offending Rate

- 7.4 The **Quarterly Reduction in Binary Re-Offending Rate** shall be calculated as follows:

$$D - E$$

Where:

D = [insert rate] [*Explanatory Note: This will be the baseline re-offending rate for the CPA*]; and

E = the Actual Quarterly Binary Rate.

- 7.5 The Quarterly Reduction in Binary Re-Offending Rate shall be expressed as a decimal.

Accordingly, by way of example only, if, in the calculation above:

D = 50% and E = 48%, the Quarterly Reduction in Binary Re-Offending Rate shall be 0.02.

Quarterly Reduction in Binary Re-Offending Rate Example

By way of example only:

If 100 Allocated Persons Enter into a Cohort during the Quarter in which the Applicable Quarterly Cohort was established and the Actual Quarterly Binary Rate for the Applicable Quarterly Cohort is 48%, the Quarterly Reduction in Binary Re-offending Rate is 0.02 (i.e. 50% - 48%).

The Binary PbR Amount would be:

$$0.02 * £4,000 * 100 = £8,000.$$

Application of the Binary PbR Amount

- 7.6 If paragraph 7.2(b) applies, the Contractor shall, subject to paragraph 7.9, add an amount equal to the Binary PbR Amount to the invoice for the Corresponding Fee for Service, as a separate line item.
- 7.7 If paragraph 7.2(d) applies, the Contractor shall apply an amount equal to the Binary PbR Amount (expressed as a positive figure) as a credit to the Contractor's invoice for the Corresponding Fee for Service.

By way of example only:

If the Corresponding Fee for Service is £10,000 and the Binary PbR Amount is -£1,000 then the Contractor shall apply a credit of £1,000 to the Contractor's invoice for the Corresponding Fee for Service.

- 7.8 If the Termination Date occurs for any reason and, accordingly, for any Binary PbR Amount there is no Corresponding Fee for Service:
- (a) where paragraph 7.2(b) applies, the Contractor may issue a separate invoice (in accordance with paragraph 16) for an amount equal to the Binary PbR Amount; or
 - (b) where paragraph 7.2(d) applies, the Authority may issue an invoice (in accordance with paragraph 16) for an amount equal to the Binary PbR Amount.

Limitations on the Binary PbR Amount

- 7.9 Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to charge, and the Authority shall have no obligation to pay, the Binary PbR Amount if that Binary PbR Amount would be more than the Maximum Quarterly Binary Amount for the Contract Year in which the Applicable Quarterly Cohort was established. In these circumstances paragraph 7.10 will apply.
- 7.10 If paragraph 7.9 applies, the amount of the Binary PbR Amount for the Applicable Quarterly Cohort shall be reduced to an amount equal to the Maximum Quarterly Binary Amount for the Contract Year in which the Applicable Quarterly Cohort was established.

Notification of the PbR Amount

- 7.11 Within five months after the end of each Quarterly Binary Calculation Date, the Authority shall notify the Contractor in writing of the Quarterly Binary Band that applies to that Applicable Quarterly Cohort and:
- (a) the amount (if any) of the Binary PbR Amount that is to be paid by the Authority; or
 - (b) the amount (if any) of the credit that the Contractor shall apply to the Contractor's invoice for the Corresponding Fee for Service,

(PbR Notification).

8. ANNUAL BINARY RECONCILIATION

Annual Binary Calculation

- 8.1 Within five months after the Annual Binary Calculation Date, the Authority shall, for each Annual Cohort (**Applicable Annual Cohort**) use the Actual Annual Binary Rate to determine whether the

Authority shall pay a Binary PbR Top-up Amount to the Contractor, in accordance with the relevant band of the Annual Binary Metric Table for the Contract Year in which the Applicable Annual Cohort was established. The relevant band for that Applicable Annual Cohort shall be the band which represents the percentage range into which the Actual Quarterly Binary Rate falls (**Actual Annual Band**).

Consequences of the Annual Binary Calculation

8.2 If the Actual Annual Binary Rate for the Applicable Annual Cohort falls into:

- (a) **Band 1:** the Actual Annual Binary Rate shall be deemed to be the percentage that is in the “Upper Boundary” column of Band 2 of the Annual Binary Metric Table for the Contract Year in which the Annual Quarterly Cohort was established and paragraph 8.2(b) shall apply;
- (b) **Band 2:** the Authority shall pay to the Contractor; subject to paragraph 8.10, an amount equal to the Binary PbR Top-up Amount in accordance with paragraph 8.7;
- (c) **Band 3:** the Contractor shall not be entitled to charge and the Authority shall have no obligation to pay a Binary PbR Top-up Amount;
- (d) **Band 4:**
 - (i) the Contractor shall not be entitled to charge and the Authority shall have no obligation to pay a Binary PbR Top-up Amount; and
 - (ii) Paragraph 8.8 shall apply; or
- (e) **Band 5:**
 - (i) the Contractor shall not be entitled to charge and the Authority shall have no obligation to pay a Binary PbR Top-up Amount; and
 - (ii) Paragraph 8.9 shall apply.

Calculation of the Binary PbR Top-up Amount

8.3 The **Binary PbR Top-up Amount** for each Applicable Annual Cohort shall, subject to paragraph 8.10, be an amount in pounds sterling calculated as follows:

$$A - B$$

Where:

A = the Annual Binary Amount calculated in accordance with paragraph 8.4; and

B = the total aggregate of the Binary PbR Amounts for each of the Quarterly Cohorts that comprise the Applicable Annual Cohort.

Annual Binary Amount

8.4 The **Annual Binary Amount** for each Applicable Annual Cohort shall be an amount in pounds sterling calculated as follows:

$$C * D * E$$

Where:

C = the Annual Reduction in Binary Re-Offending Rate for each Applicable Annual Cohort calculated in accordance with paragraphs 8.5 and 8.6;

D = the Per Offender Amount; and

E = the number of Allocated Persons who Enter into a Cohort during the Contract Year in which the Applicable Annual Cohort was established.

Annual Reduction in Binary Re-Offending Rate

- 8.5 The **Annual Reduction in Binary Re-Offending Rate** for the Applicable Quarterly Cohort shall be calculated as follows:

$F - G$

Where:

F = *[insert rate]* [*Explanatory Note: This will be the baseline re-offending rate for the CPA*]; and

G = the Actual Annual Binary Rate.

- 8.6 The Annual Reduction in Binary Re-Offending Rate shall be expressed as a decimal.

Accordingly, by way of example only, if, in the calculation above:

F = 50% and G = 48%, the Annual Reduction in Binary Re-Offending Rate shall be 0.02.

Annual Reduction in Binary Re-Offending Rate Example

By way of example only:

If:

(a) *the PbR Amounts for each of the Quarterly Cohorts that comprise the Applicable Annual Cohort are: (i) £0, (ii) £0, (iii) £10,000, and (iv) 20,000 (giving a total of £30,000); and*

(b) *If the Annual Binary Amount is £40,000.*

The Binary PbR Top-up Amount is £10,000 (i.e. £40,000 - £30,000).

Application of the Binary PbR Top-up Amount

- 8.7 If paragraph 8.2(b) applies, the Contractor shall, subject to paragraph 8.10, include an amount equal to the Binary PbR Top-up Amount as a separate line item on the invoice on which the Binary PbR Amount for the final Quarterly Cohort in the Applicable Annual Cohort (if any) would also be invoiced in accordance with paragraph 7.6 or 7.8(a) (as appropriate).

Termination on Increase in Re-Offending

- 8.8 Without prejudice to the Authority's other rights and remedies under this Agreement, subject to paragraph 8.13, if for any [two Contract Years (whether or not consecutive)], the Actual Annual Band is Band 4, the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor.

- 8.9 Without prejudice to the Authority's other rights and remedies under this Agreement, subject to paragraph 9.12, if in any Contract Year, the Actual Annual Band, is Band 5 the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor.

Limitations on the Binary PbR Top-up Amount

- 8.10 Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to charge, and the Authority shall have no obligation to pay the full Binary PbR Top-up Amount if that Binary PbR Top-up Amount, when added to the Previous Binary PbR Amount would be more than the Maximum Annual Binary Amount for the Applicable Contract Year. In these circumstances paragraph 8.11 will apply.
- 8.11 If paragraph 8.10 applies, the amount of the Binary PbR Top-up Amount for the Applicable Annual Cohort shall be reduced to an amount equal to the difference between the Previous Binary PbR Amount and the Maximum Annual Binary Amount for the Applicable Annual Cohort.

Notification of the Binary PbR Top-up Amount

- 8.12 The Authority shall specify in the PbR Notification for the final Quarterly Cohort in the Applicable Annual Cohort details of the Binary PbR Top-up Amount (if any) for the Applicable Annual Cohort.

First Annual Cohort

- 8.13 If the first Annual Cohort is not comprised of four Quarterly Cohorts then:
- (a) the Contractor shall not be entitled to charge and the Authority shall have no obligation to pay a Binary PbR Top-up Amount in the First Contract Year; and
 - (b) that first Annual Cohort shall be disregarded for the purpose of paragraph 8.8.

9. PAYMENT BY RESULTS – FREQUENCY

- 9.1 Subject to paragraph 10.10, within five months after the Annual Binary Calculation Date, the Authority shall, for the Applicable Annual Cohort, calculate the Frequency PbR Amount in accordance with paragraph 9.2 (if any) that it will pay to the Contractor.

Calculation of the Frequency PbR Amount

- 9.2 Subject to paragraph 9.6, the **Frequency PbR Amount** for each Applicable Annual Cohort shall be calculated as follows:

$$A * B * C * D$$

Where:

A = the number of Allocated Persons who Enter into a Cohort during the Contract Year in which the Applicable Annual Cohort is established;

B = [insert rate] [*Explanatory Note: This will be the baseline re-offending rate for the relevant CPA*]

C = the Change in Re-Offending Frequency for that Applicable Annual Cohort calculated in accordance with paragraphs 9.3; and

D = the Per Offence Amount.

Change in Re-Offending Frequency

9.3 The Change in Re-Offending Frequency shall be calculated as follows:

$E - F$

Where:

E = [insert rate]; and [*Explanatory Note: This will be the baseline re-offending frequency for the relevant CPA*]

F = the Actual Re-Offending Frequency.

By way of example only:

If:

(a) *there are 500 Allocated Persons who Enter into a Cohort during the Contract Year in which the Applicable Annual Cohort was established; and*

(b) *the Change in Re-Offending Frequency is 0.02;*

the Frequency PbR Amount for the Applicable Annual Cohort shall, subject to paragraph 9.6, be:

$500 * [\text{insert rate}] * 0.02 * £1,000 = £[●]$

Consequences of the Frequency PbR Amount

9.4 If the Frequency PbR Amount is:

- (a) a positive figure, the Contractor shall, subject to paragraph 9.6, include an amount equal to the Frequency PbR Amount as a separate line item on the invoice on which the Binary PbR Amount (if any) for the final Quarterly Cohort in the Applicable Annual Cohort would also be invoiced in accordance with paragraph 7.6 or 7.8(a) (as applicable); or
- (b) a negative figure, the Contractor shall include a credit for an amount equal to the Frequency PbR Amount (expressed as a positive figure) as a separate line item on the Contractor's invoice for the Corresponding Fee for Service.

9.5 If the Termination Date occurs for any reason and, accordingly, for any Frequency PbR Amount, there is no Corresponding Fee for Service:

- (a) in the case of paragraph 9.4(a), the Contractor may issue an invoice (in accordance with paragraph 16) for an amount equal to the Frequency PbR Amount; or
- (b) in the case of paragraph 9.4(b), the Authority may issue an invoice (in accordance with paragraph 16) for an amount equal to the Frequency PbR Amount.

Limitations on the Frequency PbR Amount

9.6 Notwithstanding any other provision of this Agreement the Contractor shall not be entitled to charge, and the Authority shall have no obligation to pay:

Binary Hurdle

- (a) any Frequency PbR Amount for an Applicable Annual Cohort if the Annual Reduction in Binary Re-Offending Rate for that Applicable Annual Cohort is 0 (zero) or a negative number; and

Maximum Frequency Payment

- (b) the full Frequency PbR Amount for any Applicable Annual Cohort which is more than the Maximum Frequency Amount for that Applicable Annual Cohort. In these circumstances paragraph 9.7 will apply.

- 9.7 If paragraph 9.6(b) applies, the amount of the Frequency PbR Amount for the Applicable Annual Cohort shall be reduced to an amount equal to Maximum Frequency Amount.

Notification of the Binary PbR Top-up Amount

- 9.8 The Authority shall specify in the PbR Notification for the final Quarterly Cohort in the Applicable Annual Cohort, details of the Frequency PbR Amount (if any) for the Applicable Annual Cohort.

Frequency PbR Amount – Termination

- 9.9 Without prejudice to other Authority's other rights and remedies under this Agreement, the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if any Change in Re-Offending Frequency is [*specify figure*] or any higher negative number provided that this shall not apply in respect of the first Annual Cohort if that first Annual Cohort does not consist of four Quarterly Cohorts. [*Explanatory Note: The level of the termination trigger will be completed following selection of the preferred bidder*]

First Annual Cohort

- 9.10 If the first Annual Cohort is only comprised of one Quarterly Cohort then:
- (a) subject to paragraph 9.10(b) the Contractor shall not be entitled to change and the Authority shall have no obligation to pay a Frequency PbR Amount for that first Annual Cohort; and
 - (b) the Actual Re-Offending Frequency that is published by the Authority for the next Annual Cohort shall aggregate that Quarterly Cohort together with the four Quarterly Cohorts for that next Contract Year.
- 9.11 If the first Annual Cohort is comprised of only two or three Quarterly Cohorts then the Actual Re-Offending Frequency for that Annual Cohort shall relate only to those two or three Quarterly Cohorts.

10. MATERIAL RE-OFFENDING CHANGE – CHANGE IN POLICY OR LAW

If, with respect to a Contract Year, a Change in Law or a change in any or all of the policies of the Authority, an Authority Related Party or a Relevant Authority (each a **Re-Offending Rate – Change in Policy or Law**) occurs, which, in the reasonable opinion of the Authority, has resulted or is likely to result (by itself, regardless of any other factor) in an increase or decrease in:

- (a) the Actual Annual Binary Rate which is equal to or more than [3 percentage points] above or below [●]; and/or [*Explanatory Note: This will be the baseline annual re-offending rate*]

- (b) the Actual Quarterly Binary Rate which is equal to or more than [3 percentage points] above or below [●] [*Explanatory Note: This will be the baseline quarterly re-offending rate*]

the Authority may, at its discretion, amend the basis on which the PbR Amount or PbR To-up Amount is calculated to reflect the impact of that Re-Offending Rate – Change in Policy or Law. If the Authority intends to exercise its discretion under this paragraph 10, it will notify the Contractor in writing in advance (**Re-Offending Rate Change Notice**). The Contractor may make representations to the Authority in writing and request that these be taken into account by the Authority when exercising its discretion under this paragraph 10. The Authority will include in each Re-Offending Rate Change Notice a date by which the Contractor's representations must be received by the Authority. The Authority shall reasonably consider any representations made by the Contractor under this paragraph 10 on or before that date in good faith and shall provide its reasons to the Contractor for its decision.

By way of example only:

If the baseline annual re-offending rate is [48.25%] and, in the opinion of the Authority, the Re-Offending Rate – Change in Policy or Law has or is likely to increase the Actual Annual Binary Rate to [51.25%] or above or to decrease the Actual Annual Binary Rate to [45.25%] or below then this paragraph 10 shall apply.

11. PBR ALLOCATION FOLLOWING CONTRACT EXPIRY

- 11.1 Notwithstanding any other provision of this Schedule, if a Quarterly Binary Calculation Date or an Annual Binary Calculation Date falls after the last day of the Exit Period (each an **Expired Calculation Date**) then the Binary PbR Amount, the Binary PbR Top-up Amount or the Frequency PbR Amount (as relevant) that is to be paid following an Expired Calculation Date shall be reduced in accordance with paragraph 11.2.
- 11.2 If paragraph 11.1 applies, the Authority shall, when determining the Binary PbR Amount, the Binary PbR Top-up Amount or the Frequency PBR Amount (as relevant) apply the following formula:

$$(A/365) * B$$

Where:

A = the Binary PbR Amount, the Binary PbR Top-up Amount or the Frequency PbR Amount (as relevant); and

B = the number of days between the first day of the period during which the relevant Quarterly Cohort or Annual Cohort was established and the last day of the Exit Period (both dates inclusive).

12. FEE FOR USE

Monthly Fee

- 12.1 The Authority shall pay to the Contractor for the Applicable Contract Year monthly amounts calculated in accordance with paragraph 12.3 (Fee for Use).
- 12.2 The Contractor shall issue invoices to the Authority, monthly in arrears, for the Fee for Use in accordance with paragraph 16.

- 12.3 The Fee for Use shall be calculated by dividing the Projected FFU for the Applicable Contract Year into 12 equal monthly instalments. The Projected FFU for the Applicable Contract Year shall be the amount notified to the Contractor by the Authority in accordance with paragraph 12.4.

Projected FFU Calculation

- 12.4 Subject to paragraph 12.5, for each Applicable Contract Year during the three month period prior to the commencement of that Applicable Contract Year, the Authority shall:
- (a) determine, at its discretion, its estimate of the total amount it will spend on services for Designated Retained Persons, purchased from the Contractor in that Applicable Contract Year (the **Projected FFU**); and
 - (b) include in the Predicted WAV Notification provided to the Contractor under paragraph 2.4(b) the Projected FFU for the Applicable Contract Year.
- 12.5 For the First Contract Year, the Projected FFU shall be £[insert figure]. [*Explanatory Note: Projected FFU to be completed following selection of the preferred bidders.*]
- 12.6 The Contractor shall include an amount equal to the Fee for Use on each invoice issued to the Authority under paragraph 2.2.

FFU Adjustment Calculation

- 12.7 Within four months after the end of the Applicable Contract Year, the Authority shall calculate:
- (a) the actual volume of the NPS Priced Purchased Services and any Elective Services that have been requested by the Authority in writing and performed by the Contractor during the Applicable Contract Year (**Actual NPS Services**);
 - (b) the price for the Actual NPS Services calculated in accordance with the NPS Rate Card (the **Actual FFU**); and
 - (c) the **FFU Adjustment Amount**, being the Actual FFU minus the Predicted FFU.
- 12.8 The Authority shall include in the Actual WAV Notification provided to the Contractor under paragraph 2.7(b):
- (a) the Actual FFU for the Applicable Contract Year;
 - (b) details of the calculation of that Actual FFU; and
 - (c) the amount of the FFU Adjustment Amount.
- 12.9 If the Actual FFU is:
- (a) more than the Predicted FFU, Contractor shall include an amount equal to the FFU Adjustment Amount as a separate line item on the Contractor's Subsequent Invoice; or
 - (b) less than the Predicted FFU, the Contractor shall apply a credit for an amount equal to the FFU Adjustment Amount as a separate line item on the Contractor's Subsequent Invoice.
- 12.10 If the Termination Date occurs for any reason before the FFU Adjustment Amount has been paid or becomes payable:

- (a) in the case of paragraph 12.9(a), the Contractor may issue an invoice (in accordance with paragraph 16) for the FFU Adjustment Amount; or
- (b) in the case of paragraph 12.10(b), the Authority may issue an invoice (in accordance with paragraph 16) for the FFU Adjustment Amount.

- 12.11 Paragraph 2.7 of Appendix 1 shall apply to the calculation of the Actual NPS Services (and so the Actual FFU) under this paragraph 12.
- 12.12 For NPS Priced Purchased Services included in Part 1 of the NPS Rate Card, the Contractor shall provide those services to the Authority (or the relevant Commissioning Body) at the rate for that service set out in Part 1 of the NPS Rate Card.
- 12.13 For NPS Priced Purchased Services included in Part 2 of the NPS Rate Card, the Contractor shall provide those services to the Authority (or the relevant Commissioning Body) at the rate for that service set out in Part 2 of the NPS Rate Card unless the Contractor can demonstrate to the satisfaction of the Authority (acting reasonably) that the cost to the Contractor of providing those services to Designated Retained Persons is greater than the cost to the Contractor of providing that service to Allocated Persons.
- 12.14 Other than for those NPS Priced Purchased Services included in Part 1 of the NPS Rate Card, payment for the services to be provided by the Contractor in respect of Designated Retained Persons has been incorporated as part of the determination of the relevant Weighting(s) for those services.

13. RATE CARD

The CRC Rate Card for the purposes of Clause 3.11 of this Agreement is as set out in Appendix 6.

14. SERVICE CREDITS

The Contractor shall include as a separate line item on each invoice that it provides to the Authority under paragraph 2.2 the amount of any Service Credit that is to be paid by the Contractor under paragraph 2.3 and Part 4 of Schedule 9 (Service Levels and Service Credits).

15. INDEXATION

The Authority shall adjust: (i) the Per Offender Amount, (ii) the Per Offence Amount, (iii) each of the amounts in the "Fixed FFS" column of the relevant Fee for Service Table, (iv) each of the amounts in the CRC Rate Card in Appendix 6; and (v) each of the amounts in the NPS Rate Card in Appendix 7; in each case, with effect from 1 April of each Contract Year (starting from 1 April 2015) by multiplying the relevant amount by the percentage change in the GDP Deflator published for the 12 months ended on 31 December prior to the start of the Applicable Contract Year.

16. INVOICING

- 16.1 Subject to paragraph 16.4, the Authority or the Contractor (as the case may be) shall (or, if paragraph 16.3 applies, the Authority shall ensure that the relevant Commissioning Body shall) pay all invoices within 20 Business Days after the date of receipt of the relevant invoice by the nominated department or contact, as notified by a party to the other party in writing from time to time.
- 16.2 The Contractor or the Authority (as the case may be) shall ensure that each invoice includes or is accompanied by supporting information setting out all details which are necessary for the Authority or the Contractor (as the case may be) to verify the accuracy of the invoice.

- 16.3 If required by the Authority, the Contractor shall apportion its invoices (or any credit to an invoice) among the Authority and/or any of the Commissioning Bodies, according to the proportions specified by the Authority. If an invoice is to be addressed to a Commissioning Body, references to the Authority in paragraphs 16.2, 16.4, 16.5 and 16.6 shall be read and construed as references to that Commissioning Body.
- 16.4 Subject to paragraph 16.7, if any part of the Charges is subject to a good faith Dispute between the Authority and the Contractor:
- (a) the disputing party (**Disputing Party**) shall notify the other party (**Issuing Party**), within 10 Business Days after the date of receipt by the Disputing Party of the relevant invoice, of any disputed amounts and shall, as soon as reasonably practicable after it has notified the Issuing Party, describe in reasonable detail the Disputing Party's reasons for disputing each amount;
 - (b) the Issuing Party shall issue:
 - (i) a credit note for the original invoice; and
 - (ii) a new invoice for the undisputed amount;
 - (c) the Disputing Party shall pay the new invoice issued under paragraph 16.4(b)(ii) in accordance with 16.1; and
 - (d) the Authority and the Contractor shall seek to reach settlement of the items that are the subject of the Dispute in accordance with paragraph 17 and the Dispute Resolution Procedure.
- 16.5 When any Dispute regarding the Charges is resolved:
- (a) the Issuing Party shall issue an invoice (which shall be payable in accordance with paragraph 16.1) for the amount which it is agreed or determined to be payable by the Disputing Party (whether that sum is the amount originally invoiced or a reduced amount) within 20 Business Days after the date of resolution of that Dispute; and
 - (b) if the Disputing Party has disputed an amount payable under an invoice and it is subsequently agreed or determined that the amount originally invoiced was correct the Issuing Party shall be entitled to make a claim for interest on that amount accruing daily from (and including) the date that the Dispute is settled until (but excluding) the date of payment by the Disputing Party at the Interest Rate for the time being in force.
- 16.6 Subject to paragraph 16.5(b), where one party is owed any undisputed amount under this Agreement and that amount remains unpaid for more than 20 Business Days after the due date, without limiting its other rights and remedies, that party may charge, and the other party shall pay, interest at the Interest Rate on that amount accruing daily from (and including) the due date to (but excluding) the date of actual payment.
- 16.7 The Contractor shall not dispute the amount of any Binary PbR Amount until it has been notified of the Binary PbR Top-up Amount for the Applicable Annual Cohort under paragraph 9.8.

17. DATA AND METHODOLOGY

The Contractor agrees that the information, data, methodology and calculations set out in this Schedule are the sole basis on which the Charges are calculated and shall have no right to dispute any or all of them.

18. DISPUTES

- 18.1 Notwithstanding Clause 41.2(a) of this Agreement, each Dispute arising out of or in connection with this Schedule shall be referred to adjudication in accordance Clause 41.2 of this Agreement and all experts appointed under Clause 41.2(b)(ii) or under Clause 41.2(b)(v) of this Agreement shall be members of the Institute of Chartered Accountants in England and Wales.

APPENDIX 1

WAV CALCULATION

1. DEFINITIONS

- 1.1 Unless otherwise defined in this Appendix, capitalised terms shall have the meanings given to them in Schedule 1.

Service Requirement means each requirement set out in the “Service Requirement” column of the WAV Calculation Table, as each is further described in paragraph 2.9 of this Appendix;

Unit:

- (a) for the **Manage the Community Order or Suspended Sentence Order Service Requirement**: means the number of Community Orders or Suspended Sentence Orders imposed on Allocated Persons (for the purposes of this definition only, Allocated Persons [excludes those adults who have been sentenced to: (i) an Unpaid Work Requirement only; and (ii) an Unpaid Work Requirement and an electronic monitoring Curfew Requirement only]);
- (b) for the **Manage the Custodial and Licence and Post Sentence Supervision Period – less than 12 months Service Requirement**: means the number of Allocated Persons released from custody from a custodial sentence of less than 12 months on a Licence and a Post Sentence Supervision Period (for the purposes of this definition only, Allocated Persons excludes those persons (i) who were released following a recall to custody; and (ii) who were released following a committal to custody for a breach of the Post Sentence Supervision Period);
- (c) for the **Manage the Custodial and Licence and Post Sentence Supervision Period – equal to or more than 12 months Service Requirement**: means the number of Allocated Persons released from custody from a custodial sentence of 12 months or more on a Licence and, where applicable, a Post Sentence Supervision Period (for the purposes of this definition only, Allocated Persons excludes those persons (i) who were released following a recall to custody and (ii) who were released following a committal to custody for a breach of the Post Sentence Supervision Period);
- (d) for the **Unpaid Work Service Requirement**: means the number of hours for which an Unpaid Work requirement has been ordered for Allocated Persons;
- (e) for the **Accredited Programmes – Non Sex Offender Treatment Programme (Accredited Programme Non-SOTP) Service Requirement**: means the number of Accredited Programme requirements or conditions imposed as part of a Community Order, Suspended Sentence Order, Licence and Post Sentence Supervision Period for Allocated Persons;
- (f) for the **Drug Rehabilitation Requirement Service Requirement**: means the number of Community Orders and Suspended Sentence Orders containing a Drug Rehabilitation Requirement for Allocated Persons;
- (g) for the **Alcohol Treatment Requirement Service Requirement**: means the number of Community Orders and Suspended Sentence Orders containing an Alcohol Treatment Requirement for Allocated Persons;

- (h) for the **Mental Health Treatment Requirement Service Requirement**: means the number of Community Orders and Suspended Sentence Orders containing a Mental Health Treatment Requirement for Allocated Persons;
- (i) for the **TTG – Reception Services Service Requirement**: means the number of new arrivals of Resettlement Persons into custody at a Resettlement Prison designated to the Contractor excluding: (i) Resettlement Persons who have been transferred to that Resettlement Prison designated to the Contractor from another prison; and (ii) Resettlement Persons returning to the Resettlement Prison from court or returning from Release on Temporary Licence;
- (j) for the **TTG – Persons on Remand Service Requirement**: means the number of releases from custody at a Resettlement Prison designated to the Contractor of Persons on Remand excluding Persons on Remand who are transferred from that Resettlement Prison designated to the Contractor to another prison or going out from that Resettlement Prison to court or going on Release on Temporary Licence; and
- (k) for the **TTG – Co-ordination of Joint Release Planning**: means the number of releases from custody at a Resettlement Prison designated to the Contractor of Resettlement Persons excluding (i) Persons on Remand and (ii) Resettlement Persons who are transferred from that Resettlement Prison to another prison or going out from that Resettlement Prison to court or going on Release on Temporary Licence,

in each case which has been recorded as part of the WAV Data.

WAV Calculation Table means the table set out in Appendix 2; and

Weighting means, for each Service Requirement, the amount set out in the “Weighting” column of the WAV Calculation Table.

2. WAV CALCULATION

WAV Calculation

- 2.1 The Authority shall calculate the WAV in accordance with paragraph 2.2 of this Appendix.
- 2.2 Subject to any adjustments required to implement or take account of the principles in paragraphs 2.3 to 2.7 of this Appendix, the WAV shall be equal to the aggregate of the WAV for each Service Requirement, for the Applicable Contract Year. The WAV for a Service Requirement shall be:

$$A * B$$

Where:

A = the Weighting for the Service Requirement; and

B = the number of Units.

Unpaid Work Requirement

- 2.3 For the Unpaid Work Service Requirement, the entire number of hours for which an Unpaid Work Requirement has been ordered for an Allocated Person will be included in the calculation of the WAV for the Applicable Contract Year in which that Allocated Person Enters into a Cohort.

Transfer of Cases

- 2.4 Without prejudice to the generality of paragraph 2.7, other than for the Unpaid Work Service Requirement, if the Contractor cannot demonstrate to the satisfaction of the Authority (acting reasonably) that it has actually undertaken meaningful activities aimed at fulfilling the relevant Service Requirement in respect an Allocated Person who:
- (a) transfers out of the Contractor's Contract Package Area (for any reason including if the Allocated Person moves out of England and Wales or transfers to another Community Rehabilitation Company); or
 - (b) transfers in to the Contractor's Contract Package Area (for any reason including if the Allocated Person moves into England and Wales or transfers from another Community Rehabilitation Company),
- that Allocated Person or the sentence imposed on that Allocated Person (as the case may be) shall not be included in the calculation of the number of Units for that Service Requirement for the purposes of calculating the Actual WAV.
- 2.5 For the Unpaid Work Service Requirement, if the Contractor cannot demonstrate to the satisfaction of the Authority (acting reasonably) that it has actually provided an hour of Unpaid Work, that hour shall not be included in the calculation of the number of Units for the Unpaid Work Service Requirement for the purposes of calculating the Actual WAV.
- 2.6 For the avoidance of doubt, any activities that the Contractor may have undertaken in relation to the provision of a Service Requirement (including the Unpaid Work Service Requirement) generally but which do not specifically relate to the relevant Allocated Person shall not be taken into consideration for the purpose of paragraphs 2.4 and 2.5

WAV Calculation Principles

- 2.7 The Contractor shall ensure that at all times during the Contract Period:
- (a) the Contractor acts honestly and in good faith in connection with this Schedule 11;
 - (b) the Charges for the Services properly reflect the value to the Authority of those Services; and
 - (c) it acts within the spirit and intentions of this Schedule 11 and it shall:
 - (i) not be entitled to be paid for any Charges under this Agreement for the provision of any Service to the extent that it has already been paid or will be paid for that Service; and
 - (ii) not be entitled to be paid for any Charges that would otherwise be due under this Agreement for the provision of any Service where, other than as a result of a Force Majeure Event or a Relief Event, the Contractor cannot demonstrate to the satisfaction of the Authority (acting reasonably) that it has actually undertaken meaningful activities aimed at fulfilling the relevant Service Requirement in respect of an Allocated Person.
- 2.8 For the avoidance of doubt, any activities that the Contractor may have taken in relation to the provision of a Service Requirement generally but which do not specifically relate to an Allocated Person shall not be taken into account for the purposes of paragraph 2.7.

Service Requirement Descriptions

2.9 The following describes each of the Service Requirements (by reference to the definition of Unit):

Manage the Community Order means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM1	OM 11	OM25	RH1	V5
OM2	OM 12	OM26	RH2	V6
OM3	OM18	OM27	OSR 1	V7
OM 5	OM19	OM29	OSR 2	D1
OM 6	OM20	OM31	OSR 3	D2
OM7	OM21	OM33	V1	D3
OM8	OM22	OM34	V2	
OM9	OM23	OM36	V3	
OM10	OM24	OM37	V4	

Manage the Suspended Sentence Order means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM1	OM11	OM25	RH1	V5
OM2	OM12	OM26	RH2	V6
OM3	OM18	OM27	OSR1	V7
OM5	OM19	OM29	OSR2	D1
OM6	OM20	OM31	OSR3	D2
OM7	OM21	OM33	V1	D3
OM8	OM22	OM34	V2	
OM9	OM23	OM36	V3	
OM10	OM24	OM37	V4	

Manage the Custodial and Licence and Post Sentence Supervision Period – less than 12 months means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM1	OM13	OM28	R8	V1
OM2	OM14	OM29	R9	V2
OM4	OM16	OM30	RH1	V3
OM5	OM17	OM31	RH2	V4
OM6	OM18	OM32	TR2	V5
OM7	OM19	OM35	TR3	V6
OM8	OM21	OM36	TR4	V7
OM9	OM22	OM37	TR5	D1
OM10	OM24	R1	DRR1	D2
OM11	OM25	R3	DRR2	
OM12	OM26	R4	OSR3	

Manage the Custodial and Licence and Post Sentence Supervision Period – equal to or more than 12 months means the delivery of the following Service Outputs: the delivery of the following Service Output Groups (as set out in Schedule 7):

OM1	OM2	OM4	OM5	OM6
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OM7	OM17	OM30	R9	V1
OM8	OM18	OM31	RH1	V2
OM9	OM19	OM32	RH2	V3
OM10	OM21	OM35	TR2	V4
OM11	OM22	OM36	TR3	V5
OM12	OM24	OM37	TR4	V6
OM13	OM25	R1	TR5	V7
OM14	OM26	R3	DRR1	D1
OM15	OM28	R4	DRR2	D2
OM16	OM29	R8	OSR3	

Unpaid Work means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM1	OM29	OSR5	OSR9
OM2	OM31	OSR6	OSR10
OM22	OM32	OSR7	OSR11
OM23	OSR3	OSR8	D3

Accredited Programme – Non SOTP means the delivery of the following Service Output Groups (as set out in Schedule 7)

OM1	OM6	OM22	OM29	OSR3
OM2	OM16	OM23	OM31	OSR4

Drug Rehabilitation Requirement means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM22	TR1	TR3	TR5	DRR3
OM31	TR2	TR4	DRR1	DRR4

Alcohol Treatment Requirement means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM22	TR1	TR3	TR5
OM31	TR2	TR4	AT1

Mental Health Treatment Requirement means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM22	TR1	TR3	TR5
OM31	TR2	TR4	MHTR1

TTG – Reception Services means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM22	OM25	R1	R4
OM23	OM26	R3	

TTG – Persons on Remand means the delivery of the following Service Output Groups (as set out in Schedule 7)

OM22	OM26	R4	V3	V6
OM23	R1	V1	V4	V7
OM25	R3	V2	V5	

TTG – Co-ordination of Joint Release Planning means the delivery of the following Service Output Groups (as set out in Schedule 7):

OM12	OM23	OM26	R6
OM22	OM25	R5	

- 2.10 Certain Service Output Groups form part of more than one Service Requirement and the Weighting for each Service Requirement reflects all of the Service Output Groups for that Service Requirement.

APPENDIX 2
WAV CALCULATION TABLE

No.	Service Requirement	Weighting (B)	Unit (C)
1	Manage the Community Order	1.0	1.0
2	Manage the Suspended Sentence Order	1.0	1.0
2	Manage the Custodial and Licence and Post Release Period – less than 12 months	1.35	1.0
3	Manage the Custodial and Licence and Post Release Period – equal to or more than 12 months	3.15	1.0
4	Unpaid Work	0.007	per hour
5	Accredited Programme – Non SOTP	2.88	1.0
6	DRR	0.99	1.0
7	ATR	0.99	1.0
8	MHTR	0.99	1.0
9	TTG – Reception Services	0.08	1.0
10	TTG –Persons on Remand	0.05	1.0
11	TTG – Co-ordination of Joint Release Planning	0.05	1.0

APPENDIX 3

FEE FOR SERVICE TABLE

Contract Year 1/First Contract Year

Band	Upper Volume Boundary	Mid-Point Volume	Lower Volume Boundary	Fixed FFS
14	[Projected WAV + 50%]	[●]	[Projected WAV + 45%]	[MAF – adjusted Bid]
13	[Projected WAV + 45%]	[●]	[Projected WAV + 39%]	[MAF – adjusted Bid]
12	[Projected WAV + 39%]	[●]	[Projected WAV + 33%]	[MAF – adjusted Bid]
11	[Projected WAV + 33%]	[●]	[Projected WAV + 27%]	[MAF – adjusted Bid]
10	[Projected WAV + 27%]	[●]	[Projected WAV + 21%]	[MAF – adjusted Bid]
9	[Projected WAV + 21%]	[●]	[Projected WAV + 15%]	[MAF – adjusted Bid]
8	[Projected WAV + 15%]	[●]	[Projected WAV + 9%]	[MAF – adjusted Bid]
7	[Projected WAV + 9%]	[●]	[Projected WAV + 3%]	[MAF – adjusted Bid]
6	[Projected WAV + 3%] [Provided by MoJ]	[●]	[Projected WAV -3%] [Provided by MoJ]	[Bid]
5	[Projected WAV -3%]	[●]	[Projected WAV -9%]	[MAF – adjusted Bid]
4	[Projected WAV -9%]	[●]	[Projected WAV -15%]	[MAF – adjusted Bid]
3	[Projected WAV -15%]	[●]	[Projected WAV -21%]	[MAF – adjusted Bid]
2	[Projected WAV -21%]	[●]	[Projected WAV -27%]	[MAF – adjusted Bid]
1	[Projected WAV -27%]	[●]	[Projected WAV -33%]	[MAF – adjusted Bid]
A	[Projected WAV-33%]	[●]	[Projected WAV-39%]	[MAF-adjusted Bid]
B	[Projected WAV-39%]	[●]	[Projected WAV-45%]	MAF-adjusted Bid
C	[Projected WAV-45%]	[●]	[Projected WAV-51%]	MAF-adjusted Bid
D	[Projected WAV-51%]	[●]	[Projected WAV-57%]	MAF-adjusted Bid
E	[Projected WAV-57%]	[●]	[Projected WAV-63%]	MAF-adjusted Bid

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F	[Projected WAV 63%]	[●]	[Projected WAV-69%]	MAF-adjusted Bid
G	[Projected WAV-69%]	[●]	[Projected WAV-75%]	MAF-adjusted Bid
H	[Projected WAV-75%]	[●]	[Projected WAV-81%]	MAF-adjusted Bid
I	[Projected WAV-81%]	[●]	[Projected WAV-87%]	MAF-adjusted Bid
J	[Projected WAV-87%]	[●]	[Projected WAV-93%]	MAF-adjusted Bid
K	[Projected WAV-93%]	[●]	[Projected WAV-100%]	MAF-adjusted Bid

[Explanatory Note: The Projected WAV figured for the Upper Volume Boundary, Mid Volume Boundary and Lower Volume Boundary columns will be completed following selection of the preferred bidder. Bidders should complete the cell shown in yellow as part of their response to the Invitation to Negotiate].

Contract Year 2

The numbers set out in this table are included by way of illustration only.

Band	Upper Volume Boundary	Mid- Point Volume	Lower Volume Boundary	Fixed FFS
14	[●]	[●]	[●]	[●]
13	[●]	[●]	[●]	[●]
12	[●]	[●]	[●]	[●]
11	[●]	[●]	[●]	[●]
10	[●]	[●]	[●]	[●]
9	[●]	[●]	[●]	[●]
8	[●]	[●]	[●]	[●]
7	[●]	[●]	[●]	[●]
6	120,000	115,000	110,001	£1,100
5	110,000	105,000	100,001	£1,000
4	[●]	[●]	[●]	[●]
3	[●]	[●]	[●]	[●]
2	[●]	[●]	[●]	[●]
1	[●]	[●]	[●]	[●]
A	[●]	[●]	[●]	[●]
B	[●]	[●]	[●]	[●]
C	[●]	[●]	[●]	[●]
D	[●]	[●]	[●]	[●]
E	[●]	[●]	[●]	[●]
F	[●]	[●]	[●]	[●]
G	[●]	[●]	[●]	[●]
H	[●]	[●]	[●]	[●]
I	[●]	[●]	[●]	[●]
J	[●]	[●]	[●]	[●]
K	[●]	[●]	[●]	[●]

[Explanatory Note: Table to be repeated as relevant for 15 Contract Years]

APPENDIX 4

PART 1

QUARTERLY BINARY METRIC TABLES

Contract Year	Band	Upper Boundary (%)	Lower Boundary (%)	Consequence
1 (First Contract Year)	1	[●]	[●]	Paragraph 7.2(a) applies
2	1	[●]	[●]	Paragraph 7.2(a) applies
3	1	[●]	[●]	Paragraph 7.2(a) applies
4	1	[●]	[●]	Paragraph 7.2(a) applies
5	1	[●]	[●]	Paragraph 7.2(a) applies
6	1	[●]	[●]	Paragraph 7.2(a) applies
7	1	[●]	[●]	Paragraph 7.2(a) applies
8	1	[●]	[●]	Paragraph 7.2(a) applies
9	1	[●]	[●]	Paragraph 7.2(a) applies
10	1	[●]	[●]	Paragraph 7.2(a) applies
11	1	[●]	[●]	Paragraph 7.2(a) applies
12	1	[●]	[●]	Paragraph 7.2(a) applies
13	1	[●]	[●]	Paragraph 7.2(a) applies
14	1	[●]	[●]	Paragraph 7.2(a) applies
15	1	[●]	[●]	Paragraph 7.2(a) applies
All Contract Years	2	[●]	[●]	Paragraph 7.2(b) applies
All Contract Years	3	[●]	[●]	Paragraph 7.2(c) applies
All Contract Years	4	[●]	[●]	Paragraph 7.2(d) applies

[Explanatory Note: Upper Boundary and Lower Boundary percentage figures to be completed following selection of the preferred bidders]

PART 2

ANNUAL BINARY METRIC TABLE

Contract Year	Band	Upper Boundary (%)	Lower Boundary (%)	Consequence
1 (First Contract Year)	1	[●]	[●]	Paragraph 8.2(a) applies
2	1	[●]	[●]	Paragraph 8.2(a) applies
3	1	[●]	[●]	Paragraph 8.2(a) applies
4	1	[●]	[●]	Paragraph 8.2(a) applies
5	1	[●]	[●]	Paragraph 8.2(a) applies
6	1	[●]	[●]	Paragraph 8.2(a) applies
7	1	[●]	[●]	Paragraph 8.2(a) applies
8	1	[●]	[●]	Paragraph 8.2(a) applies
9	1	[●]	[●]	Paragraph 8.2(a) applies
10	1	[●]	[●]	Paragraph 8.2(a) applies
11	1	[●]	[●]	Paragraph 8.2(a) applies
12	1	[●]	[●]	Paragraph 8.2(a) applies
13	1	[●]	[●]	Paragraph 8.2(a) applies
14	1	[●]	[●]	Paragraph 8.2(a) applies
15	1	[●]	[●]	Paragraph 8.2(a) applies
All Contract Years	2	[●]	[●]	Paragraph 8.2(b) applies
All Contract Years	3	[●]	[●]	Paragraph 8.2(c) applies
All Contract Years	4	[●]	[●]	Paragraph 8.2(d) applies
All Contract Years	5	[●]	[●]	Paragraph 8.2(e) applies

[Explanatory Note: Upper Boundary and Lower Boundary percentage figures to be completed following selection of the preferred bidders]

APPENDIX 5

PBR AMOUNTS

1. DEFINITIONS

Base PbR Amount has the meaning given to it in paragraph 2.2 of this Appendix 5;

Projected PbR Starts has the meaning given to it in paragraph 2.2 of this Appendix 5;

Total PbR Amount means the amount calculated under paragraph 2.1 of this Appendix 5;

2. MAXIMUM PBR AMOUNTS

2.1 The **Total PbR Amount** for each Applicable Contract Year shall be calculated as follows:

$$(A/B) * C$$

Where:

A = the number of Allocated Persons who Enter into a Cohort during the Contract Year in which the Applicable Annual Cohort was established;

B = the number of Projected PbR Starts for the Applicable Contract Year; and

C = the Base PbR Amount for the Applicable Contract Year.

2.2 The number of Projected PbR Starts and the Base PbR Amount shall each be the amount set out in the relevant column of the table below for the Contract Year in which the Annual Cohort was established:

Contract Year	Projected PbR Starts	Base PbR Amount
1 (First Contract Year)	[●]	[●]
2	[●]	[●]
3	[●]	[●]
4	[●]	[●]
5	[●]	[●]
6	[●]	[●]
7	[●]	[●]
8	[●]	[●]
9	[●]	[●]
10	[●]	[●]

[Explanatory Note: Projected PbR Starts and Base PbR Amounts to be completed following selection of the preferred bidders]

2.3 Subject to paragraph 9 of this Schedule and paragraph 2.4 of this Appendix 5:

- (a) the **Maximum Quarterly Binary Amount** shall be the Maximum Annual Binary Amount for the Contract Year in which the relevant Quarterly Cohort was established, divided by 4;

- (b) the Maximum Annual Binary Amount shall be the Total PbR Amount for the Contract Year in which the relevant Annual Cohort was established, divided by 2; and
- (c) the Maximum Frequency Amount shall be the Total PbR Amount for the Contract Year in which the relevant Annual Cohort was established, divided by 2.

2.4 If the number of Allocated Persons in an Annual Cohort is more than 150% of the Projected PbR Starts for the Contract Year in which that Annual Cohort was established, then when calculating the Total PbR Amount, 'A' in the calculation set out in paragraph 1.2 of this Appendix shall be the number that is equal to 150% of 'B' in that calculation.

By way of example only:

*If, in the Annual Cohort established in Contract Year 4, there are [1,100] Allocated Persons then the Total PbR Amount is: £[x] (i.e. $(1,100/[x]) * [x]$).*

Therefore:

(i) the Maximum Annual Binary Amount in relation to the Annual Cohort established in Contract Year 4 is [x] (i.e. $[x]/2$) which determines the maximum amount of any Binary PbR Top-up Amount in accordance with paragraph 8.10 of this Schedule and so the maximum amount that may be added to the Contractor's invoice in accordance with paragraph 8.7 of this Schedule (which invoice shall actually be issued during Contract Year 6);

(ii) the Maximum Quarterly Binary Amount in relation to any Quarterly Cohort Annual Cohort established in Contract Year 4 is [x] (i.e. $[x]/4$) which determines the maximum amount of any Binary PbR Amount in accordance with paragraph 7.9 of this Schedule and so the maximum amount that may be added to the Contractor's invoices in accordance with paragraph 7.6 of this Schedule (which invoices shall actually be issued during Contract Year 6); and

(iii) the Maximum Annual Frequency Amount in relation to the Annual Cohort established in Contract Year 4 is [x] (i.e. $[x]/2$) which determines the maximum amount of any Frequency PbR Top-up Amount in accordance with paragraph 9.6(b) of this Schedule and so the maximum amount that may be added to the Contractor's invoice in accordance with paragraph 9.4(a) of this Schedule (which invoice shall actually be issued during Contract Year 6);

APPENDIX 6

CRC RATE CARD

[Explanatory Note: Bidders should provide their CRC Rate Card as part of their response to the Invitation to Negotiate]

APPENDIX 7
NPS RATE CARD

1. DEFINITIONS

1.1 Unless otherwise defined in this Appendix, capitalised terms shall have the meanings given to them in Schedule 1.

Accredited Programme – Non SOTP has the meaning given to it in Appendix 1; and

Unpaid Work has the meaning given to in Appendix 1.

2. RATE CARD

PART 1

Price (£)															
NPS Priced Purchased Service	Contract Year 1 (First Contract Year)	Contract Year 2	Contract Year 3	Contract Year 4	Contract Year 5	Contract Year 6	Contract Year 7	Contract Year 8	Contract Year 9	Contract Year 10	Contract Year 11	Contract Year 12	Contract Year 13	Contract Year 14	Contract Year 15
Part 1															
Unpaid Work															
Accredited programme – Non SOTP															

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[Explanatory Note: The prices for Part 1 will be completed following selection of the preferred bidders].

PART 2

[Explanatory Note: The prices for Part 2 will be copied across from the CRC Rate Card in Appendix 6]

APPENDIX 8
LIABILITY CAPS

Contract Year	Liability Cap Base Amount	Termination Compensation Amount
1 (First Contract Year)	[●]	[●]
2	[●]	[●]
3	[●]	[●]
4	[●]	[●]
5	[●]	[●]
6	[●]	[●]
7	[●]	[●]
8	[●]	[●]
9	[●]	[●]
10	[●]	[●]
11	[●]	[●]
12	[●]	[●]
13	[●]	[●]
14	[●]	[●]
15	[●]	[●]
Total	[●]	

[Explanatory Note: 1.The Liability Cap Base Amounts will be the MAP figures for each Contract Year, as set out in the FRT. 2.The Termination Compensation Amount for each Contract Year or part of a Contract Year which remains unexpired at the Termination Date (i.e. the date on which this Agreement would effectively terminate) will be an amount determined by calculating the NPV representing 5% of the MAP that applies to each of those unexpired Contract Years. A discount rate equivalent to a reasonable Weighted Average Cost of Capital (WACC) will be applied. Bidders should propose a reasonable WACC as part of their indicative amendments to the draft Amended and Restated Services Agreement as described in section 3 of Volume 4 of the Invitation to Negotiate. The Termination Compensation Amounts will be 5% of the Liability Cap Base Amounts]