



Department
for Work &
Pensions

CONTRACT

For

**The Provision of Managing Sickness Absence in Small and Medium Enterprises
Phase 3 Services**

Between

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

And

[Insert Contractor Name]

[Insert Company Registration Number]

CONTRACT REFERENCE NUMBER: [Insert]

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This Contract is made on the [insert date of the last signature to this Contract]

between the Parties

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

Of

Caxton House,
Tothill Street
London
SW1H 9DA

And

[insert name of Contractor]

with Company Registration
Number

[insert Registered Number]

having the main or registered
office at

[insert address of Contractor]

("the Contractor")

individually referred to as "Party" and collectively as
"the Parties"

A.GENERAL PROVISIONS

A1 Definitions and Interpretation

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

"**Acquired Rights Directive**" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.

"**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 the Secretary of State for Work and Pensions.

“Authority Data” means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-

- (i) supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract.

“Authority ICT System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor ICT system or which is necessary for the Authority to receive the Services.

“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 of the Secretary of State for Work and Pensions on all matters relating to the Contract and shall be the person(s) named in paragraph 1.1 of Schedule 2.

“Authority Software” means software which is owned by or licensed to the Authority, including software which is, or will be used by the Contractor for the purpose of providing the Services but excluding the Contractor Software.

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Services, the Authority ICT System, the Contractor ICT system or any ICT or data (including the Authority’s Data) and any Personal Data and any Special Categories of 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.

“Business Continuity Plan” means any plan prepared as directed in clause H5.6, as may be amended from time to time.

“Change Communication” means any Operational Change Request, Operational Change Confirmation, Change Request, Impact Assessment, Change Authorisation Note or other communication sent or which must be sent pursuant to the Change Control Procedure.

“Change Control Procedure” means the procedure for proposing a Contract Change, as set out in Schedule 11 (Change Control Procedure).

“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.

“Change Request” means a written request for a Contract Change which include the information as specified in the form of Appendix 1 of Schedule 11 (Change Control Procedure).

“Commencement Date” means the date on which this Contract is signed/sealed.

“Commercially Sensitive Information” means the Information:-

- (i) listed in Schedule 5 (Commercially Sensitive Information);
- (ii) notified to the Authority in writing (prior to the Commencement Date) which has been clearly marked as Commercially Sensitive Information which is provided by the Contractor to the Authority in confidence; or
- (iii) which constitutes a trade secret.

“Commercially Sensitive Information Schedule” means Schedule 5, containing a list of the Commercially Sensitive Information provided by the Contractor.

“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 and the Tender.

“Contract Change” means any change to this Contract other than an Operational Change, including, for the avoidance of doubt, the Services, any restatement and any supplement to the Contract.

“Contractor” means the person, partnership or company with which the Authority enters into the Contract.

“Contractor Software” means software owned or licensed to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services.

“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.

“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 [and Special Categories Personal Data] held by the Contractor under this Contract and/or actual or potential loss and/or alteration and/or destruction of Personal Data [and Special Categories 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 [and Special Categories 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 and Special Categories 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 and Special Categories 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.

“DWP Offshoring Policy” means the Authority’s policy and procedures in relation to hosting or accessing the Authority ICT System or official information

outside of the UK including Landed Resources as advised to the Contractor by the Authority from time to time.

“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*).

“Guarantee” means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Schedule 10 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

“Guarantor” means the body which has agreed to guarantee the due performance of the Contract by the Contractor as defined in clause G4 and the deed at Schedule 10 (Parent Company Guarantee).

“ICT” means information and communications technology.

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

“Impact Assessment” means an assessment of a Change Request in accordance with paragraph 5 of Schedule 11 (Change Control Procedure).

“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

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction.

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

“Invitation to Tender” means the invitation and instructions to tenderers issued by the Authority on 6 June 2019.

“Job Seekers” means people looking for work.

“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 and Special Categories of Personal Data.

“Key Personnel” means those persons described in clause B4.

“Landed Resources” means when the Contractor or its Sub-contractor causes foreign nationals to be brought to the United Kingdom to provide the Services.

“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.

“**Management Plan**” means the Contractor’s plan containing a time-bound programme of all the activities to be delivered by the Contractor in line with the requirements set out in the Specification, as well as other information as required by the Specification.

“**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 and Schedule 3 (Monitoring Requirements) over any two (2) month period during the term of the Contract;
- 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.

“**Monitoring Requirements Schedule**” means the details of the monitoring arrangements, more particularly described in Schedule 3 (Monitoring Requirements).

“**Month**” means calendar month.

“**New Intellectual Property Rights**” means:

- a) Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract and updates and amendments of these items including database schema; and
- b) Intellectual Property Rights in or arising as a result of the performance of the Contractor's obligations under the Contract and all updates and amendments to the same;

but shall not include the Contractor's Pre-Existing Intellectual Property Rights.

"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.

"Operational Change Confirmation" means a written response to an Operational Change Request in which the Party that receives the Operational Change Request confirms its agreement to it. The confirmation may be sent by electronic mail or letter.

"Operational Change Request" means a written request for an Operational Change which may be sent by electronic mail or by letter.

"Parent Company" is a company that owns enough voting stock in another firm known as its subsidiaries to control management and operation by influencing or electing its board of directors.

"Parent Company Guarantee" means the parent company guarantee in the form set out in Schedule 10 (Parent Company Guarantee).

"Party" means a party to the Contract.

"Performance Improvement Plan" means the plan to be provided by the Contractor in accordance with clauses F5.2.2 and F5.2.4(i).

"Persistent Breach" means a Default which has occurred on two (2) 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.

“Pricing Proposal” means the completed Schedule S which forms part of the Tender submitted by the Contractor.

“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 and Special Categories 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 and Special Categories Personal Data in a timely manner in the event of a physical or technical incident
- ensuring that availability of and access to Personal Data and Special Categories 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.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Receiving Party” means the Party which receives a proposed Contract Change.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time, or the Authority where the Authority is providing Replacement Services on its own account.

“Replacement Services” means any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry of the Contract Period, whether those services are provided by the Authority internally and/or by any third party.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Schedule” means a Schedule attached to, and forming part of, the Contract.

“Security Plan” means the Contractor’s security plan prepared as directed in paragraph 3 of Schedule 6 (Security Requirements & Plan).

“Security Policy” means the Authority’s Security Policy/Policies to be provided by the Authority to the Contractor (as updated from time to time).

“Service(s)” means the maintenance of the current mental health online toolkit, as well as focused research, development, testing and delivery of an enhanced online toolkit to include physical health conditions / disabilities and final summary report, as more particularly described in the Specification and Schedule 1 (The Services).

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

“Special Categories of Personal Data” shall have the meaning given in Data Protection Legislation.

“Specification” means the description of the Services to be provided as specified in the Specification at Schedule 1 (The Services).

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority that would not affect a Comparable Supply.

“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.

“Staff Vetting Procedures” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority.

“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 and Special Categories Personal Data on behalf of the Contractor under this Contract.

“Tender” means the document(s) submitted by the Contractor to the Authority in response to the Invitation to Tender attached at Schedule 1 (The Services).

“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 29 July 2019 and shall expire automatically on 31 March 2020, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under clause F9 (Extension of Initial Contract Period).

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 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:-

- a) For the Authority:
Address: Department for Work and Pensions, Employment Category – Test & Learn, Room 1S Blue Zone N, Quarry House, Quarry Hill, Leeds LS2 7UA
For the attention of: Kevin Keenan
Email: Kevin.Keenan1@dwp.gov.uk
- b) For the Contractor:
Address: **[Insert]**
For the attention of: **[Insert]**
Email: **[Insert]**

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned due to the Authority as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Authority.

A7 Conflicts of Interest

A7.1 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.

A7.2 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.

A7.3 This clause A7 shall apply for the duration of this Contract and for a period of twelve (12) months after its termination.

A8 Prevention of Fraud

A8.1 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.

A8.2 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.

A8.3 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) 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.

For the avoidance of doubt any breach referred to in clause A8.3 shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

A9 Not Used

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.
- B1.3 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B3 Manner of Carrying Out the Services

- B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and the standards specified in this Contract. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in any way limiting any other provision of this Contract, in delivering the Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- B3.3 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.
- B3.4 The Authority will conduct a review of the performance of this Contract at least annually during the Contract Period. During this review, a performance report will be agreed.

B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are those personnel of the Contractor that are essential to the proper provision of the Services to the Authority.

B4.2 The Key Personnel shall not be released from supplying the Services without the prior Approval.

B4.3 Any replacements to the Key Personnel shall be subject to prior Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Contractor's Staff

B5.1 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.

B6 Not Used

B7 Not Used

B8 Not Used

B9 Offers of Employment

B9.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

B10 Not Used

B11 Not Used

B12 Not Used

B13 Not Used

B14 Not Used

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 4 (Contract Price and Invoicing).

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 no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

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 4 (Contract Price and Invoicing).

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 4 (Contract Price and Invoicing).

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 4 (Contract Price and Invoicing).

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 Not Used

C5 Euro

C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C6 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 Contact;
- 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 Discrimination

D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.

D2.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D3 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.

D4 Not Used

D5 Health and Safety

D5.1 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.

D5.2 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.

D6 Not Used

D7 Not Used

D8 Not Used

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 perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and confirmation that secure back-ups have been performed in accordance with the Authority's requirements as specified in this clause E1.5 are delivered to the Authority no less than every three (3) Months.
- E1.6 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 6 Appendix A.
- E1.7 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) days; 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.
- E1.8 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.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Contractor and any of its Sub-contractors, shall not process or transfer Authority Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor

shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.

E1.10 Where the Authority has given its prior written consent to the Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with clause E1.9 of the Contract):-

- a) the Contractor must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
- b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

E1.11 Not Used

E1.12 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.

E1.13 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.

E1.14 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.

E1.15 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, the Contractor 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 and Special Categories 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.

E2.1A The Data Controller is responsible for ensuring that Personal Data and Special Categories of Personal Data is processed in accordance with Data Protection Legislation.

E2.1B The Authority shall be the Data Controller of the information listed in Schedule 12 Annex B Part 1.

E2.1C The Contractor shall be the Data Controller of the information listed in Schedule 12 Annex B Part 2.

E2.1D Where the Contractor is the Data Controller, it shall comply with the Data Controller obligations specified in Data Protection Legislation and shall implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with the GDPR.

E2.2 Notwithstanding the general obligations in clauses E2.1, E2.1A, E2.1B, E2.1C and E2.1D, where the Contractor is a Data Processor, the Contractor shall as Data Processor meet the obligations in clauses E2.3 - E2.15 (inclusive) for Personal Data and Special Categories of Personal Data.

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 Special Categories of Personal Data; and
- e) upon request provide a copy of the record of the processing of any Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

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

- a) process that Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Schedule 12, unless the Contractor is required to process the Personal Data and Special Categories of 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 and Special Categories of 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 and Special Categories of Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data and Special Categories of Personal

Data to meet the Contractor's Data Processor duties under the Contract and Data Protection Legislation and only collect Personal Data and Special Categories of 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 and Special Categories of 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 Special Categories of 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 Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Contractor shall give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data; and
- d) not transfer Personal Data and Special Categories of Personal Data outside of the European Economic Area or International Organisation unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with

GDPR Article 46 or LED Article 37) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred; and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
- e) at the written direction of the Authority, delete or return Personal Data and Special Categories of Personal Data (and any copies of it) using a secure method of transfer to the Authority on expiry or earlier termination of the Contract unless the Contractor is required by Law to retain the Personal Data and Special Categories of Personal Data;
- 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 and Special Categories of Personal Data processed under this Contract;
- e) receives a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
- 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 and Special Categories of Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Authority following any Data Loss Event to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that the Data Loss Event of the same nature 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 maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this clause E2. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:-

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

E2.10 The Contractor shall keep a record of any processing of Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

E2.11 The Contractor shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.

- E2.12 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;
 - b) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data under the Contract; and
 - c) 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.

E2.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor and/or Staff.

E2.14 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).

E2.15 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.

E2.16 Where the Parties include two or more Joint Controllers as identified in Schedule 12 Annex C in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 12 Annex C in replacement of clauses E2.1-E2.15 for the Personal Data under joint control by the Joint Controllers.

E2.17 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 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

- E3.1 The Contractor shall comply with, and shall ensure that it's Staff comply with, the provisions of:-
- a) the Official Secrets Acts 1911 to 1989; and
 - b) Section 182 of the Finance Act 1989.

E3.2 Any breach by the Contractor of this clause E3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-

- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E4.2 Clause E4 shall not apply to the extent that:-

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality to the information owner prior to its disclosure;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other Party's Confidential Information.

E4.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.4 Any breach by the Contractor of clauses E4.1-E4.3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

E4.5 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.6 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.

E4.7 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:-

- a) to any government department, any part of the Crown. All government departments, and any part of the Crown receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, and other parts of the Crown on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, or the Crown;
- b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
- e) on a confidential basis for the purpose of the exercise of its rights under the Contract, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Contract (clause F1.8), to a Replacement Contractor (clause H6.2) and for the purpose of the examination and certification of the Authority's accounts; or
- f) for any 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.

E4.8 The Authority shall use all reasonable endeavours to ensure that any government department, part of the Crown, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.

E4.9 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.10 Clauses E4.1-E4.7 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or Confidential Information, which is specified as being exempt from disclosure under this Contract, the content of this Contract is not Confidential Information. The

Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E5 Freedom of Information

E5.1 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.

E5.2 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.

E5.3 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.

E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.

E5.5 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.
- E5.6 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.
- E5.7 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.
- E5.8 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5 and/or any other legal requirement.

E6 Publicity, Media and Official Enquiries

E6.1 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.

E6.2 Both Parties shall each take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E7 Security

E7.1 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.

E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E7.3 The Contractor shall comply, and shall ensure that its Staff comply with the Security Plan and the Security Policy.

E7.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy. Any changes shall be agreed in accordance with the Change Control Procedure in clause F3 and Schedule 11.

E7.5 Until and/or unless a change to the Security Policy is agreed by the Authority pursuant to clause E7.4 the Contractor shall continue to perform the Services in accordance with its existing obligations.

E8 Intellectual Property Rights

E8.1 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.

E8.2 The Authority shall grant the Contractor a non-exclusive, revocable, royalty free licence for the Contract Period to use the Authority's Pre-Existing and New 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 Pre-Existing and New 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 Pre-Existing and New Intellectual Property Rights.

E8.3 The Contractor shall grant the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-licence the Contractor's Pre-Existing Intellectual Property Rights used in connection with the Services to enable it to:

- a) receive and use the Services;
- b) make use of the deliverables provided by a Replacement Contractor; and
- c) make use of and receive the benefit of any New Intellectual Property Rights.

E8.4 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. For the avoidance of doubt, any New Intellectual Property Rights created under the Contract are owned by the Authority.

E8.5 Ownership of third party software or other Intellectual Property Rights necessary to deliver the Services will remain with the relevant third party. The Contractor warrants that it will not, without Approval (which can be withheld at the sole

discretion of the Authority) use any such pre-existing materials in connection with the Services where the New Intellectual Property Rights and Contractor Pre-Existing Intellectual Property Rights can only be used by or on behalf of the Authority (in accordance with the terms of this Contract) after the Contract Period in conjunction with such pre-existing materials.

- E8.6 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.
- E8.7 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).
- E8.8 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 Rights 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.
- E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the 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.

E8.10 Where a Party acquires ownership of Intellectual Property Rights incorrectly under this Contract it shall do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

E8.11 Neither Party has the right to use the other Party's Intellectual Property Rights, including any use of the other Party's names, logo or trademarks, except as provided in clause E8 or otherwise agreed in writing.

E9 Audit and the National Audit Office

E9.1 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.

E9.2 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.

E9.3 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.

E9.4 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.

E9.5 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.

E9.6 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days notice of its intention to conduct an audit.

E9.7 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.

E10 Exceptional Audits

E10.1 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
 - (iv) a breach of the Security Policy or the Security Plan has occurred under the Contract,
(each an "**Exceptional Circumstance**").

E10.2 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.

E11 Audit Costs

E11.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses E9.3 to E10.2 (inclusive), 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 government department or other part of the Crown 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 government department or part of the Crown.

E12 Malicious Software

E12.1 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.

E12.2 Notwithstanding clause E12.1, 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.

E12.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.2 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 government department;
 - 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 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 government department, or part of the Crown, or if there is a change in the legal status of the Authority such that it ceases to be a government department, or part of the Crown, (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 Contract Change

F3.1 No Contract Change shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 11 (Change Control Procedure) and signed on behalf of the Parties except for the changes described in clauses E2.14 and E2.15 and where specified in clauses F3.3 and F3.4, which shall be made by the Authority without the requirement to be made through the Change Control Procedure and shall be made by the Contractor at no additional cost to the Authority.

F3.2 The Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Contract which has the effect of:-

- a) rendering this Contract materially different in character from the original terms of this Contract as at the original signature date of this Contract;
- b) changing the economic balance of this Contract in favour of the Contractor in a manner which is not provided for in this Contract as at the signature date of this Contract; or
- c) extending the scope of this Contract substantially.

Change in Law

F3.3 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.

F3.4 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.3(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.

F3.5 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.

F3.6 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 F3.3(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 and/or been approved; or
- (ii) refer the matter for resolution by the dispute resolution procedure set out in clause I.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.

F8.4 Where a Parent Company Guarantee has been requested by the Authority, the Contractor is required to provide the documents detailed in clause F8.3 for the Parent Company, including a translation and conversion (profit and loss, balance sheet and key balance sheet notes) into GBP (£), stating the conversion rate used.

F9 Extension of Initial Contract Period

F9.1 The Authority may, by giving written notice to the Contractor of not less than one (1) Month prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to two (2) months. The provisions of the Contract will apply (subject to any Contract Change) throughout any such extended period.

F10 Entire Agreement

F10.1 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.

F10.2 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.

F10.3 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 with the exception of the Tender;
- d) Tender.

F11 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

G1 Liability, Indemnity and Insurance

G1.1.1 Neither Party excludes or limits liability to the other Party for:-

- a) death or personal injury caused by its negligence;
- b) fraud;
- c) fraudulent misrepresentation; or
- d) any Default of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.1.2 The Contractor's liability in respect of the indemnities in clauses C2.8, E2.17, E8.6 and E8.8 shall be unlimited.

G1.2 Subject to clause G1.3, the Contractor shall indemnify the Authority and keep the Authority indemnified fully:-

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor and/or its Staff or by circumstances within its or their

control in connection with the performance or purported performance of the Contract; and

- b) Not Used
- 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 G1.4;
 - (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.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense 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 the Contract.

G1.4 Subject always to clause G1.1, G1.2(a), G1.2(c)(ii), G1.2(c)(iii), G1.2(c)(iv) and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limit:-

- a) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of one hundred thousand pounds (£100,000) or one hundred and fifty per cent (150%) of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises.

G1.5 Subject always to clause G1.1 and G2 and as specified in clauses E2.17 and G1.2(c)(iv), in no event shall either Party be liable to the other for any:-

- a) loss of profits, business, revenue or goodwill; and
- b) indirect or consequential loss or damage.

G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's

performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- G1.7 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

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) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and during the Contract Period the Contractor shall disclose any change to the information referred to in this clause G3.1(c) and information in relation to the Prohibited Acts;
- d) 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.

G4 Deed of Guarantee

- G4.1 Unless otherwise agreed by the Authority in writing, this Contract is conditional upon the Contractor procuring that the Guarantor shall within twenty (20) days of the Commencement Date execute and deliver the Guarantee to the Authority.
- G4.2 On satisfaction of clause G4.1, the Authority shall promptly notify the Contractor that those conditions have been satisfied.
- G4.3 The conditions specified in this clause G4 are inserted solely for the Authority's benefit. The Authority may waive them, in whole or in part and with or without conditions, without prejudicing the Authority's right to require subsequent fulfilment of such conditions.
- G4.4 Notwithstanding clauses G4.1 to G4.3, the Authority reserves the right (in its absolute discretion) to waive the requirement for a Guarantee in its entirety.

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 of 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 of 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.

H2 Termination on Default

H2.1 The Authority may without prejudice to any other right or remedy available to it terminate the Contract by written notice to the Contractor with immediate effect or such period as specified by the Authority in writing if the Contractor commits a Default and if:-

- a) the Default is not, in the opinion of the Authority capable of remedy;
- b) the Default is a Material Breach of the Contract.

H2.2 Without prejudice to the provisions of clause H1 or H2.1 or to any other right or remedy available to the Authority, where the Authority considers that the

Contractor has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Authority shall be entitled to serve a written notice (“**Formal Warning Notice**”) on the Contractor:-

- a) specifying that it is a Formal Warning Notice;
- b) giving details of the Persistent Breach; and
- c) stating that if the Persistent Breach recurs two (2) or more times within a two (2) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- a) twenty (20) Working Days after service of a Formal Warning Notice, the Contractor has failed to demonstrate to the Authority’s satisfaction that the Persistent Breach specified has not continued and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur; or
- b) within a two (2) month period after the date of service of the Formal Warning Notice, the Contractor has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred two (2) or more times within such two (2) month period and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur,

then the Authority may deem such failure shall constitute a Material Breach and shall be entitled to exercise its rights under clause F5.2A.

H2.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data. The Contractor shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3 (Recovery of Sums Due).

H3 Break

H3.1 The Authority shall have the right to terminate the Contract at any time by giving one (1) Months’ written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

H3.2 On the expiry or termination of this Contract or any part thereof:-

- a) the Contractor shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Contractor shall cease all use of all the Authority's Intellectual Property Rights and shall return or destroy, as the Authority requires all documents and materials (including those in electronic format) incorporating or referring to the same.

H4 Consequences of Expiry or Termination

H4.1 Where the Authority terminates the Contract under clause F5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5 or clause H2, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss reasonably incurred by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of loss reasonably and actually incurred by the Contractor as a result of termination under clause H3. Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause H3. Following such settlement the Contractor shall, to the fullest extent lawfully permissible, be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which:-

- a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

- c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 On the expiry or termination of this Contract or any part thereof the Contractor shall:-

- a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
- c) return all Authority Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority;
- d) return all Personal Data and Special Categories of Personal Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority, where the Authority is the Data Controller and delete existing copies unless the Law requires storage of Personal Data and Special Categories of Personal Data and/or unless the Contractor is required to retain the Personal Data and Special Categories of Personal Data; and
- e) plan for the orderly handover of the Services to the Authority or its Replacement Contractor including compliance by the Contractor with the provisions of this clause H4.4 at no additional charge to the Authority or its Replacement Contractor.
- f) Not Used

H4.5 Unless otherwise expressly provided in the Contract:-

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration. Nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C (Payment and Contract Price), C3 Recovery of Sums, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E4 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E5 (Confidential Information), E6 (Freedom of Information), E9

(Intellectual Property Rights), E10 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in performing its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval in relation to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect or such period as specified by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- H5.6 The Contractor shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to the Contractor's ICT system) to the Contractor's operations, and those of Sub-contractors, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

H6 Recovery upon Termination

- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any of its Staff. In the event the Contractor fails to do so, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Staff where any such items may be held.
- H6.2 At the expiry or early termination of the Contract Period (howsoever arising) or after the Contract Period the Contractor shall provide assistance to the Authority

and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

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 twenty (20) 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 The procedure for mediation and consequential provisions relating to mediation are as follows:-

- a) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.

- b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
- c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- g) 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

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

SIGNED for and on behalf of

[Insert - Contractor]

Name **[Insert]**

Position **[Insert or leave further space to write]**

Signature

Name **[Insert]**

Position **[Insert or leave further space to write]**

Signature

SCHEDULE 1 – THE SERVICES

1 General

The following additional documents shall be deemed to be incorporated into this Contract;

[Insert Specification here]

[Insert Tender here]

Document	Dated
Specification	
Tender	
Bid Clarification	

2 Not Used

3 Not Used

4 Recruitment Through Jobcentre Plus

4.1 One of the key objectives of the Department for Work and Pensions is to move people from welfare into employment. DWP has a Great Britain-wide network of Jobcentre Plus offices that provide job broking services for unemployed people. The Contractor is therefore required to notify Jobcentre Plus when recruiting staff for any entry-level job vacancies located within Great Britain, which may arise from the delivery of their Contract to the Authority.

4.2 The Contractor is also encouraged to notify Jobcentre Plus of any other vacancies that may arise. The Contractor may in addition use other recruitment methods.

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 the Secretary of State for Work and Pensions on all matters relating to the Contract (“**Authority’s Representative**”). Contact details are shown in clause A5.3.

Name: Kevin Keenan
Title: Authority's Representative

- 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: **[Insert]**
Title: Contractor’s Representative

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).

3 Health and Safety Responsibilities of the Authority's Representatives

3.1 The Authority's Representatives may visit Contractors and its Sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority may make recommendations in relation to the monitoring of health and safety requirements. In doing this the Authority's Representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not, which shall remain the responsibility of the Contractor. Instead they shall approach this from the position of any lay person. If, however, the Authority's Representative does notice something on which they require assurance or clarification, they shall raise this with the Contractor or the Sub-contractor's representative at the location where they are visiting. In no event are the Authority's Representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Contractor or its Sub-contractors or any omission to give such advice, comments or otherwise.

4 Management Information

4.1 The Contractor shall supply information listed below relevant to the delivery of the Services to the Authority, using formats and to timescales as specified. This includes but is not limited to:-

Contractor Information Required	Frequency or Date Required by
Full and final Security Plan in accordance with Schedule 6	Within twenty (20) Working Days after the Commencement Date.
Progress against the Pricing Proposal and Management Plan, as set out in an updated reporting template	Three (3) working days prior to each monthly performance review meeting
Record of all Intellectual Property Rights used and created as part of MSA Phase 3, as set out in an updated IPR Activity Log	Three (3) working days prior to each monthly performance review meeting

Appendix A – Not Used

Appendix B – Not Used

Appendix C – Not Used

SCHEDULE 4 – CONTRACT PRICE AND INVOICING

1 DEFINITIONS

1.1 In this Schedule, the following terms shall have the meanings set out below:

"Appendix" means an appendix to this Schedule 4 unless expressly indicated to the contrary.

"Authorisation" means the prior written consent of the Authority this includes email (and "Authorise" and "Authorised" shall be construed accordingly).

"Invoice Validation Matrix" means the summary of criteria and performance requirements for payment of each Contractual Milestones, as described within Schedule 4, Appendix 2

2 APPLICABLE PRICING METHODOLOGY

General

2.1 For the performance of the Services in this Contract, the Contractor will be paid the Contract Price calculated using the prices and rates entered in the Pricing Proposal attached at Schedule 4, Appendix 1.

2.2 In delivering the Services, the Contractor acknowledges that it is under an obligation to meet the following Contractual Milestones. Failure to meet any of the Contractual Milestones may constitute a Material Breach of Contract pursuant to clause F5.

Contractual Milestones

Contractual Milestone	Invoice Date	% of Overall Contract Price	Payment Value £ (VAT Ex)
1. Milestone 1: Delivery of final Management Plan	07/08/2019	5%	
2. Milestone 2: Completion of activity in line with final Management Plan	31/10/2019	25%	
3. Milestone 3: Completion of activity in line with final Management Plan	31/12/2019	25%	
4. Milestone 4: Completion of activity in line with final Management Plan	28/02/2020	25%	
5. Milestone 5: Delivery of Summary Report and final product handover	31/03/2020	20%	

2.3 Payment of the Contractual Milestones is dependent upon completion of all activity associated with each Milestone against the agreed time bound Management Plan, provision of the MI defined in Schedule 3 and relevant

supporting evidence, assessed against the Invoice Validation Matrix at Appendix 2 of this Schedule 4:

- a) Meeting with the Authority on a monthly basis, at a date and time set by the Authority, to discuss progress and performance;
- b) Meeting the commitments as defined in the Contractor's Management Plan submitted with the Tender, containing a time bound programme of activities designed to deliver the output described in this document, timescales and resource requirements; and
- c) Meeting the project cost profile as detailed in the Contractor's Pricing Proposal submitted with the Tender.

3. SERVICE CREDITS

3.1 Service credits will not apply to this contract.

4. INDEXATION

4.1 Indexation shall not apply to the Contract Price under this Contract.

5. INVOICING

5.1 Purpose of this part of the Schedule

This paragraph 5 sets out the method by which the Contractor shall raise invoices to the Authority for payment, together with the requirements which apply to such invoices, and the payment terms thereof.

5.2 Contractor Invoices

5.2.1 The Authority shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days of receipt of a valid invoice, submitted to the address specified by the Contracting Authority in paragraph 5.2.4 of this Schedule and in accordance with the provisions of this Contract.

5.2.2 The Contractor shall ensure that each invoice contains:

- i) all appropriate references, including the unique Purchase Order reference number, which will be supplied to the Contractor by the Authority within ten (10) working days of the Commencement Date; and
- ii) a detailed breakdown of the Contractual Milestone(s) (if any) within this Contract to which the delivered Services relate.

5.2.3 The Contractor shall submit an invoice, as soon as possible and in any case within five (5) Working Days after confirmation from the Authority that the relevant Contractual Milestone has been met by the Contractor. Invoices and Supporting Documentation shall be emailed, in PDF format to: [APinvoices-DWP-](#)

- 5.2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 5.2.5 The Authority shall only regard an invoice as valid if it complies with the provisions of clause C2 and this paragraph 5 of this Schedule. Where any invoice does not conform to the Authority's requirements set out in clause C2 and Paragraph 5 this Schedule, the Authority will reject the disputed invoice. The Contractor shall promptly issue a replacement invoice which shall comply with the same.

6 DISPUTED CLAIMS

- 6.1 Notwithstanding paragraph 6.5 of this Schedule, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Contractor shall not signify Authorisation of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.
- 6.2 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.
- 6.3 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 the remainder.
- 6.4 If any invoice 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 (and no later than five (5) Working Days after the relevant agreement or determination) repay such part to the Authority.
- 6.5 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 invoice for which payment is being made or any previous invoice.
- 6.6 Any unresolved dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

7 FINAL CLAIMS

- 7.1 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.

[Insert - On Contract award insert information supplied by the Contractor within their proposal]



MSA Annex S final
03.06.19.xlsx



Invoice Validation
Matrix.docx

SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION

[Insert - On Contract award insert information supplied by the Contractor within their proposal]

1. The Authority acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.

2. The Contractor acknowledges that circumstances may arise that require disclosure and are outside the control of the Authority, for example, due to a legal requirement including a court order.
3. The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
4. The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
5. The Authority will publish without prior consent from the Contractor all information provided by the Contractor **not** identified in this Schedule 5 as constituting Commercially Sensitive Information under the Authority's transparency reporting requirements provided that such disclosure satisfies the requirements of the FOIA.
6. The Authority reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

1.1 This Schedule 6 covers;

- a) Principles of security for the Contractor ICT system, derived from the Security Policy, including without limitation principles of physical and information security;
- b) The creation of the Security Plan;
- c) Audit and testing of the Security Plan;
- d) Conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification);
- e) Breaches of Security; and
- f) 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 and consequently on the security of the Premises and the security for the Contractor ICT system. The Contractor also acknowledges the confidentiality of the Authority's Data.

2.2 The Contractor shall be responsible for the security of the Contractor ICT system and shall at all times provide a level of security which;

- a) is in accordance with Good Industry Practice and Law;
- b) complies with the Security Policy;
- c) meets any specific security threats to the Contractor System;
- d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule 6; and
- e) meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

2.3 Without limiting paragraph 2.2 of this Schedule 6, 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) use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services; and
- g) loss of confidentiality, integrity and availability of Authority Data through Cyber/internet threats.

3 Security Plan Introduction

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.
- 3.2 A draft Security Plan provided by the Contractor as part of its Tender is set out in Appendix B.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision) of this Schedule 6, the Contractor will prepare and deliver to the Authority for Approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix B of this Schedule 6.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within ten (10) Working Days of a notice of non-Approval and re-submit for Approval. The Parties will use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No Approval to be given pursuant to this paragraph 3.4 of this Schedule 6 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 of this Schedule 6 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times

comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

- a) the provisions of this Contract; this Schedule 6 (including the principles set out in paragraph 2 of this Schedule 6);
 - b) the provisions of Schedule 1 relating to security;
 - c) ISO/IEC27002 and ISO/IEC27001;
 - d) the data protection compliance guidance produced by the Authority.
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 of this Schedule 6 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 6.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Contractor annually, or from time to time to reflect:-
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Contractor ICT system, the Services and/or associated processes; and
 - c) any new perceived or changed threats to the Contractor ICT system.
 - d) a reasonable request by the Authority.
- 3.11 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Authority request or change to the Schedule 1 (The Services) or otherwise shall be subject to the change control procedure and shall not be implemented until approved in writing by the Authority.

4 Not Used

5 Compliance with ISO/IEC 27001

5.1 Not Used

5.2 Not Used

5.3 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Contractor, then the Authority shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Contractor does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 of this Schedule 6 the Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 Breach of Security

6.1 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, or threat to, the Security Plan.

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule 6, the Contractor shall;-

- a) immediately take all reasonable steps necessary to;
 - (i) remedy such breach or protect the Contractor ICT system against any such potential or attempted breach or threat; and
 - (ii) 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, then the Contractor shall be entitled to refer the matter to the change control procedure in clause F3 (Contract Change) and Schedule 118 (Change Control Procedure).

- 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.

7 Authority Data relevant to the Contract

- 7.1 The Specification will outline the services to be provided by the Contractor, including the type of Authority Data involved.
- 7.2 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.

8 Accreditation

- 8.1 Where a system is being used to deliver the Services it may be appropriate to conduct security accreditation.
- 8.2 The DWP Security Accreditation Team may undertake an accreditation of the service where the Contractor shall provide appropriate accreditation evidence to DWP upon request throughout the lifecycle of the Contract.
- 8.3 Where security accreditation is required the Contractor must ensure that the service in scope remains accredited throughout the Contract Period and that there is an agreed accreditation assurance plan in place supporting the DWP deployed service.

9 Not Used

Appendix A – DWP Security Policies and Standards

1. The Department for Work and Pensions (referred to as DWP or Authority in this Schedule 6) 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 and Special Categories of Personal Data for which DWP is the Data Controller.
2. In order to protect Authority Data, Personal Data and Special Categories of Personal Data appropriately, the Contractor must provide the security measures and safeguards appropriate to the nature and use of such information. The Contractor must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.
3. The main DWP policies include:-
 - Information Security Policy
 - Physical Security Policy
 - Acceptable Use Policy

The above policies can be found at: gov.uk

4. The Contractor must appoint a named officer who will act as a first point of contact with DWP for security issues. In addition all Staff, with access to the Authority ICT System, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.
5. The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.
6. Whilst DWP policies are written for internal DWP requirements the Contractor must implement appropriate arrangements which ensure that Authority Data and any DWP 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.
7. It is the Contractor's responsibility to monitor compliance of its Staff including its Sub-contractors and provide assurance to DWP, as requested regarding such compliance.
8. Failure to comply with any of these DWP Policies and Standards could result in termination of Contract by DWP.
9. The following are some key basic requirements that all Contractors must apply:

10. Personnel Security

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

11. Secure Information Handling and Transfers

- 11.1 The Contractor shall ensure the physical and electronic handling, processing and transferring of Authority Data, Personal Data and Special Categories of 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.

12. Portable Media

- 12.1 The Contractor shall use encrypted laptops and encrypted storage devices and other removable media when handling Authority Data, Personal Data and Special Categories of Personal Data.

13. Offshoring

- 13.1 Transfer of Personal Data and Special Categories 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.

14. Not Used

15. Security Incidents

- 15.1 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 and/or Special Categories of Personal Data shall be carried in accordance with clause E2.

Appendix B – Draft Security Plan

[Include here the draft security plan supplied by the successful tenderer as part of their Tender].



Security Plan
Template - Annex Y

SCHEDULE 7 – NOT USED

SCHEDULE 8 – NOT USED

SCHEDULE 9 – NOT USED

SCHEDULE 10 – PARENT COMPANY GUARANTEE

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

[INSERT NAME OF PARENT COMPANY]

THIS DEED is dated

[DATE]

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA (“the **Authority**”); and
- (2) **[INSERT NAME OF PARENT COMPANY]** incorporated and registered in England and Wales with company registration number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (“the **Guarantor**”).

BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee (“the **Contract**”, which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Authority has agreed to engage **[INSERT NAME]** (“the **Contractor**”) to deliver **[INSERT DETAILS]**.
- (2) It is a condition of the Contract **[being awarded to the Contractor]** that the Contractor ensures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor.
- (4) It is the intention of the Parties that this document be executed as a deed.

AGREED TERMS

1 Interpretation

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Contract shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

2 Obligations of The Guarantor

- 2.1 In consideration of the Authority entering into the Contract with the Contractor, the Guarantor agrees:
 - 2.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;
 - 2.1.2 in addition to its obligations set out in clause 2.1.1, to indemnify the Authority against all loss which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, contract or at common law including without limitation by reason of any

default by the Contractor of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Contract save that, subject to the other provisions of this guarantee (including without limitation clause 2.1.3), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor under the Contract; and

- 2.1.3 to indemnify the Authority against all loss whether arising under statute, contract or at common law which may be awarded against the Authority or which the Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Liability

3.1 The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- 3.1.1 any arrangement made between the Contractor and the Authority;
- 3.1.2 any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise;
- 3.1.3 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- 3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;
- 3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Contractor's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or
- 3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, Liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

4 Addendum Or Variation

The Guarantor by this guarantee authorises the Contractor and the Authority to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

5 Guarantee

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Authority brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.
- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6 Outstanding Payments

- 6.1 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in default of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.
- 6.2 The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in default of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.
- 6.3 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

7 Change of Control

The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its

prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

8 Payment And Expenses

- 8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

9 Settlement

Any settlement or discharge between the Authority and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or law relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

10 Warranties

- 10.1 The Guarantor warrants and confirms to the Authority that:
- 10.1.1 it is duly incorporated with limited liability and validly existing under the laws of England;
 - 10.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
 - 10.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - 10.1.4 it has been duly authorised to enter into this guarantee;
 - 10.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
 - 10.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

- 10.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
- 10.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.
- 10.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.
- 10.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11 Assignment

The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

12 Notices

- 12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this clause 12.
- 12.2 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.

13 Waiver

- 13.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 13.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

13.3 A waiver by the Authority shall not constitute a continuing waiver and shall not prevent the Authority from subsequently enforcing any of the provisions of this guarantee.

14 Severability

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

15 Contracts (Rights of Third Parties) Act 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11.

16 Governing Law

16.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) [and the Guarantor irrevocably appoints [INSERT NAME] as its agent for service of process.

17 Entire Agreement

17.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the transactions.

17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in clause 17.2 limits or excludes any liability for fraud.

THIS DEED has been entered into on the date stated at the beginning of it.

The Corporate Seal of Secretary of State for Work and Pensions hereunto affixed is authenticated by:

Secretary of State Seal

Name:

Signature:

Position in Organisation:

EXECUTED AS A DEED by
[please insert name of Contractor]

acting by:

.....
Director

.....
Director / Company Secretary*
[*Delete as appropriate]

or

EXECUTED AS A DEED by
[please insert name of Contractor]

acting by:

.....
Director

in the presence of :-

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

or

THE COMMON SEAL OF
[please insert name of Contractor]
was hereunto affixed in the presence of:

.....
Authorised Signatory

SCHEDULE 11 – CHANGE CONTROL PROCEDURE

1 General Principles of Change Control Procedure

- 1.1 This Schedule 11 sets out the procedure for dealing with Contract Changes and Operational Changes.
- 1.2 If either Party is in doubt about whether a change to the Contract falls within the definition of an Operational Change, it must be processed as a Contract Change.
- 1.3 For any Change Communication to be valid under this Schedule 11, it must be sent in accordance with the provisions of clause A5 (*Notices*) as if it were a notice.

2 Costs

- 2.1 The Contractor shall be entitled to increase the Contract Price only if the Impact Assessment satisfies the requirement in paragraph 5.2 of the Schedule 11, that the Contract Change is not exempt from a change in Contract Price as specified in clause F3 and it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and the Authority agrees to pay such increase.
- 2.2 The Contractor shall decrease the Contract Price if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3 Any change to the Contract Price resulting from a Contract Change, whether the change will cause an increase or a decrease in the Contract Price, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.4 Each Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Operational Change Procedure

- 3.1 Any Operational Changes identified by either Party to improve operational efficiency of the Services may be implemented by the Contractor without following the Change Control Procedure provided they do not:-
 - (a) involve the Authority in paying any additional Contract Price or other costs;
 - (b) have an impact on the business of the Authority;
 - (c) require a change to this Contract; or
 - (d) have a direct impact on use of the Services.

- 3.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Contract Period, and which may be sent by electronic mail or by letter.
- 3.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.
- 3.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 3.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

4 Contract Change Procedure

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Appendix 1 of this Schedule 11.
- 4.2 If the Authority issues a Change Request, then the Contractor shall provide as soon as reasonably practical, and in any event within ten (10) Working Days of the date of receiving the Change Request, an Impact Assessment to the Authority.
- 4.3 If the Contractor issues the Change Request, then it shall provide an Impact Assessment to the Authority at the same time as the Change Request.
- 4.4 If the Contractor requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Authority within three (3) Working Days of the date of receiving the Change Request.
- 4.5 Provided that sufficient information is received by the Authority to fully understand the nature of the request for clarification and the reasonable justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 Impact Assessment

- 5.1 An Impact Assessment shall be substantially in the form of Appendix 2 of this Schedule 11.
- 5.2 Each Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact the proposed Contract Change will have on the

Services and the Contractor's ability to meet its other obligations under this Contract;

- (b) any additional changes to the terms of this Contract that will be required as a result of that impact which may include changes to:-
 - (i) the Services;
 - (ii) the Implementation Plan and any other timetable previously agreed by the Parties; and
 - (iii) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority ICT System;
- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Services which comes into force after the Commencement Date;
- (e) any amendments to the Contract wording proposed in the Change Request Form;
- (f) such other information as the Authority may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

5.3 The calculation of costs for the purposes of paragraphs 5.2(g) and (h) of this Schedule 11 shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;
- (c) include evidence of the cost of any assets required for the Change; and
- (d) include details of any new Sub-contracts necessary to accomplish the Change.

5.4 If the Contract Change involves the processing or transfer of any Personal

Data and Special Categories of Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause E2 (Protection of Personal Data).

- 5.5 Subject to the provisions of paragraph 5.6 of this Schedule 11, the Authority shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 6 of this Schedule 11 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.6 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification.
- 5.7 At the Authority's discretion, the Parties may repeat the process described in paragraph 5.6 of this Schedule 11 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 6 of this Schedule 11.

6 Authority's Right of Approval

- 6.1 Subject to paragraphs 5.6 and 5.7 of this Schedule 11, within fifteen (15) Working Days, or timescale agreed between both Parties, of receiving the Impact Assessment from the Contractor, the Authority shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 6.5 of this Schedule 11; or
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the Services to comply with any changes in Law.
- 6.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.5 of this Schedule 11.
- 6.3 Unless the Authority expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.
- 6.4 Any discussions, negotiations or other communications which may take place

between the Authority and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

- 6.5 If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 of this Schedule 11 and it has not been rejected by the Contractor in accordance with paragraph 7 of this Schedule 11, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 of this Schedule 11 and send them to the Contractor. The Contractor shall sign/executed as a deed (as appropriate) both copies and deliver both signed/executed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign/seal (as appropriate) both copies and return one copy to the Contractor. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.

7 Contractor's Right Of Rejection

- 7.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law,

- 7.2 then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2 of this Schedule 11.

- 7.3 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 7.1 of this Schedule 11.

8 Failure to Comply

- 8.1 If the Contractor fails to complete an Impact Assessment, implement or successfully comply with the Contract Change by the required date, the Authority may:-

- (a) give the Contractor a further opportunity to implement or comply with the Contract Change; or
- (b) escalate any issues arising out of the failure to implement or comply with the Contract Change to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in clause I2 (Dispute Resolution).

- 8.2 If, despite the measures taken under paragraphs 8.1 (a) & 8.1(b) of this Schedule 11, the Contractor fails to implement or comply with the Contract Change, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause I2 (Dispute Resolution).

9 Management Information

- 9.1 The Parties shall update the Contract to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Request and annotate with a reference to the Change Authorisation Note or Operational Change Request pursuant to which the relevant Contract Changes or Operational Changes were agreed.

APPENDIX 1 - Change Request Form

(For Completion by the Party Requesting Change)

Change Request No:	Contract Title & Contract Number:	Contractor Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Full Description of Requested Contract Change (including proposed changes to wording of the Contract):		
Reasons for and Benefits of Requested Contract Change:		
Name of Owner Requesting Change:		
Signature of Owner Requesting Change:		
Date of Signature:		
(For Completion by Party Receiving Request for Change)		
Disadvantages of Requested Contract Change, if any:		
Details of any proposed alternative scenarios, if any;		
Authorisation to Complete Impact Assessment: (Name)		
Impact Assessment Assigned to: (Name)		
Impact Assessment Assigned on: (Date)		

APPENDIX 2 - Impact Assessment

(For Completion by DWP Contractor)

Change Request No:	Contract Title & Contract Number:	Contractor Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Full Details of the Impact the proposed Contract Change will have on the services and your ability to meet your other obligations under this Contract:		
Any additional changes to this Contract that will be required as a result of the change – including any: <ol style="list-style-type: none">1. Service2. Amendments to the Management Plan3. Amendments to contract wording4. Cost of implementing the change – ongoing/increase/decrease in costs5. Alteration in Resources – estimated volumes and applicable rates		
Impact Assessment Completed by: (Name & Position in Organisation)		
(For Completion by DWP) Impact Assessment Approved by: (Name & Date)		
Impact Assessment Rejected by: (Name & Date)		
Reason for Rejection:		

APPENDIX 3 - Change Authorisation Note

(For Completion by DWP)

Change Request No:	Contract Title & Contract No:	Contractor Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Detailed Description of Agreed Contract Change for which the Impact Assessment has been prepared. Provide details:		
Details of Agreed adjusted Contract Price resulting from the Contract Change for which the Impact Assessment has been prepared. Provide details:		
Amended/New Contract Wording – must include details of Cross Referencing to Original Contract Documents:		
In consideration of the rights and obligations created, granted and assumed by each Party to the other Party pursuant to this Change Authorisation Note, the Parties have agreed to enter into this Change Authorisation Note.		
The provisions of the Contract shall, save as amended in this Change Authorisation Note, continue in full force and effect, and shall be read and construed as one document with this Change Authorisation Note.		

Signed on Behalf of the Authority:	Signed on Behalf of the Contractor:
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

SCHEDULE 12 – PERSONAL DATA, SPECIAL CATEGORIES OF PERSONAL DATA AND DATA SUBJECTS

ANNEX A – DATA PROCESSING

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Schedule 12 Annex A.
3. This Schedule 12 Annex A shall be completed by the Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule 12 Annex A shall be with the Data Controller at its absolute discretion.
4. The contact details of the Data Processor’s Data Protection Officer are **[insert contact details]**.

Description	Details
Identify of: the Data Controller the Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Contractor is the Data Controller and the Data Processor in accordance with clause E2.2.
Subject matter of the processing	Questionnaire and interview data relating to the usability and relevance of the online toolkit, designed to support return to work following physical or mental ill health sick absence.
Duration of the processing	The Contract Period.
Nature and purposes of the processing	Data will be analysed for themes and trends. Each participant will be allocated a code and any identifying information along with the participant code will be stored on one password protected spreadsheet; the participant number and participant data on a second password protected spreadsheet.
Type of Personal Data and Special Categories of Personal Data	Personal Data will include email address, age, gender and opinions of the online toolkit.

Categories of Data Subject	Demographics, usability, work, wellbeing.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under European Union or European member state law to preserve that type of data	All Data will be held securely in a password protected file with participant numbers identifying data. At the written direction of the Authority, on the completion of the project, the data will be deleted or returned using a secure method.

ANNEX B – DATA CONTROLLER

PART 1

The Authority shall be the Data Controller of:

None of the Data

PART 2

The Contractor shall be the Data Controller of:

All of the Data

ANNEX C – NOT USED