



Buckinghamshire & Milton Keynes Fire Authority

Meeting and date: Executive Committee, 17 November 2021

Report title: TVFCS - Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS

Lead Member: Councillor Lesley Clarke OBE

Report sponsor: Deputy Chief Fire Officer Mick Osborne

Author and contact: Area Commander Steve Wells, swells@bucksfire.gov.uk,

Action: Decision

Recommendations:

1. That approval be given for the Deed or Novation between Oxfordshire County Council, Royal Berkshire Fire Authority, Capita Secure Information Solutions Limited (“CSIS”) and Capita (SSS) Limited (in relation to the ‘Mobilising System Contract’) to be completed.
 2. That approval be given for the Deed of Novation between Royal Berkshire Fire Authority Capita Secure Information Solutions Limited (“CSIS”), and Capita (SSS) Limited, in relation to the contract for the provision, maintenance and support of the DS3000 Integrated Communication Control System (ICCS).
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Executive summary:

Thames Valley Fire Control Service (TVFCS) utilises the ‘Vision 4’ mobilising system, which is provided by the Secure Solutions and Services business (“SSS”) that currently sits within Capita Secure Information Solutions Limited (“CSIS”) a subsidiary wholly owned by Capita plc.

Thames Valley partners - the Authority, Oxfordshire County Council (OCC), and Royal Berkshire Fire Authority (RBFA) - entered into an inter authority agreement which included this provision which formally commenced when TVFCS ‘went live’ in **April 2015**.

At the meeting of the Executive Committee held on the **15 September 2021**, there was approval given following the recommendation from the Thames Valley Fire Control Service (TVFCS) Joint Committee on **12 July 2021**, pursuant to the inter authority agreement (IAA) relating to the steady state operation of the TVFCS, to

extend the contract of the 'Vision 4' mobilising system of one year from **April 2022 – March 2023**.

Earlier this year Capita plc undertook an extensive review of its portfolio, with an aim – in its words - to consolidate its activities into consulting, transformation and digital services, which has led to a decision to restructure some areas of its business.

As a result, it is its intention to transfer the entire SSS business to a new company within the Capita group, namely Capita (SSS) Limited. The contract between OCC and RBFA and CSIS for the 'Mobilising System Contract' "Agreement") is one such contract that would transfer to the new company.

Furthermore, the contract between RBFA and CSIS for the provision of DS3000 (ICCS) support and maintenance (the "Call-off Agreement"), is a further customer contract that would also transfer to the new company. It is believed that the Call-Off Agreement is the successor to a contract between RBFA and CSIS dated 2 October 1995 in place at the date of the IAA.

At the point of transfer, both the Agreement and Call-off Agreement would become the responsibility of Capita SSS for all the obligations and liabilities under those agreements, as though it had always been a party to the Agreement and Call-off Agreement. This would ensure TVFCS experience no break in service continuity whatsoever.

Finally, against the backdrop of the restructure, Capita plc have also entered into negotiations with NEC Software Solutions UK Limited, in relation to the proposed purchase of Capita SSS.

Financial implications:

The maintenance and support aspects of both the Agreement and Call-off Agreement are paid from the TVFCS Revenue Account.

In accordance with Schedule 7 of the IAA, one of the receipts made into the TVFCS Revenue Account under this agreement comprises: payments of Annual TVFCS Contribution.

The Annual TVFCS Contribution payable by each party is determined in accordance with the cost apportionment model in the IAA.

Any changes in cost are incorporated into the Buckinghamshire Fire and Rescue Service (BFRS) budget, which will be presented at the Authority meeting in February 2022.

Risk management:

The agreement to extend the contract of the 'Vision 4' mobilising system of one year from **April 2022 – March 2023** ensured the necessary technical support arrangements between TVFCS Capita SSS service contract could be maintained.

Furthermore, in evaluating the optimum extension period, consideration was given toward the announcement made by Capita plc in March 2021, relating to a restructuring programme that would result in the sale of Capita SSS.

This was captured as a high risk in the TVFCS risk register, as follows.

If Capita SSS is sold and the purchaser makes unfavourable decisions on software development and provision of support, which is likely given commercial uncertainties around the sale, then we can expect TVFCS to experience substantial impacts on their ability to deliver an efficient, effective and resilient service which is significant in respect of delivering our statutory fire and rescue functions.

By agreeing to the one year extension, this will allow BFRS to monitor and react to the outcome of the sale and consider how to proceed beyond the extended contract end date.

Officers will bring forward recommendations to the TVFCS Joint Committee in **July 2022** setting out whether to further extend the contract in line with the agreement or seek to commence a full replacement.

By agreeing to recommendations 1 and 2, the Authority is also allowing OCC and RBFA to consent to the subsequent sale of Capita SSS Limited to NEC Software Solutions UK Limited. This consent will remain in place for 6 months from the novation of the contracts to Capita SSS and applies only to a sale to NEC Software Solutions UK Limited. This is in the event that either the Agreement or the Call-Off Agreement allow for termination by OCC and RBFA if there occurs a 'change of control' of Capita SSS.

Legal implications:

RBFA and OCC are parties to the 'Mobilising System Contract' and contract for the provision, maintenance and support of DS3000 (ICCS). The legal implications of terminating or extending the contract are set out in the contract and procurement teams of RBFA and OCC have been engaged to ensure that the contracting authorities comply with the relevant legislation.

Both contracts are detailed within the IAA, "Clause 17.5. No material variation shall be made to a TVFCS Contract without the prior agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...]"

"Clause 17.3. [...] A Fire Authority, on its own account or jointly with another, shall not enter into a new TVFCS Contract without the agreement of the Fire Authorities (not to be unreasonably withheld or delayed) [...]"

Privacy and security implications:

No privacy or security implications have been identified that are directly associated with this report.

Duty to collaborate:

TVFCS is a collaborative shared service between BFRS, Oxfordshire Fire and Rescue Service (OFRS) and Royal Berkshire Fire and Rescue Service (RBFRS). Officers will review collaborative opportunities with the Police and Ambulance Services for the 'hardware refresh' through the collaboration governance boards.

Health and safety implications:

There are no Health, Safety or Wellbeing implications arising from this report.

Environmental implications:

There are no environmental implications arising from this report.

Equality, diversity, and inclusion implications:

There are no equality and diversity implications identified at this time.

Consultation and communication:

The decision-making bodies within RBFA and OCC will be receiving similar reports; and will be notified by the author of the content of this report and the decisions of the Executive Committee.

Detailed within the IAA the three fire and rescue authorities created a joint committee (the "Joint Committee") under section 102 of the Local Government Act 1972 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

The agreement sets out the basis on which the Joint Committee is established and the agreed arrangements for its operation.

The interests of the Authority are currently represented on the Joint Committee by Councillors Lesley Clarke OBE the Joint Committee's current vice-chairman and Steven Lambert.

Background papers:

Buckinghamshire and Milton Keynes Fire Authority meeting held on the 22 October 2014 (item 8, pages 21 to 39)

https://bucksfire.gov.uk/documents/2020/03/fire_authority_agenda_221014.pdf/

Agenda for the Thames Valley Fire Control Service Joint Committee - 12 July 2021 (item 12)

<https://decisionmaking.rbfrs.co.uk/ieListDocuments.aspx?CId=159&MId=1719>

Agenda for the Royal Berkshire Fire Authority Management Committee - 29 July 2021 (item 9)

<https://decisionmaking.rbfrs.co.uk/ieListDocuments.aspx?CId=137&MId=1543&Ver=>

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Buckinghamshire and Milton Keynes Fire Authority Executive Committee meeting held on the 15 September 2021 (item 7)

<https://bucksfire.gov.uk/documents/2021/09/item-7-tvfcs-mobilising-agreement-ex-150921.pdf/>

Agreement relating to the steady state operation of the TVFCS (with consolidated amendments as approved by resolution of the TVFCS Joint Committee 25 July 2016)

<https://bucksfire.gov.uk/documents/2021/09/legal-agreement-relating-to-the-steady-state-operation-of-the-thames-valley-fire-control-service.pdf/>

Appendix	Title	Protective Marking
1 (a) and (b)	Letters from Capita dated 30 September (a) and 12 October 2021 (b), in relation to the - Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS.	None



Email: HarrisS@tvfcs.org.uk

FAO: Simon Harris
Royal Berkshire Fire Authority
Thames Valley Fire Control Service
Newsham Court
Pincents Kiln
Calcott, Reading
RG31 7SD

30 September 2021

(Sent by post and email)

Dear Simon

Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS

1. Capita plc restructure

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business (“**SSS**”) that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited (“**CSIS**”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) (“**Capita SSS**”). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and CSIS (the “**Agreement**”) is one such customer contract that would transfer for that purpose. At the point of transfer all Capita’s rights under your Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Agreement as though it had always been a party to the Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

2. Proposed share sale of Capita SSS

Against the backdrop of our restructure (as outlined above), we also wanted to inform you NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers. Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Agreement will be novated from CSIS to Capita SSS, and provides you with comfort that your rights and obligations under your Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale to NEC Software Solutions UK Limited.

Please note that no other changes to your Agreement are anticipated by this Deed of Novation and Consent. Following signature, it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both CSIS (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to SSS.Transfer@capita.com.

We are mindful that the Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“PCR 2015”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from CSIS. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to SSS.Transfer@capita.com.

We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.



This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Eggleton', with a long horizontal flourish extending to the right.

Paul Eggleton

Managing Director – Secure Solutions and Services

Appendix

Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	CBSremittances@capita.com
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone:+44 (0)208 535 8221

THIS DEED OF NOVATION is made on

2021

BETWEEN

- (1) **OXFORDSHIRE COUNTY COUNCIL** whose office is at County Hall, New Road, Oxford, OX1 1ND (“**Client A**”);
- (2) **ROYAL BERKSHIRE FIRE AUTHORITY** whose office is at Thames Valley Fire Control Service, Newsham Court, Pincents Kiln, Calcott, Reading, Berkshire, RG31 7SD (“**Client B**” and together with Client A, the “**Clients**”);
- (3) **CAPITA SECURE INFORMATION SOLUTIONS LIMITED** incorporated and registered in England and Wales with company number 01593831 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferor**”); and
- (4) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the “**Transferee**”).

RECITALS

- (A) The Clients and the Transferor are party to a contract for the provision of a Mobilising System and Related Services for the Thames Valley Fire Control Service dated 21 January 2014 as may have been varied from time to time (the “**Contract**”).
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30 September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the “**Business Transfer Agreement**”) at a future date, which will be notified by e-mail to the Clients and the Transferee by the Transferor (the “**Effective Date**”).
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor’s rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Clients have further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

IT IS AGREED AS FOLLOWS

1 NOVATION

1.1 With effect from the Effective Date:

1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;

1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;

1.1.3 the Clients agree to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and

1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.

1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.

2 RELEASE OF OBLIGATIONS AND LIABILITIES

2.1 With effect from the Effective Date:

2.1.1 the Clients and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;

2.1.2 each of the Clients and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and

2.1.3 each of the Clients and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Clients agree to pay any such unpaid or accrued amounts to the Transferee.

3 CONSENT TO CHANGE OF CONTROL

3.1 In executing this Deed the Clients also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.

3.2 The parties agree that such consent and waiver shall satisfy:



3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Clients in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and

3.2.2 any requirements set out in the Contract on the Clients to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.

4 TERMINATION

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

6 FURTHER ASSURANCES

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

7 NOTICES

7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

Client A

For the attention of: Sarah Hayes

Address: County Hall, New Road, Oxford, OX1 1ND

Email: sarah.hayes@oxfordshire.gov.uk

Copy to: N/A

Client B

For the attention of: Simon Harris

Address: Thames Valley Fire Control Service, Newsham Court, Pincents Kiln, Calcott, Reading, Berkshire, RG31 7SD

Email: HarrisS@tvfcs.org.uk

Copy to: N/A

Transferee

For the attention of: Paul Eggleton

Address: Methuen Park, Chippenham, SN14 0TW

Email: SSS.Transfer@capita.com

Copy to: richard.green2@capita.com

Transferor

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: sarah.millington@capita.com

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
 - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
 - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.



7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

8 INVALIDITY

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.

9 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

11 ASSIGNMENT

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

12 THIRD PARTY RIGHTS

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

13 GOVERNING LAW

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

Executed as a **DEED** by **OXFORDSHIRE COUNTY COUNCIL**

acting by two directors or a director and a secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **ROYAL BERKSHIRE FIRE AUTHORITY**

acting by two directors or a director and a secretary:

.....

Director

.....

Director / Secretary

Executed as a **DEED** by **CAPITA SECURE INFORMATION SOLUTIONS LIMITED**

acting by two directors or a director and a secretary:



.....

Director



.....

Secretary



Executed as a **DEED** by **CAPITA (SSS) LIMITED**

acting by two directors or a director and a secretary:

.....
Director

.....
Secretary



Email: HarrisS@tvfcs.org.uk

(Sent by post and email)

FAO: Simon Harris
Royal Berkshire Fire Authority
Pincents Kiln Industrial Park,
Newsham Court, Calcot, Reading
RG31 7SD

FAO: Simon Harris

12th October 2021

Dear Sirs,

Transfer of the Secure Solutions and Services (“SSS”) business to Capita (SSS) Limited (“Capita SSS”) and subsequent sale of Capita SSS

1. Capita plc restructure

As you are already aware, Capita plc has recently conducted an extensive review of its portfolio with a view to consolidating its activities into consulting, transformation and digital services. As a result of this, we are proposing to restructure some areas of our business. A number of businesses within the Capita family are being affected by the restructure. The Secure Solutions and Services business (“SSS”) that currently provides services to your organisation has been identified as one such business.

The SSS business currently sits in Capita Secure Information Solutions Limited (“CSIS”) which is a wholly owned subsidiary of Capita plc. CSIS also houses other Capita businesses. As part of the restructure, we are intending to transfer the entire SSS business to a new company within the Capita group which has been set up for this purpose. This company is called Capita (SSS) Limited (Company Number: 13052116) (“Capita SSS”). At this point we do not have a precise date for the proposed transfer.

The transfer of the SSS business to Capita SSS would, in order to be fully effective, involve all customer contracts, supplier contracts, licences and employees transferring to Capita SSS. The contract between your organisation and Capita Business Services Limited for the provision of DS3000 support and maintenance dated 27th April 2021 (the “Call-off Agreement”), which was awarded pursuant to the framework agreement between KCS Professional Services and Capita Business Services Ltd for the provision of KCS Framework Y16018 (the “Framework Agreement”), is one such customer contract that would transfer for that purpose. At the point of transfer the Framework Agreement would remain with Capita and all Capita’s rights under your Call-off Agreement would transfer to Capita SSS, and Capita SSS would become responsible for all of the obligations and liabilities under your Call-off Agreement as though it had always been a party to the Call-off Agreement. As under the proposal all supplier contracts, resources and employees transfer to Capita SSS at the same point, your organisation would experience no break in service continuity whatsoever.

2. Proposed share sale of Capita SSS

Against the backdrop of our restructure (as outlined above), we also wanted to inform you that NEC Software Solutions UK Limited has been identified as a potential purchaser of Capita SSS. Capita plc has therefore entered into negotiations with NEC Software Solutions UK Limited in relation to the purchase of Capita SSS.

It goes without saying that Capita plc want to protect the interests of its employees and, importantly, its customers and suppliers.

Following extensive considerations and due diligence, we are confident that NEC Software Solutions UK Limited is ideally placed to take Capita SSS forward during 2021 and beyond.

3. Next steps

We are therefore writing to you as one of the customers of SSS (and in similar terms to other customers) to ask for your co-operation in transferring the Call-off Agreement. For that purpose we have enclosed with this letter a formal Deed of Novation and Consent. This document serves two purposes:

1. Firstly, it sets out the basis on which your Call-off Agreement will be novated from Capita Business Services Limited to Capita SSS, and provides you with comfort that your rights and obligations under your Call-off Agreement remain unchanged following the transfer. The actual date of the business transfer (which will also be the “effective date” of the novation) will be notified to you separately in writing once known;
2. Secondly, it provides your consent to the subsequent sale of Capita SSS to NEC Software Solutions UK Limited and confirmation that you would not as a result wish to exercise any right of termination that you may have under the Call-off Agreement in relation to changes in control of the contractor. This consent will remain in place for 6 months from the novation of the contract to Capita SSS, and applies only to a sale NEC Software Solutions UK Limited.

Please note that no other changes to your Call-off Agreement are anticipated by this Deed of Novation and Consent. Following signature it will continue in all other respects as currently drafted.

In anticipation of your agreement, this Deed of Novation and Consent has already been executed by both Capita Business Services Limited (as the outgoing supplier) and Capita SSS (as the new supplier). Assuming that you are comfortable we would ask that you arrange signature on behalf of your organisation and return the document to us as soon as possible. This could be by hard copy (addressed to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW) or by email to SSS.Transfer@capita.com.

We are mindful that the Framework Agreement and Call-off Agreement may have been originally awarded to CSIS following a public procurement exercise conducted in accordance with the Public Contracts Regulations (“**PCR 2015**”) or equivalent Regulation in force at the time. We fully appreciate that as a contracting authority required to comply with PCR 2015, you will need to be confident that the corporate restructuring (to transfer the SSS business to Capita SSS) and any subsequent share sale of Capita SSS to NEC Software Solutions UK Limited will not undermine your ongoing compliance obligations. For the reasons outlined above, we are confident that notwithstanding the restructure and any subsequent share sale to NEC Software Solutions UK Limited, at all times Capita SSS will have the same technical ability and financial standing required to continue supplying the high quality services you are used to receiving from Capita Business Services Limited. Should you require any further information in relation to the proposed corporate restructuring and/or proposed share sale in the context of procurement law (or other) considerations, then please do not hesitate to contact us as we would be pleased to assist and provide any evidence that may be required.

Once you have received notification that the business transfer has taken place, all payments relating to your Call-off Agreement should be made to Capita SSS. We would therefore ask that you make the necessary internal arrangements to set Capita SSS up on your system as a supplier now. Payment details for Capita SSS are set out in full in the Appendix to this letter. If you currently pay by Direct Debit, Capita SSS will be in touch separately regarding the transfer of your Direct Debit mandate.

Your key contact, their telephone number and email address remain the same. However, we request that any future correspondence and notices relating to your Call-off Agreement are sent to Capita SSS at Methuen Park, Bath Rd, Corsham, Chippenham SN14 0TW marked for the attention of your key contact. All correspondence and notices in relation to the transfer of SSS should be sent by email to SSS.Transfer@capita.com.



We will of course keep you updated on the progress of the sale. Should you have any questions or concerns at this point please do not hesitate to get in touch with me.

This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Eggleton', with a long horizontal stroke extending to the right.

Paul Eggleton

Managing Director – Secure Solutions and Services

Appendix

Payment Details

Bank details	Payee	Capita (SSS) Limited
	Bank name	Barclays Bank
	Account number	13837386
	Sort code	206759
	IBAN number	GB98BARC20675913837386
	SWIFT number	BARCGB22
Remittance advices	To be emailed to	CBSremittances@capita.com
	To be sent to	PO Box 212 Faverdale Industrial Estate Darlington. GB DL1 9HN Telephone:+44 (0)208 535 8221

THIS DEED OF NOVATION is made on

2021

BETWEEN

- (1) **ROYAL BERKSHIRE FIRE AUTHORITY** of Pincent's Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD (the "**Client**");
- (2) **CAPITA BUSINESS SERVICES LIMITED** incorporated and registered in England and Wales with company number 02299747 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferor**"); and
- (3) **CAPITA (SSS) LIMITED** incorporated and registered in England and Wales with company number 13052116 whose registered office is at 65 Gresham Street, London, EC2V 7NQ (the "**Transferee**").

RECITALS

- (A) The Client and the Transferor are party to an agreement for the provision of DS3000 support and maintenance dated 27th April 2021 which was awarded pursuant to KCS Framework Y16018 as may have been varied from time to time (the "**Contract**").
- (B) The Transferor and Transferee are parties to a business transfer agreement dated 30th September 2021 whereby the Transferor has agreed to transfer its Secure Solutions and Services business to the Transferee (the "**Business Transfer Agreement**") at a future date, which will be notified by e-mail to the Client and the Transferee by the Transferor (the "**Effective Date**").
- (C) Notwithstanding that the Transferor is an original party to the Contract, due to the Business Transfer Agreement, the parties have agreed to novate the Transferor's rights, obligations and liabilities under the Contract to the Transferee on the terms of this Deed with effect from the Effective Date.
- (D) The Client has further provided consent for a limited period to the proposed change of control of the Transferee as set out in this Deed.

IT IS AGREED AS FOLLOWS

1 NOVATION

1.1 With effect from the Effective Date:

- 1.1.1 the Transferor transfers all its rights and obligations under the Contract to the Transferee;
- 1.1.2 the Transferee shall enjoy all the rights and benefits of the Transferor under the Contract. The Transferee agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Transferor;

- 1.1.3 the Client agrees to perform the Contract and be bound by its terms in every way as if the Transferee were the original party to it in place of the Transferor; and
 - 1.1.4 all references to the Transferor in the Contract shall be read and construed as references to the Transferee.
- 1.2 If there is a conflict between this Deed and the Contract, this Deed shall take precedence.

2 RELEASE OF OBLIGATIONS AND LIABILITIES

- 2.1 With effect from the Effective Date:
- 2.1.1 the Client and the Transferor release and discharge each other from all claims, obligations and demands whatsoever in respect of the Contract, whether arising before, on or after the Effective Date, and in each case whether known or unknown to the releasing party;
 - 2.1.2 each of the Client and the Transferee shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the other with respect to matters arising before, on or after the Effective Date as though the Transferee were the original party to the Contract instead of the Transferor; and
 - 2.1.3 each of the Client and the Transferor agree to the ownership, right and interest of the Transferee in and to any unpaid billings, fees, reimbursable payable to or accrued by the Transferor in or under the terms of the Contract for the period prior to the Effective Date and the Client agrees to pay any such unpaid or accrued amounts to the Transferee.

3 CONSENT TO CHANGE OF CONTROL

- 3.1 In executing this Deed the Client also provides the necessary consent to any subsequent change of control of the Transferee generated by the sale of the Transferee from Capita plc to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date and confirms that it will not exercise and waives any right of termination under the Contract in relation to a change of control of the Transferee to NEC Software Solutions UK Limited within a period of 6 months from the Effective Date.
- 3.2 The parties agree that such consent and waiver shall satisfy:
- 3.2.1 any requirements set out in the Contract on the Transferee or any other entity in the Capita group of companies to notify the Client in relation to the proposed change of control of the Transferee as set out in Clause 3.1 above; and
 - 3.2.2 any requirements set out in the Contract on the Client to provide any further consent or waiver (written or otherwise) to the proposed change of control of the Transferee as set out in Clause 3.1 above.

4 TERMINATION

In the event that the Effective Date does not occur within 6 months of the date of this Deed it will automatically terminate and all obligations and rights of the Parties under this Deed of Novation shall lapse (except for Clauses 7 to 14 (inclusive)) and no party shall have any claim against another, save in respect of any prior breach of the underlying Contract.

5 PERIOD FOR BRINGING CLAIMS CAUSED BY BREACH OF THE CONTRACT

The period of time permitted for bringing a claim for breach of this Deed, where that breach is caused by a party's alleged failure to perform its duties and/or discharge its obligations under the Contract, shall be the same period of time permitted for bringing a claim solely for breach of the Contract in respect of such alleged failure.

6 FURTHER ASSURANCES

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the novation referred to in Clause 1, the release and discharge of the obligations referred to in Clause 2, and the consent to change of control referred to in Clause 3 to give any party the full benefit of this Deed.

7 NOTICES

7.1 Subject to Clause 7.3, any notice or other communication given under or in connection with this Deed will be in writing (which shall include email) in the English language and may be delivered by hand, first class post (or air mail if overseas) or e-mail and addressed to the recipient using the details below (and each party will promptly notify the other in writing of any change to its details for service):

Client

For the attention of: Simon Harris

Address: Royal Berkshire Fire Authority, Pincent's Kiln Industrial Park, Newsham Court, Calcot, Reading, RG31 7SD

Email: HarrisS@tvfcs.org.uk

Copy to: N/A

Transferee

For the attention of: Paul Eggleton

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: richard.green2@capita.com

Transferor

For the attention of: James Cowan

Address: 65 Gresham Street, London, England, EC2V 7NQ

Email: SSS.Transfer@capita.com

Copy to: sarah.millington@capita.com

- 7.2 Any such notice or communication given in accordance with Clause 7.1 will be deemed to have been served if delivered by:
- 7.2.1 hand, at the time the demand, notice or communication is left at that party's proper address for service;
 - 7.2.2 prepaid first class post, on the second Business Day after posting it or in the case of airmail on the fifth Business Day after posting it; and
 - 7.2.3 email, at the time of transmission
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it will be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it will be deemed to be served at 9.00am on the immediately following Business Day.
- 7.3 To prove service of a notice or communication it will be sufficient to prove that the provisions of Clause 7 were complied with.
- 7.4 This Clause 7 will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
- 7.5 For the purposes of this Clause 7, "Business Day" shall mean any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business.

8 INVALIDITY

If any provision in this Deed shall be held to be illegal, invalid or unenforceable, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Deed but the legality, validity or enforceability of the remainder of this Deed shall not be affected.



9 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10 VARIATION

No variation of this Deed shall be effective unless it is in writing and signed by the parties, or their authorised representatives.

11 ASSIGNMENT

Neither party shall assign any of its rights and/or obligations under this Deed without the prior written consent of the other party.

12 THIRD PARTY RIGHTS

The parties do not intend that any term of this Deed of Novation will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

13 GOVERNING LAW

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

14 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

This document has been entered into as a deed and is delivered and takes effect on the day and the year first stated above.

Executed as a **DEED** by **ROYAL BERKSHIRE
FIRE AUTHORITY**


acting by two directors or a director and a
secretary:


.....
Director

.....
Director / Secretary

Executed as a **DEED** by **CAPITA BUSINESS
SERVICES LIMITED**

acting by two directors or a director and a
secretary:



.....
Director


.....
Secretary

Executed as a **DEED** by **CAPITA (SSS)
LIMITED**

acting by two directors or a director and a
secretary:


.....
Director


.....
Secretary