

CONTRACT

For the provision of

EXECUTIVE RECRUITMENT SERVICES

Between

THE SECRETARY OF STATE FOR WORK AND PENSIONS
(the “Authority”) acting as part of the Crown.

And

Russell Reynolds Associates

CONTRACT REFERENCE NUMBER: project_22935

1. Interpretation

In these terms and conditions of Contract the following definitions shall apply:

- 1.1 "Authority" means the Secretary of State for Work and Pensions;
- 1.2 "Authority Data" means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - a) supplied to the Contractor by or on behalf of the Authority; or
 - b) which the Contractor is required to generate, process, store or transmit pursuant to this Contract;
- 1.3 "Bribery Act 2010" means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
- 1.4 "Change in Law" means any change in law which impacts on the performance of the Services which comes into force from and including the Commencement Date;
- 1.5 "Commencement Date" means the date when this Contract commences and shall be the date specified in **clause 3.1**;
- 1.6 "Comparable Supply" means the supply of services to another customer of the Contractor that are the same or similar to any of the Services;
- 1.7 "Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed and on whatever media it is stored), including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential;
- 1.8 "Contract" means this written agreement between the Authority and the Contractor consisting of these terms and conditions of contract and any attached Schedules, Appendices and any document referred to in the Schedules or Appendices, including the Invitation to Quote, the Specification, the Pricing Schedule, the Data Protection Schedule, the Contractor's Bid.
- 1.9 "Contract Change" means any change to this Contract, including, for the avoidance of doubt, the Services, any restatement and any supplement to the Contract;
- 1.10 "Contracting Body" means the Department for Work and Pensions and any contracting body described in the advert issued with the Invitation to Quote;
- 1.11 "Contractor" means the person who undertakes to provide the Services specified in the Contract and shall be **Russell Reynolds Associates**;
- 1.12 "Contractor's Bid" means the document(s) submitted by the Contractor to the Authority in response to the Invitation to Quote;
- 1.13 "Contract Period" means the period from the Commencement Date to:
 - a) the date of expiry set out in **clause 3** (Term of Contract), or
 - b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract;
- 1.14 "Contract Price" means the price exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of its obligations under the Contract in accordance with the provisions of the Contract as specified in **Schedule 2** (Pricing Schedule);

- 1.15 “Data Controller” shall have the same meaning as given in Data Protection Legislation;
- 1.16 “Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract and/or actual or potential loss and/or alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
- 1.17 “Data Processor” shall have the same meaning as given in the Data Protection Legislation;
- 1.18 “Data Protection Legislation” means the GDPR, the LED and any applicable national implementing Laws as amended from time to time, the DPA 2018, the Criminal Law Enforcement Data Protection Directive 2016/680, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable Law relating to the processing of Personal Data;
- 1.19 “Data Subject” shall have the same meaning as given in Data Protection Legislation;
- 1.20 “Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- 1.21 “Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or its personnel including directors, officers, employees, sub-contractors, servants, agents and consultants in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;
- 1.22 “Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
- 1.23 “FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 1.24 “Fraud” means any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Contract, defrauding or attempting to defraud or conspiring to defraud the Crown;
- 1.25 “General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply;
- 1.26 “GDPR” means the General Data Protection Regulation (*Regulation (EU) 2016/679*);
- 1.27 “Government Property” means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Authority or its authorised representative;
- 1.28 “Intellectual Property Rights” means patents, inventions, trade-marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
- 1.29 “International Organisation” shall have the meaning given in Data Protection Legislation;
- 1.30 “Joint Controllers” means where two or more Data Controllers jointly determine the purposes or means of data processing;
- 1.31 “Joint Controller Agreement” means the agreement between Joint Controllers to jointly control the Personal Data;
- 1.32 “Law” means any applicable law, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative,

enforceable European Union right including enforceable rights within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, regulation, directive, order, mandatory guidance, code of practice and/or requirements or any Regulatory Body of which the Contractor is bound to comply;

- 1.33 “LED” means the Law Enforcement Directive (Directive (EU) 2016/680);
- 1.34 “Month” means calendar month;
- 1.35 “Party” means the Authority or the Contractor individually (as appropriate);
- 1.36 “Parties” means the Authority and the Contractor collectively;
- 1.37 “person” includes a corporation;
- 1.38 “Personal Data” shall have the same meaning as given in Data Protection Legislation;
- 1.39 “Personal Data Breach” shall have the same meaning as given in Data Protection Legislation;
- 1.40 “Pre-Existing Intellectual Property Rights” means any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority or the Contractor of their obligations under this Contract and in respect of the Authority includes Authority Data;
- 1.41 “Protective Measures” means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of GDPR and ensure the protection of the rights of the Data Subject and may include (without limitation):
- Pseudonymisation and encrypting Personal Data;
 - ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
 - measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
 - ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
 - regularly assessing and evaluating the effectiveness of such measures adopted by it;
- 1.42 “Pseudonymisation” shall have the same meaning as given in Data Protection Legislation;
- 1.43 “Replacement Contractor” means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract (or where the Authority is providing replacement services for its own account, the Authority);
- 1.44 “Representative of the Authority” in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision;
- 1.45 “Special Categories of Personal Data” shall have the meaning given in Data Protection Legislation;
- 1.46 “Specification means the description of the Services to be provided as specified in the specification document at **Schedule 1** (Invitation to Quote/Specification);
- 1.47 “Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority that would not affect a Comparable Supply;
- 1.48 “Staff” mean all persons employed by the Contractor to perform its obligations under the Contract including directors, officers, employees together with the Contractor’s servants, agents, consultants, contractors of the Contractor, suppliers and sub-contractors used or engaged in the performance of its obligations under the Contract;
- 1.49 “Sub-Processor” means any third party appointed to process Personal Data on behalf of the Contractor under this Contract;
- 1.50 “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

1.51 "Working Days" means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business.

2. Acts by the "Authority"

Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing.

3. Term of Contract

3.1 This Contract shall commence on the Commencement Date **4 May 2020** and shall expire automatically on **3 October 2020** unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated.

4. Service of Notice

4.1 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail or by letter (such letter may be delivered by hand or sent by registered post or by recorded delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail. Such letters shall be addressed to the other Party in the manner referred to in **clause 4.2**.

4.2 For the purposes of **clause 4.1**, the address of each Party shall be:

- a) For the Authority:
Address: Quarry House, Quarry Hill, Leeds LS2 7UA
For the attention of: REDACTED
Email: REDACTED
- b) For the Contractor:
Address: Almack House, 28 King Street, London, SW1Y 6QW
For the attention of: REDACTED
Email: REDACTED

4.3 Either Party may change its address for service by serving a notice in accordance with this **clause 4**.

5. Amendments and Variations

5.1 No Contract Change will be valid unless agreed in advance in writing between the Authority and the Contractor and no payment will be made for work that is not authorised in advance by the Authority.

Change in Law

5.2 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the Contract nor be entitled to an increase in the Contract Price as a result of:

- a) a General Change in Law; or
- b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

5.3 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in **clause 5.2(b)**), the Contractor shall:

- a) notify the Authority as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
 - (i) whether a Contract Change is required, including to the Services, the Contract Price and/or any other part of this Contract; and
- b) provide the Authority with evidence:
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractor(s);

- (ii) as to how the Specific Change in Law has affected the cost of providing the Services;
- (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

5.4 Any Contract Change required as a result of a General Change in Law shall be made by the Authority to the Contract without the requirement to be agreed by the Contractor.

5.5 Any Contract Change to the Contract including for the avoidance of doubt, the Contract Price or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in **clause 5.2(b)**) shall be implemented in accordance without the requirement to be agreed by the Contractor.

6. Transfer and Sub-letting

6.1 The Contractor shall not without the prior written consent of the Authority assign, sub-contract, novate or any way dispose of the benefit and/or burden of the Contract or any part of the Contract.

7. Payment

7.1 On presentation of an undisputed invoice quoting the Authority contract and/or purchase number and confirming that the Services have been performed in accordance with the Contract, the Authority shall pay the undisputed Contract Price to the Contractor. Payment will be made within thirty (30) Working Days of receipt of the invoice by the Authority.

7.2 Invoices will show the period and the amount of the Services for which the payment is claimed together with the agreed Contract Price.

7.3 The Authority shall pay all undisputed sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

7.4 Any disputes relating to invoices shall be resolved in accordance with the dispute resolution procedure at **clause 14**.

7.5 If, for the purpose of performing the Contract, the Contractor enters into a contract for the supply of goods or services to the Contractor by a third party including its sub-contractors, the Contractor shall include in that contract a provision which requires the Contractor to pay for those goods or services within thirty (30) Working Days of the Contractor receiving an undisputed invoice from that third party.

8. Recovery of Sums Due

8.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under any contract with the Authority or with any other department or office of Her Majesty's Government.

8.2 Any over-payment by the Authority to the Contractor whether of charges or of Value Added Tax shall be a sum of money recoverable from the Contractor.

9. Value Added Tax

9.1 All charges payable by the Authority to the Contractor will include VAT at the appropriate rate.

9.2 The Contractor must add VAT to the Charges at the appropriate rate with visibility of the amount as a separate line item.

9.3 The Contractor will indemnify the Authority on demand against any liability arising from the Contractor's failure to account for or to pay any VAT on payments made to the Contractor under the Contract. The Contractor must pay all sums to the Authority at least 5 Working Days before the date on which the tax or other liability is payable to the Authority.

10. Insolvency

10.1 The Authority may at any time by notice in writing terminate the Contract without compensation to the Contractor if:

- a) the Contractor, being an individual or where the Contractor is a company, any partner in that company at any time becomes bankrupt or has a receiving order or administration order made against him or makes any composition or agreement with or for the benefit of his creditors, or makes any conveyance or assignment for the benefit of his creditors, or purports to do so or if in Scotland he becomes

insolvent or bankrupt, or any application is made under any bankruptcy act for the time being in force for sequestration of his estate, or a trust deed is granted by him for the benefit of its creditors; or

- b) the Contractor, being a company, is the subject of a proposal for a voluntary arrangement; or has a petition for an administration order or a petition for a winding-up order brought against it; or passes a resolution for a winding-up order; or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors; or purports to do so; or a receiver or any other person is appointed in respect of its undertaking or of all or any of its property;

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority.

11. Termination on Default

- 11.1 Either Party shall have the right to terminate the Contract if the other Party is in Default of any of the terms and conditions of the Contract and such Default shall not have been remedied to the satisfaction of the injured Party within a period of thirty (30) days of written notification of such Default to the other Party. Notice of termination shall be given to the offending Party in writing with immediate effect and such termination shall be without prejudice to the rights of the Parties accrued to the date of termination.

12. Break

- 12.1 The Authority may terminate the Contract in whole or in part at any time by giving the Contractor at least one (1) months' advance notice in writing, without the need to give any reason for the termination. Save in relation to any previous Default by the Authority in the event of termination pursuant to this Contract the Contractor shall not have any right or rights against the Authority arising out of or as a consequence of such termination, other than as provided for by **clause 12.2**.
- 12.2 If such notice is given under **clause 12.1** the Authority shall indemnify the Contractor against commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract under **clause 12.1**.
- 12.3 The Authority shall not be liable to pay under the provisions of **clauses 12.1** and **12.2** any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed such total sum as would have been payable under the Contract if the Services had been completed in accordance with the requirements of the Contract.
- 12.4 If hardship to the Contractor should arise from the operation of **clause 12.3** it shall be open to the Contractor to refer the circumstances to the Authority who, on being satisfied that such hardship exists, shall make such allowance, if any, as in its opinion is reasonable, and the decision of the Authority on any matter or thing arising out of this clause shall be final and conclusive.

13. Exit and Handover

- 13.1 On the expiry or termination of this Contract or any part thereof the Contractor shall:
 - a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
 - b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
 - c) return all Authority Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority;
 - d) return all Personal Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority, where the Authority is the Data Controller and delete existing copies unless the law requires storage of Personal Data and/or unless the Contractor is required to retain the Personal Data;
 - e) plan for the orderly handover of the Services to the Authority or its Replacement Contractor including compliance by the Contractor with the provisions of this clause 13 at no additional charge to the Authority or its Replacement Contractor.

14. Dispute Resolution

- 14.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within fourteen (14) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he/she may direct) of each Party.
- 14.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 14.3 If the dispute cannot be resolved by the Parties pursuant to **clause 14.1** the Parties shall refer it to mediation using a neutral appointed mediator unless:
- a) the Authority considers that the dispute is not suitable for resolution by mediation; or
 - b) the Contractor does not agree to mediation.
- 14.4 Each Party shall be responsible for its own costs in relation to such mediation unless otherwise agreed between the Parties.

15. Official Secrets Act

- 15.1 The Contractor shall comply with, and shall ensure that its Staff comply with (including any statutory amendment or re-enactment), the provisions of:
- a) the Official Secrets Act 1911 to 1989; and
 - b) Section 182 of the Finance Act 1989.
- 15.2 In the event that the Contractor or its Staff fail to comply with this **clause 15**, the Authority reserves the right to terminate the Contract by giving immediate notice in writing to the Contractor.

16. Confidentiality

- 16.1 The Contractor undertakes:
- a) to treat as confidential all information which may be derived from or obtained in the course of the Contract; and
 - b) to take all necessary precautions to ensure that all such information is treated as confidential by the Contractor and its Staff.
- 16.2 Each Party may disclose Confidential Information it receives from the other Party in any of the following circumstances:
- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to **clause 17** (Freedom of Information and Environmental Information Regulations);
 - b) such information was in the possession of the Party making the disclosure without obligation of confidentiality to the information owner prior to its disclosure;
 - c) such information was obtained from a third party without obligation of confidentiality;
 - d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - e) it is independently developed without access to the other Party's Confidential Information.
- 16.3 The Authority may, in addition to the circumstances specified in **clause 16.2**, disclose Confidential Information in the following circumstances:
- a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
 - b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Authority transfers or proposes to transfer all or any part of

its business to;

- c) if the Authority (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions; or
- d) where requested by Parliament.

17. Freedom of Information and Environmental Information Regulations

- 17.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its information disclosure obligations under the FOIA or Environmental Information Regulations (as appropriate).
- 17.2 The Contractor must notify the Authority of any request for information it receives under the FOIA or Environmental Information Regulations within forty-eight (48) hours of receiving such request.

18. Transparency

- 18.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations, the content of this Contract may be disclosed by the Authority including under a legal requirement or court order or any other requirement as required by or determined by the Authority. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA, Environmental Information Regulations or otherwise.

19. Audit

- 19.1 The Contractor including its Staff shall permit the Authority, the Authority's representatives, its internal auditors and external auditors authorised by the Authority access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as Authority and its representatives may reasonably require for the purpose of the financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This **clause 19** does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

20. Prevention of Fraud and Corruption

- 20.1 The Contractor shall not offer, give, or agree to give anything, to any person as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or for showing or refraining from showing favour or disfavour to any person in relation to this Contract.
- 20.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent Fraud by its Staff and the Contractor (including its shareholders, members and directors) in connection with the Services and shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 20.3 If the Contractor or the Staff engages in conduct prohibited by **clause 20.1** or commits Fraud in relation to the Services or any other contract with the Crown, the Authority may:
 - a) terminate the Contract immediately and recover from the Contractor the amount of any loss suffered by the Authority resulting from termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract; or
 - b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any Default of this **clause 20**.
- 20.4 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this **clause 20.4 ("Prohibited Act")**. For the purposes of this **clause 20.4**, a Prohibited Act is committed when the Contractor or any Staff:
 - a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:

- (i) induce that person to perform a relevant function or activity improperly; or
- (ii) reward that person for improper performance of a relevant function or activity;
- b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- c) commits any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - (iv) relating to defrauding, attempting to defraud or conspiring to defraud the Authority.

21. Issued Government Property

- 21.1 All Government Property issued in connection with the Contract shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever save with the prior approval in writing of the Authority.
- 21.2 All such property shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies the Authority to the contrary within fourteen (14) days or such other time as is specified in the Contract.
- 21.3 The Contractor shall undertake to return all such property so issued and will be responsible for all loss thereof or damage thereto from whatever cause to the full amount of such loss or damage.

22. Liability

- 22.1 Subject to **clause 22.2**, the Contractor shall indemnify the Authority and keep the Authority indemnified fully:
- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor and/or its Staff or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
 - b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any service user and
 - c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of:
 - (i) the performance or non-performance by the Contractor of its obligations under the Contract subject to **clause 22.3**;
 - (ii) the presence of the Contractor or any of its Staff on the Authority's premises, including financial loss arising from any advice given or omitted to be given by the Contractor;
 - (iii) infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Authority; or
 - (iv) any other loss which is caused directly by any act or omission of the Contractor.
- 22.2 The Contractor shall not be responsible for any injury, loss, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by Default by the Authority of its obligations under this Contract.

22.3 Subject always to **clauses 22.1(a), 22.1(b), 22.1(c)(ii), 22.1(c)(iii), 22.1(c)(iv)** and **22.5**

- a) the aggregate liability of the Contractor in respect of all Defaults, claims, losses or damages howsoever caused, whether arising from breach of the Contract, the supply or failure to supply the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the charges paid or payable to the Contractor; and
- b) except in the case of claims arising under **clauses 20** (*Prevention of Fraud and Corruption*), **22.1(c)(iv)**, **33** (*Intellectual Property Rights*) and **36** (*Data Protection*) in no event shall the Contractor be liable to the Authority for any loss of profits, loss of business, loss of revenue, loss of or damage to goodwill, loss of savings (whether anticipated or otherwise) and/or any indirect, special or consequential loss or damage.

22.4 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- a) death or personal injury caused by its negligence or that of its staff;
- b) Fraud or fraudulent misrepresentation by it or that of its staff; or
- c) any other matter which, by law, may not be excluded or limited.

22.5 The Contractors liability under **clauses 20, 22.1(a), 22.1(b), 22.1(c)(ii), 22.1(c)(iii), 22.1(c)(iv), 33** and **36** shall be unlimited.

23. Insurance

23.1 The Contractor shall take out and maintain the following insurance policies:

Public Liability Insurance

- a) Public liability insurance of a minimum of one million pounds £1,000,000 or such greater sum as the Contractor may choose in respect of any one incident.

Employers Liability Insurance

- b) Employers Liability Insurance of a minimum of five million pounds £5,000,000 or such greater sum as the Contractor may choose in respect of any one incident.

Professional Indemnity Insurance

- c) Professional Indemnity Insurance in respect of the Contractor's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than one million pounds £1,000,000 for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the completion date of this Contract.

24. Law

24.1 The Contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with the provisions of English Law.

25. Waiver

25.1 The failure of either Party at any time to enforce any provision of the Contract shall in no way affect its rights thereafter to require complete performance by the other Party, nor shall the waiver of any default of any provision be taken or held to be a waiver of any subsequent default of any such provision or be a waiver of the provision itself.

26. Severability

26.1 If any condition or provision of the Contract not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract shall not be affected thereby.

27. The Contracts (Rights of Third Parties) Act 1999

27.1 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties except as specified in this Contract. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

28. Equality

28.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

28.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of **clause 28.1** by all of its Staff.

29. Health and Safety

29.1 The Contractor must perform its obligations meeting the requirements of:

- a) all applicable Law regarding health and safety; and
- b) the Authority's current health and safety policy while at the Authority premises, as provided to the Contractor.

29.2 The Contractor and the Authority must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Authority's premises that relate to the performance of a Contract.

30. Not used

31. Performance

31.1 The Services shall be carried out in accordance with the Contract to the satisfaction of the Authority or its authorised representatives. During the course of the Contract the Authority or its authorised representative shall have the power to inspect and examine the Services being performed on Authority premises at any reasonable time or where any part of the Services is being performed on premises other than Authority premises. Reasonable notice shall be given to the Contractor of its intention to do so. The Contractor shall give and procure all such facilities as the Authority or its authorised representatives may reasonably require for such inspection and examination.

31.2 If any part of the Services is found to be unsatisfactory or not in accordance with the Contract, other than as a result of negligence on the part of the Authority or its authorised representative, the Contractor shall at its own expense re-schedule and perform the Services correctly within such reasonable time as may be specified by the Authority.

31.3 If the Services or any part thereof is suspended by the Authority or its authorised representative (otherwise than in consequence of Default or negligence on the part of the Contractor) or if the Contractor is delayed in proceeding with the Services by the Authority or its authorised representative, the Authority shall be responsible for any loss incurred by the Contractor as a result of such suspension or delay.

31.4 If the performance of the Contract by the Contractor is delayed by causes mentioned in **clause 31.3** or by reason of any act on the part of the Authority then the Contractor shall be allowed a reasonable extension of time for completion.

32. Progress reports

32.1 Where formal progress reports are specified in the Contract, the Contractor shall render such reports at such time and in such form as may be specified or as otherwise agreed between the Contractor and the Authority or the Authority's authorised representative.

32.2 The submission and the acceptance of progress reports shall not prejudice the rights of the Authority under any other clause of the Contract.

33. Intellectual Property Rights

33.1 Save as granted under the Contract, neither the Authority nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Contractor acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may exist in the Authority Data.

33.2 The Authority shall grant the Contractor a non-exclusive, revocable, royalty free licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Contractor to supply the Services. The Contractor shall have the right to sub license the sub-contractor's use of the Authority's

Intellectual Property Rights. At the end of the Contract Period the Contractor and the sub-contractor shall cease use and shall ensure that its Staff cease use of the Authority's Intellectual Property Rights.

33.3 The Contractor shall grant the Authority a non-exclusive, revocable, royalty free licence for the Contract period to use the Contractor's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract period the Authority shall cease use of the Contractor's Intellectual Property Rights.

33.4 All Intellectual Property Rights in any Authority Data or other material:

- a) furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; or
- b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority, and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior approval from the Authority, use or disclose any such Intellectual Property Rights.

33.5 The Contractor shall obtain approval from the Authority before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall ensure that the owner of those rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the Authority to sub-license, transfer, novate or assign to another Contracting Body, the Replacement Contractor or to any other third party supplying services to the Authority.

34. Publicity

34.1 The Contractor shall not:

- a) make any press announcements or publicise this Contract or its contents in any way; or
- b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

35. Contractor's Staff

35.1 The Authority reserves the right to refuse to admit to premises occupied by or on behalf of the Authority any person employed by the Contractor, or by any of its Staff, whose admission would be, in the opinion of the Authority, undesirable.

35.2 If and when directed by the Authority, the Contractor shall provide a list of names and business addresses of all persons who may at any time require admission in connection with the performance of the Contract, to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contractor and giving such other particulars as the Authority may require.

35.3 If and when directed by the Authority, the Contractor shall secure that any person employed by it, or any of its Staff, who is specified in the direction, or is one of a class of persons who may be so specified, shall sign a statement that he/she understands that the Official Secrets Acts 1911 to 1989 apply to the person signing the statement both during the carrying out and after completion or termination of the Contract.

35.4 The Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012), the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protecting Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

35.5 If the Contractor shall fail to comply with this **clause 35** and if the Authority (whose decision shall be final and conclusive) decides that such failure is prejudicial to its interests, then the Authority may terminate the Contract by notice in writing to the Contractor always providing that such termination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to the Authority.

35.6 If the failure to comply is in relation to **clauses 35.2** and/or **35.3**, the Authority may decide (without prejudice to its other rights under the Contract) whether any person is to be refused admission to its premises and the decision of the Authority under this **clause 35.6** shall be final and conclusive.

36. Data Protection

36.1 Protection of Personal Data

- 36.1.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 36.1.2 The relevant Data Controller is responsible for ensuring that Personal Data and Special Categories of Personal Data is processed in accordance with Data Protection Legislation.
- 36.1.3 The Contractor shall be the Data Controller of the information listed in Schedule 4.
- 36.1.4 Where the Contractor is the Data Controller, it shall comply with the Data Controller obligations specified in Data Protection Legislation and shall implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with the GDPR.
- 36.1.5 Notwithstanding the general obligations in clauses 36.1.1 to 36.1.4, the Contractor shall meet the obligations in clauses 36.1.6 to 36.1.13 (inclusive) for Personal Data and Special Categories of Personal Data.
- 36.1.6 The Contractor shall, in relation to any Personal Data and Special Categories of Personal Data processed or to be processed in connection with its obligations under this Contract:-
- a) process that Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Schedule 16, unless the Contractor is required to process the Personal Data and Special Categories of Personal Data otherwise by Law;
 - b) ensure that it and its Staff:-
 - (i) do not process Personal Data and Special Categories of Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data and Special Categories of Personal Data to meet the Contractor's duties under the Contract and Data Protection Legislation;
 - (ii) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and Special Categories of Personal Data and ensure that they:-
 - (A) are aware of and comply with the Contractor's duties under this clause 36.1;
 - (B) are subject to appropriate confidentiality undertakings;
 - (C) are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Contractor shall give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data; and
- c) not transfer Personal Data and Special Categories of Personal Data outside of the European Economic Area or International Organisation unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the relevant Data Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred; and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
- d) at the written direction of the Authority, delete or return Personal Data and Special Categories of Personal Data (and any copies of it) using a secure method of transfer to the Authority on expiry or earlier termination of the Contract unless the Contractor is required by Law to retain the Personal Data and Special Categories of Personal Data;
- e) permit the Authority or the Authority's designated representative or external auditors to inspect and audit the Contractor's activities (and/or those of its Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Contractor is in full compliance with its obligations under the Contract.

36.1.7 Subject to clause 36.1.8, the Contractor shall notify the Authority immediately if it:-

- a) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- b) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data and Special Categories of Personal Data processed under this Contract;
- c) receives a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
- d) becomes aware of a Data Loss Event.

36.1.8 The Contractor's obligation to notify the Authority under clause 36.1.7 shall include the provision of further information to the Authority promptly.

36.1.9 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 36.1 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-

- a) the Authority with full details and copies of the complaint, communication or request;
- b) the Authority, at its request, with any Personal Data and Special Categories of Personal Data it holds in relation to a Data Subject;

- c) assistance as requested by the Authority following any Data Loss Event to enable the Authority to mitigate the impact of the Data Loss Event and/or to ensure that the Data Loss Event of the same nature does not occur again;
 - d) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 36.1.10 The Contractor shall keep a record of any processing of Personal Data and Special Categories of Personal Data it carries out in relation to this Contract including (without limitation) the records specified in Article 30(1) of the GDPR.
- 36.1.11 The Contractor shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.
- 36.1.12 The Contractor shall remain fully liable for all acts or omissions of any sub-contractor engaged to provide the Services and/or Staff.
- 36.1.13 The Contractor shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.
- 36.1.14 The Contractor shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor or any of its Staff of this clause 36.1.
- 36.3 Subject to **clause 36.4**, the Contractor shall notify the Authority immediately if it:
 - a) receives a Data Subject Request (or purported Data Subject Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 36.4 The Contractor's obligation to notify the Authority under **clause 36.3** shall include the provision of further information to the Authority promptly.
- 36.5 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under **clause 36.3** (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:
 - a) the Authority with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request promptly;

- c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Authority following any Data Loss Event to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that the Data Loss Event of the same nature do not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subject(s) of the Data Loss Event;
- e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

36.6 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this **clause 36**. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- a) the Authority determines the processing is not occasional;
- b) the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

36.7 The Contractor shall keep a record of any processing of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

36.8 The Contractor shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.

36.9 Before allowing any Sub-Processor to process any Personal Data under this Contract, the Contractor must:

- a) notify the Authority in writing of the intended Sub-Processor and processing;
 - (i) obtain the advance written consent of the Authority to allow the Sub-Processor to process any Personal Data under the Contract; and
 - (ii) enter into a written contract with the Sub-Processor which reflects the terms set out in this **clause 36** such that they apply to the Sub-Processor as a Data Processor.

36.10 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor and/or Staff.

36.11 The Authority may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable Data Controller/Data Processor standard clauses or similar terms forming part of an applicable certification scheme under Article 43 of the GDPR (which shall apply when incorporated by an attachment to this Contract).

36.12 The Contractor shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.

36.13 Where the Parties include two or more Joint Controllers as defined in **Schedule 4 Annex C** in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in **Schedule 4 Annex C** in replacement of **clauses 36.1 to 36.12** for the Personal Data under joint control by the Joint Controllers.

36.14 The Contractor shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever

arising out of, in respect of or in connection with, any breach by the Contractor or any of its Staff of this clause 36.

37. HMG Baseline Personnel Security

37.1 HMG Baseline Personnel Security Standard is a staff vetting procedure and requires that a number of checks are made on persons who are to be given access to Government Assets (premises, systems, information or data). This is mandatory and applies to all Authority commercial arrangements, where the Contractor and any of Staff require access to Government Assets in the course of their duties.

37.2 The Contractor shall be required to undertake pre-recruitment checks prior to commencement of the Contract to verify the four elements outlined below, in respect of each member of their Staff to be given access to Departmental Assets:

- a) Identity;
- b) Employment History (for a minimum of past three (3) years);
- c) Nationality and Immigration Status;
- d) Criminal Record (unspent convictions only).

Full details of the Contractors obligations are outlined in the document 'HMG Baseline Personnel Security Standard – A guide for Authority Contractors' which can be found on ["Supplying Authority"](#).

FORM OF AGREEMENT

This Contract has been entered into on

4 May 2020

SIGNED for and on behalf of

SIGNED for and on behalf of

The Secretary of State for Work and Pensions
(the Authority) acting as part of the Crown

Russell Reynolds Associates

Name: REDACTED

Name: REDACTED

Position: **Commercial Lead**

Position: MANAGING DIRECTOR

Signature: REDACTED

Signature: REDACTED

Date: 4th May 2020

Date: 4/5/20

Schedule 1 – Specification



Agent Service
Requirement 270420

Schedule 2 – Pricing Schedule

Recruitment Pricing Proposal			
Supplier Name	Russell Reynolds Associates		
	% of payment	Staged payment	
Placement of Advert	REDACTED %	£ REDACTED	
Shortlist sign off	REDACTED %	£ REDACTED	
Appointment made	REDACTED %	£ REDACTED	
Total	100%		£57,500.00
**Fees are exclusive of VAT, and advertising and travel expenses would be charged at cost.			

Schedule 3 – Contractor’s Bid

REDACTED

REDACTED

Schedule 4 – Data Protection

The Contractor acknowledges that the Authority is the Data Controller in this contract.