



**BPDTS Ltd**

Providing digital technology  
services to DWP

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**BPDTS Limited**

**CONTRACT**

**For**

**The Provision of Personal Leadership Certified Training Programme Services**

**Between**

**BPDTS Limited  
(the "Authority") acting as part of the Crown.**

**And**

**Living Leader Limited  
Company Registration Number 09084514**

Contract Ref XXXX

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This Contract is made on the 04<sup>th</sup> September 2019

between the Par BPDTS Limited

Of

REDACTED

And .iving Leader Limited

with Company Reg  
Number 19084514

having the main or re  
office at

REDACTED

individually referred to as " " collectively as  
**the Parties**"

#### A.GENERAL PROVIS

##### **A1 Definitions and Interpretation**

A1.1 In this Contract the following provisions shall have the meanings given to them below: -

**"Administration"** means the administrative receivership of a company under the management of an administrator under the Insolvency Act 1986 (as amended).

**"Affiliate"** means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006.

**"Approval"** means the prior written consent of the Authority including consent provided by email by the Authority's Representative.

**"Authority"** means BPDTS Limited.

**"Authority's Premises"** means any premises owned by the Authority or for which the Authority has legal responsibility.

**"Authority's Representative"** means the representative(s) of the Authority authorised to act on behalf BPDTS Limited on all matters relating to the Contract and shall be the person(s) named in paragraph 1.1 of Schedule 2.

**"Breach of Security"** means the occurrence of unauthorised access to or use of the Premises, the Authority's Premises, the Services, the Authority ICT System,

or any ICT or data (including the Authority's Data, any Personal Data, used by the Authority or the Contractor in connection with this Contract.

**"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.

**"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.

**"Commencement Date"** means the date on which this Contract is signed/sealed.

**"Comparable Supply"** means the supply of services to another customer of the Contractor that are the same or similar to any of the Services.

**"Confidential Information"** means: -

- a) 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 or 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 (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and the disclosure of which shall be carried out in accordance with clause E4; and
- b) the Commercially Sensitive Information and does not include any information: -
  - (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
  - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
  - (iv) is independently developed without access to the Confidential Information.

**"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 Specification.

**"Contracting Body"** or **"Contracting Bodies"** means BPDTS Limited.

**"Contractor"** means the person, partnership or company with which the Authority enters into the Contract.

**"Contract Period"** means the period from the Commencement Date to: -

- a) the date of expiry set out in clause A2 (Initial Contract Period), or
- b) following an extension pursuant to clause F9 (Extension of Initial Contract Period), the date of expiry of the extended period, or
- c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**"Contract Price"** means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in Schedule [4] (Contract Price), for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price.

**"Contract Price Schedule"** means Schedule [4] containing details of the Contract Price.

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies. In this Contract, the Authority is acting as part of the Crown.

**"Data Controller"** shall have the same meaning as given in Data Protection Legislation.

**"Data Loss Event"** 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.

**"Data Processor"** shall have the same meaning as given in the Data Protection Legislation.

**"Data Protection Impact Assessment"** means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data

**"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.

**"Data Protection Officer"** shall have the same meaning as given in Data Protection Legislation.

**"Data Subject"** shall have the same meaning as given in Data Protection Legislation.

**"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.

**"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 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.

**"Directive"** means EC Council Directive 2001/23/EC.

**"DPA"** means the Data Protection Act 2018.

**"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.

**"Equipment"** means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**"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.

**"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.

**"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.

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“GDPR”** means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

**“ICT”** means information and communications technology.

**“ICT Environment”** means the Authority ICT System and the Contractor ICT system.

**“Information”** has the meaning given under section 84 of the FOIA.

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Intellectual Property Rights”** means patents, inventions, trademarks, 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.

**“International Organisation”** shall have the same meaning as given in Data Protection Legislation.

**“Joint Controllers”** where two or more Data Controllers jointly determine the purposes and means of data processing.

**“Joint Controller Agreement”** means the agreement between Joint Controllers to jointly control the Personal Data

**“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.

**“LED”** Law Enforcement Directive (*Directive (EU) 2016/680*).

**"Liquidation"** means the appointment of a Liquidator who collects in and distributes the company's assets and dissolves the company. The company can also be put into provisional Liquidation before a final winding up order is granted.

**"Loss"** means direct loss, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such loss is reasonable, direct, proper and mitigated.

**"Malicious Software"** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**"Material Breach"** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from: -

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in clauses [A], [B], [D], [E], [F], [H];
- c) any Default which is specified in the Contract as a 'Material Breach' or which may be deemed to be a Material Breach.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**"Month"** means calendar month.

**"Operational Change"** means any change in the Contractor's operational procedures which in all respects, when implemented: -

- (i) will not affect the Contract Price and will not result in any other costs to the Authority;
- (ii) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (iii) will not adversely affect the interfaces or interoperability of the Services with any of the Authority ICT System; and
- (iv) will not require a change to this Contract.

**"Party"** means a party to the Contract.

**"Persistent Breach"** means a Default which has occurred on three (3) or more separate occasions within a continuous period of two (2) months.

**"Personal Data"** shall have the same meaning as given in Data Protection Legislation.

**"Personal Data Breach"** shall have the same meaning as given in Data Protection Legislation.

**"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.

**"Premises"** means the location where the Services are to be supplied, as set out in the Specification.

**"Prohibited Act"** shall have the meaning given in clause D1.

**"Property"** means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

**"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.

**"Pseudonymisation"** shall have the same meaning as given in Data Protection Legislation.

**"Schedule"** means a Schedule attached to, and forming part of, the Contract.

**"Security Policy"** means the Authority's Security Policy/Policies to be provided by the Authority to the Contractor (as updated from time to time).

**"Specification"** means the description of the Services to be provided as specified in the Specification at Schedule [1] (The Services).

**"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.

**"Sub-contract"** means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain between the Contractor and the Sub-Contractor, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract).

**"Sub-contractor"** means any third party appointed by the Contractor which through its employees or agents directly delivers the Services.

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of the Contractor under this Contract.

**"Third Party Software"** means software which is proprietary to any third party (other than an Affiliate of the Contractor) which is or will be used by the Contractor for the purposes of providing the Services.

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions: -

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- c) Reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted;
- d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

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

**A2 Initial Contract Period**

This Contract shall commence on the Commencement Date **25 September 2019** and shall expire automatically on **11 November 2019**, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended.

**A3 Contractor's Status**

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms and conditions of this Contract.

**A4 The Authority's Obligations**

Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability, under this Contract (howsoever arising), on the part of the Authority to the Contractor.

**A5 Notices**

A5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 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 A5.3.

A5.3 For the purposes of clause A5.2, the address of each Party shall be: -

REDACTED

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 Conflicts of Interest**

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

A6.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

**A7 Prevention of Fraud**

A7.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Contract. Contractors and its Sub-contractors are required to: -

- a) have an established system that enables the Contractor and its Staff to report inappropriate behaviour by colleagues in respect of Contract performance claims;
- b) ensure that their performance management systems do not encourage individual Staff to make false claims regarding achievement of Contract performance targets;
- c) ensure a segregation of duties within the Contractor's and/or Sub-contractor's operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority;
- d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.

A7.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Contractor's Staff, including its directors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or Fraud has occurred or is occurring.

A7.3 If the Contractor and/or its Staff commit Fraud including deliberately submitting false claims for Contract payments with the knowledge of its senior officers in

relation to this or any other contract with the Crown (including the Authority or any other Contracting Body) the Authority may: -

- a) terminate the Contract and/or any other contract the Authority has with the Contractor by serving written notice on the Contractor and recover from the Contractor the amount of any loss suffered by the Authority resulting from the 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 Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any Default of this clause.

#### **A8 Exclusion of Sub-contractors**

A8.1 Where the Authority considers under Regulation 71(8) of the Public Contracts Regulations 2015 whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then: -

- a) If the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
- b) If the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-contractor and the Contractor shall comply with such a requirement.

A8.2 The Contractor shall include in every Sub-contract: -

- a) a right for the Contractor to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in connection with environmental, social or labour law matters; and
- b) a requirement that the Sub-contractor includes a provision having the same effect as clause A8.2 (a) in any Sub-contract which it awards.

### **B.SUPPLY OF SERVICES**

#### **B1 The Services**

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in this Contract, including the Specification (which forms part of the Contract) and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements and this is other than as a

result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

## **B2 Manner of Carrying Out the Services**

B2.1 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

## **B3 Contractor's Staff**

B3.1 At the Authority's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from the date of request and in advance of admission to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B3.2 The Contractor shall further use all reasonable endeavours to ensure that its Staff who are not EU nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.

B3.3 If the Contractor, in the reasonable opinion of the Authority, fails to comply with clauses B5.1 and B5.2 the Authority will be entitled to consider that failure a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.2A.

## **C.PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay undisputed sums of the Contract Price in accordance with clause C2 (Payment and VAT) and Schedule 2 (Administration Requirements).

### **C2 Payment and VAT**

C2.1 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

C2.2 Where the Contractor submits an invoice to the Authority in accordance with clause C2.5, the Authority will consider and verify that invoice in a timely fashion.

C2.3 The Authority shall pay the Contract Price due to the Contractor under such an invoice as specified in Clause 3 Schedule 2 (Administration Requirements).

C2.4 Where the Authority fails to comply with clause C2.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid

and undisputed for the purposes of clause C2.3 after a reasonable period of time has passed.

- C2.5 The Contractor shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule [2] (Administration Requirements).
- C2.6 Where the Contractor enters into a Sub-contract for the purpose of performing its obligations under the Contract, the Contractor shall include in that Sub-contract: -
- a) provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract; and
  - b) a provision requiring the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract.
- C2.7 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following an undisputed claim for payment being notified by the Contractor in accordance with the provisions of Schedule [2] (Administration Requirements).
- C2.8 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.8 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.9 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.5 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- C2.10 Where payment by the Authority of all or any part of any payment submitted or other claim for payment by the Contractor is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Schedule [2] (Administration Requirements).
- C2.11 Without prejudice to clause C2.8, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to: -
- a) assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and

- b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the Contract to HM Revenue & Customs ("HMRC").

C2.12 The Authority shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Authority) in relation to VAT, including without limit: -

- a) where the Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
- b) where the Contractor has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or
- c) where the Contractor's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
- d) where the Contractor has specified a rate of VAT, or a VAT classification, to the Authority (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Contractor subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this clause C2.12 (d), the Contractor shall be obliged to repay any overpayment by the Authority on demand.

C2.13 Where the Contractor does not include VAT on an invoice, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

C2.14 The Contractor acknowledges that the Authority has advised the Contractor that the Contractor should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract's VAT status with HMRC.

### **C3 Recovery of Sums Due**

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4 Third Party Revenue**

The Contractor may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

### **D.STATUTORY OBLIGATIONS AND REGULATIONS**

#### **D1 Prevention of Bribery and Corruption**

D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 ("**Prohibited Act**"). For the purposes of this clause D1, 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.

D1.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract.

- D1.3 The Contractor shall if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- D1.4 The Contractor shall have an anti-bribery policy which it implements actively to prevent any Staff from committing any Prohibited Acts as set out in clause D1.1 and a copy of this shall be provided to the Authority upon request.
- D1.5 The Contractor shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any of its Staff has: -
- a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act in clauses D1.1 or D1.2;
  - b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
  - c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act in clauses D1.1 or D1.2.
- Any Default by the Contractor in connection with this clause D1.5 shall entitle the Authority to exercise its rights under clause F5.
- D1.6 If the Contractor notifies the Authority that it suspects or knows that there may be a Default of clause D1.1 or D1.2, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clause D1.1 or D1.2, the Authority may: -
- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the 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 Authority throughout the remainder of the Contract Period; and
  - b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any Default of those clauses.
- D1.8 Notwithstanding clause I (Disputes and Law), any dispute relating to: -
- a) the interpretation of clause D1; or

b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.

D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority under the Contract or otherwise.

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by clauses D1.1 or D1.2 and the identity of the person performing that Prohibited Act.

**D2 The Contracts (Rights of Third Parties) Act 1999**

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.

**D3 Health and Safety**

D3.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

D3.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D3.3 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

D3.4 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D3.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.

D3.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

## **E.PROTECTION OF INFORMATION**

### **E1 Authority Data**

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of that data.
- E1.5 The Contractor shall ensure that any system or media on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Schedule 5 Appendix A.
- E1.6 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may: -
- a) require the Contractor (at the Contractor's expense) to restore or provide for the restoration of the Authority Data and the Contractor shall do so as soon as practicable but not later than ten (10) and/or;
  - b) itself restore or provide for the restoration of the Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.7 If at any time the Contractor suspects or has reason to believe that the Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- E1.8 In the event the Contractor goes into Liquidation as outlined in clause H1.1(b) and H1.1(c) or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Authority: -
- a) conduct a full and thorough search for any electronic and paper records held by the Contractor which contain Authority Data/Information/Information [relating to a customer/service user]; in accordance with the Authority instructions;
  - b) return all such records as described in clause E1.12(a) to the Authority in accordance with their instructions;
  - c) permanently destroy all copies of any relevant electronic records; and

- d) provide written confirmation to the Authority that the actions outlined above in this clause have been completed.

- E1.9 In the event of a Sub-contractor being in Liquidation (in accordance with clause F1.2) then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Authority that they have been recovered.
- E1.10 In the event the Contractor is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the administrator to ensure the Contractor is able to maintain Authority and other records they have created and held in accordance with this clause E1 of this Contract and maintain these standards in the safekeeping of Authority information, i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.
- E1.11 Whilst in Administration the duty of the administrator is to help the Contractor trade. This may involve the administrator seeking an organisation to buy the Contractor's business or any part of it. The assignment or novation of this Contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior Approval obtained. Where the Contract is assigned or novated with prior Approval, must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

## **E2 Protection of Personal Data**

- E2.1 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.
- E2.2 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor unless otherwise specified.
- E2.3 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.4 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include (without limitation): -
  - a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- c) an assessment of the risks to the rights and freedoms of Data Subjects;
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data; and
- e) upon request provide a copy of the record of the processing of any Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

E2.5 The Contractor shall, in relation to any Personal Data processed or to be processed in connection with its obligations under this Contract: -

- a) process that 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 6, unless the Contractor is required to process the Personal Data otherwise by Law. In such case, the Contractor shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures) having taken account of the: -
  - (i) nature of the Personal Data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) implement any Protective Measures at the Contractor's own expense and at no cost to the Authority;
- c) ensure that it and its Staff: -
  - (i) do not process 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 to meet the Contractor's Data Processor duties under the Contract and Data Protection Legislation and only collect Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Contractor shall not modify the format agreed with the Authority without the prior written consent of the Authority;

- (ii) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they: -
  - (A) are aware of and comply with the Contractor's duties under this clause E2;
  - (B) are subject to appropriate confidentiality undertakings including between the Contractor and any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the 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 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
- d) not transfer 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 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 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;
- e) at the written direction of the Authority, delete or return 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;
- f) permit the Authority or the Authority's designated representative or external auditors to inspect and audit the Contractor's Data Processor 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.

- E2.6 Subject to clause E2.7, 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.
- E2.7 The Contractor's obligation to notify the Authority under clause E2.6 shall include the provision of further information to the Authority promptly.
- E2.8 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 E2.6 (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 a Data Loss Event of the same nature does not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subjects 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.
- E2.9 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.
- E2.10 The Contractor shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.

E2.11 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 E2 such that they apply to the Sub-Processor as a Data Processor.

E2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor and/or Staff.

E2.13 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).

E2.14 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.

E2.15 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 E2.

### **E3 Freedom of Information**

E3.1 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.

E3.2 The Contractor shall and shall procure that its Sub-contractors shall: -

- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and

- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- E3.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.
- E3.5 The Contractor acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services: -
  - a) in certain circumstances without consulting the Contractor; or
  - b) following consultation with the Contractor and having taken their views into account.
- E3.6 Where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- E3.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- E4 Publicity, Media and Official Enquiries**
- E4.1 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 written consent of the Authority, which shall not be unreasonably withheld or delayed.
- E4.2 Both Parties shall each take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E4.1.

**E5 Security**

- E5.1 The Authority shall be responsible for maintaining the security of the Authority Premises and maintaining the confidentiality, integrity and availability of the Authority Data it has custody of in accordance with its standard security requirements and the Security Policy. The Contractor shall comply with all security requirements of the Authority while on the Authority Premises, and shall ensure that all Staff comply with such requirements.
- E5.2 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.

**E6 Intellectual Property Rights**

- E6.1 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.
- E6.2 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 shall cease use, and shall ensure that its Staff cease use of the Authority's Intellectual Property Rights.
- E6.3 The Contractor shall grant the Authority a non-exclusive, revocable, 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.
- E6.4 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, use or disclose any such Intellectual Property Rights.

- E6.5 The Contractor shall obtain Approval 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-licence, transfer, novate or assign to another Contracting Body, the Replacement Contractor or to any other third party supplying services to the Authority.

E6.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, loss, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from: -

- a) items or materials based upon designs supplied by the Authority; or
- b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E6.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor: -

- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the Authority; and
- c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

E6.8 The Authority shall at the request of the Contractor provide to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the Contract. The Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so save to the extent that such claim or demand is caused by the Authority's negligence or breach of contract.

E6.9 If a claim, demand or action for infringement or alleged infringement of any reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to: -

- a) modify any or all of the Services without reducing the performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms and conditions which are acceptable to the Authority,

and in the event that the Contractor is unable to comply with clauses E8.9(a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

**E7 Audit and the National Audit Office**

- E7.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's Representatives such access to those records as may be requested by the Authority in connection with the Contract.
  
- E7.2 The Contractor including its Staff shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his 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 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.
  
- E7.3 Except where an audit is imposed on the Authority by a Regulatory body, the Authority may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an audit for the following purposes: -
  - a) to verify the accuracy of any charges that become due and payable by the Authority to the Contractor in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Contractor (including Sub-contractors) in the provision of Services;
  - b) to review the integrity, confidentiality and security of the Authority Data;

- c) to review the Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
- d) to review the Contractor's compliance with its obligations under the Contract;
- e) to review any records created during the provision of the Services;
- f) to review any books of account kept by the Contractor in connection with the provision of the Services;
- g) to carry out the audit and certification of the Authority's accounts;
- h) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and
- i) to verify the accuracy and completeness of any management information delivered or required by this Contract.

E7.4 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

E7.5 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including: -

- a) all Information requested within the permitted scope of the audit;
- b) reasonable access to any Premises or sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
- c) access to the Staff;
- d) access to the Contractor Software and ICT Environment; and
- e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.

E7.6 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its intention to conduct an audit.

E7.7 If an audit identifies that: -

- a) the Contractor has committed a material Default capable of remedy; the Contractor shall correct such Default as soon as reasonably practicable and as directed by the Authority in accordance with clause F5.2.1;

- b) the Authority has overpaid any charges that become due and payable by the Authority to the Contractor in respect of the Services, the Contractor shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the charges if the Contractor fails to make this payment; and
- c) the Authority has underpaid any charges that become due and payable by the Authority to the Contractor in respect of the Services, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor within twenty (20) Working Days.

## **E8 Exceptional Audits**

E8.1 The Contractor shall permit the Authority and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Contractor in any of the following circumstances: -

- a) actual or suspected impropriety or Fraud;
- b) there are reasonable grounds to suspect that: -
  - (i) the Contractor is in Default under the Contract;
  - (ii) the Guarantor may be in default of the Guarantee;
  - (iii) the Contractor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or (each an "**Exceptional Circumstance**").

E8.2 If the Authority notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.5 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours. The requirement to give up to forty-eight (48) hours under this clause E9.2 shall not apply if the Authority reasonably believes that the Contractor is in Material Breach of any of its obligations under this Contract or Data Protection Legislation.

## **E9 Audit Costs**

E9.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clause E10.2, unless an audit identifies a material Default by the Contractor in which case the Contractor shall reimburse: -

- a) the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- b) where the Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an audit under this clause, the Authority shall be able to recover on demand from the

Contractor the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

**E10 Malicious Software**

E10.1 The Contractor shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

E10.2 Notwithstanding clause E10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any loss and to restore the Services to their desired operating efficiency.

E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E10.2 shall be borne by the Parties as follows: -

- a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
- b) by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

**F.CONTROL OF THE CONTRACT**

**F1 Transfer and Sub-Contracting**

F1.1 Except where clauses F1.4 and F1.5 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

F1.3 Where the Authority has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1.4 shall be subject to: -

- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

c) the Authority receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least five (5) Working Days prior to submission of the relevant invoice.

F1.7 The provisions of clause C (Payment and Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to: -

- a) any Contracting Body;
- b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- c) any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Authority.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"); -

- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure it carries out whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F2 Waiver**

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not diminish or affect any other cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 Change in Law**

F3.1 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.

F3.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.1(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

- (ii) whether any relief from the Contractor's obligations is required 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.

F3.3 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 made through the Change Control Procedure.

F3.4 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 F3.1(b) shall be implemented in accordance with the Change Control Procedure.

#### **F4 Severability**

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **F5 Remedies in the Event of Inadequate Performance**

F5.1.1 The Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding: -

- a) the standard of Services;
- b) the manner in which any Services have been supplied;
- c) the manner in which work has been performed;
- d) the Equipment, materials or procedures the Contractor uses; or
- e) any other matter connected with the performance of the Contractor's obligations under the Contract.

F5.1.2 Without prejudice to its other rights and remedies under the Contract or otherwise, the Authority may, in its sole discretion, uphold a complaint and take further action in accordance with clause F5.2.1 or clause F5.2A of the Contract (as appropriate).

F5.2.1 In the event that the Authority reasonably believes that there has been a Default of the Contract by the Contractor, irrespective of whether the Default is a Material Breach, then the Authority may at no additional cost to the Authority and at the Contractor's own cost, without prejudice to its rights and remedies under the Contract or otherwise do any of the following: -

- a) request in writing that the Contractor remedies the Default within a period specified by the Authority; or
- b) require the Contractor to submit a Performance Improvement Plan in accordance with clause F5.2.2.

F5.2.2 The Contractor shall provide a Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of a written request from the Authority. The Performance Improvement Plan shall include details of why the Default has occurred, how the Default will be remedied and the date by which the Default will be remedied. The following actions in this clause F5.2.2 shall apply in respect of the Performance Improvement Plan: -

- a) The Authority shall either approve or reject in writing the Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of its receipt pursuant to this clause F5.2.2.
- b) If the Authority rejects the Performance Improvement Plan it shall set out the reasons and the Contractor shall address all such reasons in a revised Performance Improvement Plan, which it shall submit to the Authority within a further period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) ("**Revised Performance Improvement Plan**") of its receipt of the Authority's reasons.
- c) If the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) is agreed the Contractor shall immediately start work on the actions set out in the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate).
- d) If, despite the measures taken under this clause F5.2.2 the Revised Performance Improvement Plan cannot be agreed within a period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of receipt by the Contractor of the Authority's reasons in respect of the Performance Improvement Plan then the Authority may: -
  - (i) end the Performance Improvement Plan process and refer the matter for resolution by the dispute resolution procedure set out in clause I.2 (Dispute Resolution); or
  - (ii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2.3 In the event that: -

- a) there is any subsequent Default which the Authority regards, at its sole discretion, as being substantially the same in character to a Default in respect of which a Performance Improvement Plan has been requested by the Authority in accordance with clause F5.2.1(b) or F5.2.4(i) which occurs within six (6) months of the request by the Authority for a Performance Improvement Plan to be provided under clause F5.2.2; or
- b) the Contractor is requested to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) in accordance with clause F5.2.2 or F5.2.4(i) but fails to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) at all,

then such Default shall be deemed to be a Material Breach of the Contract.

F5.2.4 In the event that a Default is not remedied to the satisfaction of the Authority in accordance with clause F5.2.1(a) or (b) the Authority may: -

- (i) request a Performance Improvement Plan from the Contractor in respect of the Default in accordance with clause F5.2.2, irrespective of whether a previous Performance Improvement Plan has previously been requested been and/or been approved; or
- (ii) refer the matter for resolution by the dispute resolution procedure set out in clause 1.2 (Dispute Resolution); or
- (iii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2A Without prejudice to clause F5.2.1, in the event that the Authority reasonably believes that there has been a Material Breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights and remedies under the Contract or otherwise, do any of the following: -

- a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the reasonable satisfaction of the Authority that the Contractor can once more be able to supply all or such part of the Services in accordance with the Contract; or
- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; or
- c) terminate the whole of the Contract, in accordance with clause H2.1(b) (Termination on Default).

- F5.3 Without prejudice to its rights under clause C3 (Recovery of Sums Due) the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party in accordance with clauses F5.2A (a) or (b) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and the Contractor shall be responsible for its own costs.
- F6 Remedies Cumulative**  
Except as otherwise expressly provided for by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- F7 Monitoring of Contract Performance**  
The Contractor shall comply with the monitoring arrangements set out in Schedule [3] (Monitoring Requirements) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.
- F8 Financial Assurance**
- F8.1 The Contractor is required to disclose immediately to the Authority any material changes to its organisation that impacts on its on-going financial viability including details of the revenue replacement strategy and impact awareness on its organisation's profitability and stability where significant contracts are due to end.
- F8.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.
- F8.3 Only where requested by the Authority, the Contractor is required to provide any financial information which could include but is not limited to a copy of the annual accounts and annual returns.
- F9 Entire Agreement**
- F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F9.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding as referred to in this clause F10.2 shall be for breach of contract under the terms of the Contract.

F9.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in the following order of precedence: -

- a) the clauses of the Contract;
- b) the Schedules;
- c) any other document(s) referred to in the clauses of the Contract;

**F10 Counterparts**

The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same agreement.

**G. LIABILITIES, INSURANCES**

**G1 Liability**

G1.1 Subject to clause G1.2, the Contractor shall identify 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 G1.2.3;
  - (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.

G1.2 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.

G1.3 Subject always to clauses G1.1(a), G1.1(b), G1.1(c)(ii), G1.1(c)(iii), G1.1 (c)(iv) and G1.5

- a) the aggregate liability of the Contractor in respect of all Default 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 A7 (Prevention of fraud and Corruption), E6 (Intellectual Property rights) and E2 (Personal 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 direct, special or consequential loss or damage.

G1.4 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 its staff; or
- c) any other matter which, by law, may not be excluded or limited.

G1.5 The Contractors liability under clauses A7, G1.1 (a), G1.1 (b), G1.1 (c)(ii), G1.1 (c) (iii), G1.1 (c) (iv), E6 and E2 shall be unlimited.

### **G2 Insurance**

G2.1 The Contractor shall take out and maintain the following insurance policies:

#### **Public Liability Insurance**

- a) Public liability insurance of a minimum of **GBP 5,000,000** (five million pounds) 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 **GBP 5,000,000** (five million pounds) or such greater sum as the Contractor may choose in respect of any one incident.

#### **Professional Indemnity Insurance**

- c) Professional Indemnity Insurance of a minimum limit of **GBP 5,000,000** (five million pounds) or such greater sum as the Contractor may choose in respect of any one incident.

### **G3 Warranties and Representations**

G3.1 The Contractor warrants and represents that: -

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- b) in entering the Contract it has not committed any Fraud;
- c) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract: -
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

## **H.DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a company** and in respect of the Contractor: -

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in clauses H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of "Control" within the meaning of section 1124 of the Corporation Tax Act 2010 (as amended) ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of: -

- a) being notified that a Change of Control has occurred; or
- b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

H1.3 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is an individual** and: -

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition

scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;

- b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;
- c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of his assets;
- d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, seizure or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;
- f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the business.

H1.4 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a partnership** and: -

- a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is dissolved for any reason;
- c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
- d) a receiver, or similar officer is appointed over the whole or any part of its assets;
- e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- f) any of the following occurs in relation to any of its partners: -
  - (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

H1.5 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a limited liability partnership** and: -

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is dissolved for any reason;
- c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- e) a petition is presented for its winding up (which is not dismissed within fourteen (14) days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- f) a receiver, or similar officer is appointed over the whole or any part of its assets;
- g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H1.7 The Authority may, at its sole discretion, appoint a Replacement Contractor on the same terms and conditions as this Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Contractor provided that the Replacement Contractor meets the pre-qualification criteria *and* the change in contractor does not result in any other substantial amendments to the Contract.

#### **H1A Termination of Contract Under the Public Contracts Regulations 2015**

H1A.1 The Authority shall be entitled to terminate the Contract where: -

- (i) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
- (ii) the Authority has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
- (iii) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

#### **H2 Termination on Default**

H2.1 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 the 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.

## **I.DISPUTES AND LAW**

### **I 1 Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

### **I 2 Dispute Resolution**

- I 2.1 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 days (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 may direct) of each Party.
- I 2.2 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.
- I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and its Staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 Unless agreed otherwise in writing, in any mediation each Party shall bear its own costs of such mediation.

**FORM OF AGREEMENT**

This Contract has been entered into on the Commencement Date stated at A2 – Initial Contract Period.

**SIGNED** for and on behalf of

**SIGNED** for and on behalf of

BPDTS Limited (the Authority) acting as  
part of the Crown

Living Leader Limited

Name

Position

Signature

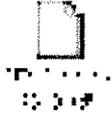
REDACTED

## **SCHEDULE 1 – THE SERVICES**

### **General**

The Services include delivery of: Two Personal Leadership Certified Training Programmes (all training materials included) and 800\*Personal Leader Programme & Online Living Leader Licences.

The Personal Leadership Programme (Certified Trainer Programme) overview:



The Services to be delivered within following dates:

### **Certified Training Programme ONE**

25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> September 2019  
9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> October 2019  
15<sup>th</sup>, 16<sup>th</sup> and 18<sup>th</sup> October 2019

### **Certified Training Programme TWO**

Week One week commencing 21<sup>st</sup> October  
Week Two week commencing 4<sup>th</sup> November

## **SCHEDULE 2 – ADMINISTRATION REQUIREMENTS**

### **1 Authority's Authorisation**

- 1.1 The following person is the Authority's Representative and is authorised to act on behalf of BPDTS Limited on all matters relating to the Contract ("**Authority's Representative**"). Contact details are shown in clause A5.3.

Name:

Email:

Title:

REDACTED

- 1.2 The Authority's Representative may approve deputy Authority's Representatives to exercise on his/her behalf such powers as are contained in this Contract.

### **2 Contractor's Authorisation**

- 2.1 The following person is the Contractor's representative and is authorised to act on behalf of the Contractor on all matters relating to the Contract ("**Contractor's Representative**"). Contact details are shown in clause A5.3.

Name:

Email:

Title:

REDACTED

### **3 Payment Information**

- 3.1 The Authority and the Contractor shall exchange all orders, invoices, claims and payments via electronic methods. All information shall be sent to:

REDACTED

3.1 and 2 – by 23d September 2019

Invoice 3 – by 21<sup>st</sup> October 2019

Invoice 4 – by 21<sup>st</sup> November 2019

Invoice 5 – by 23d December 2019

Invoice 6 – by 24<sup>th</sup> January 2020

Payment Schedule is aligned to the delivery schedule and is subject to ongoing review and confirmation.

### **4 Disputed Claims**

- 4.1 Notwithstanding paragraph 4.5 of this Schedule [2], payment by the Authority of all or any part of any Contract Price rendered or other claim for payment by the Contractor shall not signify Approval. The Authority reserves the right to verify Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.

- 4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed

or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Authority.

- 4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of undisputed sums of such claim.
- 4.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.
- 4.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

**5 Final Claims**

- 5.1 Provided all previous claims have been paid, the Authority shall have no further liability to make payment of any kind to the Contractor once the final claims have been paid.

### **SCHEDULE 3 – MONITORING REQUIREMENTS**

This Schedule [3] sets out the Contract management requirements which are applicable to the delivery of the Services.

#### **1 Reviewing Contract Performance**

- 1.1 The Contractor shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered as specified.
- 1.2 The Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor's management and delivery of it.
- 1.3 The Contractor shall supply information requested relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority in this Schedule [3].
- 1.4 The Authority intends, wherever it can, to capture and collate information through its Authority ICT System(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 1.5 Any additional requests for information shall be considered in consultation with the Contractor as shall the process of defining the methods of collection.
- 1.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule [3].
- 1.7 Review meetings between the Authority and the Contractor shall also cover, as appropriate, dispute resolution and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.8 The Authority may undertake spot checks at any time to ensure that the Contractor is complying with its obligations under this Contract and the Contractor shall co-operate fully, at its own cost, with the Authority.
- 1.9 The Contractor will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, including feedback to and from customers and stakeholders; change control procedures and the prompt resolution of any problems. The Authority will agree with the Contractor day-to-day relationship management, contact points, communication flows and escalation procedures.
- 1.10 The Contractor will be expected to continuously improve the quality of the provision including that delivered by its Sub-contractors. Where quality falls below acceptable levels (see 1.1 - minimum standard) the Contractor will be expected to have suitable escalation procedures in place to resolve this issue

and, in respect of sub-contracted provision, take action where necessary to terminate the Sub-contract.

**2 Access**

- 2.1 In all instances, the Contractor shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring in relation to the Contract. Failure to provide such reasonable assistance shall be deemed a "Default" for the purposes of clause H2 (Termination on Default).

## **SCHEDULE 4 – Contract Price**

### **General**

**For the performance of the Services, the Contractor shall be paid the Contract Price calculated using the prices and rates entered in this Schedule 4.**

	<b>Description</b>	<b>Quantity</b>	<b>Unit price</b>	<b>Total</b>
1.	The Living Leader Certified Training Programme for 6 people	2 Programmes for 6 people each	£3,000 per person	£36,000*
2	PLP & OLL Licences	800	£180 per licence	£144,000
3	Shipping fee for 800 licences	1	≤£900†	≤£900
				<b>£180,900</b>

\* The Living Leader Certified Training Programme price includes all learning materials (3 books, notepad, pens, post it and USB stick)

\* The Living Leader Certified Training Programme price excludes trainer's travel and accommodation costs. It is a responsibility of the Authority to arrange travel and accommodation at its own cost in accordance with BPDTS Travel Policy.

\* The Living Leader Certified Training Programme is based on the absolute minimum attendee requirement of 4 people.

\* In the event of cancellation by the Authority, the Authority shall be liable for all agreed fees on a proportional basis.

\* Shipping fee for 800 licences will depend on final destination but shall not exceed the upper limit of GBP 900 (nine hundred pounds).

### **Courses**

- To be invoiced and paid for in full 30 days from the date of invoice or prior to commencement of the programme whichever is sooner.
- Cancellation up to 28 days before commencement of the programme will receive a 50% refund of agreed fees, after that time fees are not refundable.

### **Coaching**

- Cancellation within 3 working days of delivery 100% of agreed fees will be payable
- Cancellation within 5 working days of delivery 80% of fees will be payable
- Cancellation within 10 working days of delivery 50% of agreed fees will be payable

**Milestone payment approach is agreed as follows:**

	<b>Milestone Payment</b>	<b>Payment description</b>	<b>Amount to be paid</b>	<b>To be paid by</b>
1	Payment 1	Two Certified Training Programmes	£36,000	27 <sup>th</sup> September 2019
2	Payment 2	Shipping cost for 800 licences	≤£900	27 <sup>th</sup> September 2019
3	Payment 3	216 licences to be delivered in October	£36,000	31 <sup>st</sup> October 2019
4	Payment 4	216 licences to be delivered in November	£36,000	29 <sup>th</sup> November 2019
5	Payment 5	216 licences to be delivered in December	£36,000	31 <sup>st</sup> December 2019
6	Payment 6	152 licences to be delivered in January	£36,000	31 <sup>st</sup> January 2020

### Delivery of 800 PLP&OLL licences

Delivery schedule to be agreed and confirmed within ten (10) working days prior to delivery. The Authority and the Contractor shall exchange all information via electronic methods. All information shall be sent to:

REDACTED

Delivery schedule is subject to constant review and confirmation.

**Table 1**

	Quantity	Estimated Delivery Date	Location	Shipment Address	Point of Contact (name, email, contact number)
1.	216 licences (36 boxes on 1 pallet)	October 2019	TBC	TBC	TBC
2.	216 licences (36 boxes on 1 pallet)	November 2019	TBC	TBC	TBC
3.	216 licences (36 boxes on 1 pallet)	December 2019	TBC	TBC	TBC
4.	152 licences (25 boxes + 2 loose packs on 1 pallet)	January 2020	TBC	TBC	TBC

## **SCHEDULE 5 – SECURITY REQUIREMENTS AND PLAN**

### **1 Introduction**

1.1 This Schedule 5 covers;

- a) Breaches of Security.
- b) Security provisions with which the Contractor shall comply in providing the services relevant to this Contract.

### **2 Principles of Security**

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information. The Contractor acknowledges the confidentiality of the Authority's Data.

2.2 Without limiting paragraph 2.2 of this Schedule 5, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks: -

- a) loss of integrity of Authority Data;
- b) loss of confidentiality of Authority Data;
- c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- d) unauthorised access to network elements and buildings;
- e) loss of availability of Authority Data due to any failure or compromise of the Services; and
- f) loss of confidentiality, integrity and availability of Authority Data through Cyber/internet threats.

### **3 Breach of Security**

3.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach.

3.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule 5, the Contractor shall; -

- a) immediately take all reasonable steps necessary to;
  - (i) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract.

- b) as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

#### **4 Authority Data relevant to the Contract**

- 4.1 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media.

#### **Appendix A – BPDTS Security Policies and Standards**

1. BPDTS Limited (referred to as BPDTS or Authority in this Schedule 5) treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which BPDTS is the Data Controller.
2. The main BPDTS (from the core department DWP) policies include: -
  - Information Security Policy
  - Physical Security Policy
  - Acceptable Use Policy

The above policies can be found at: [gov.uk](http://gov.uk)

5. Whilst BPDTS policies are written for internal BPDTS requirements the Contractor must implement appropriate arrangements which ensure that Authority Data and any BPDTS assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.
6. It is the Contractor's responsibility to monitor compliance of its Staff including its Sub-contractors and provide assurance to BPDTS, as requested regarding such compliance.
7. Failure to comply with any of these BPDTS Policies and Standards could result in termination of Contract by BPDTS.
8. The following are some key basic requirements that all Contractors must apply:

#### **5. Personnel Security**

- 5.1 Staff recruitment by the Contractor must be in accordance with government requirements for pre-employment checks including Baseline Personnel Security Standard.
- 5.2 The Contractor must ensure that its Staff are trained and made aware of BPDTS security and any specific Contract requirements.

**6. Secure Information Handling and Transfers**

- 6.1 The Contractor shall ensure the physical and electronic handling, processing and transferring of Authority Data, Personal Data and Special Categories of Personal Data, including secure access to systems and the use of encryption, where appropriate, is carried out in accordance with this Contract.

**7. Portable Media**

- 7.1 The Contractor shall use encrypted laptops and encrypted storage devices and other removable media when handling Authority Data, Personal Data

**8. Offshoring**

- 8.1 Transfer of Personal Data outside of the European Economic Area or International Organisation by the Contractor shall require the Approval of the Authority and shall be carried out in accordance with clause E2.

**9. Physical Security**

- 9.1 The Contractor shall keep secure BPDTS premises it uses and control access to BPDTS premises to those that have Approval to enter BPDTS premises.

**10. Security Incidents**

- 10.1 The Contractor shall include identification, managing and agreed reporting procedures for actual or suspected security breaches. Reporting of breaches by the Contractor relating to Personal Data shall be carried in accordance with clause E2.