

Umbrella Agreement for Employment and Health Related Services

New Enterprise Allowance

AGREEMENT DOCUMENT

For

The Provision of New Enterprise Allowance Mentoring Services

Between

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

And

PeoplePlus Group Ltd

AGREEMENT REFERENCE NUMBER: UI_DWP_101838-12a

Order Form

SECTION A

This Order Form is issued in accordance with the provisions of the umbrella agreement between (1) the Secretary of State for Work and Pensions and (2) PeoplePlus Group Ltd dated 12 January 2017 for the provision of employment related support services with contract reference number 2016/S 193-347401 (Umbrella Agreement). The Contractor agrees to supply the Services specified below on and subject to the terms of this Contract and for the avoidance of doubt this Contract consists of the terms set out in this Order Form and the Terms and Conditions attached to this Order Form.

FROM

Authority	Secretary of State for Work and Pensions (" Authority ") acting as part of the Crown
Service Address:	Caxton House, Tothill Street, London SW1H 9DA
Invoice Address:	SSCL Accounts Payable Team Room 6124 Tomlinson House Norcross Blackpool FY5 3TA
Contact Reference:	Name: Shared Services Helpline Ref: UI_DWP_101838-12a Phone: 0845 602 8244
Order Number:	UI_DWP_101838-12a To be quoted on all correspondence relating to this Order:
Commencement Date:	1 st May 2019

TO

Contractor:	PeoplePlus Group Ltd (" Contractor ")
Registered Number:	05722765
Service Address:	Edmund House, 12-22 Newhall Street, Birmingham B3 3EW
Contact Reference:	Name: REDACTED

	Ref: Governance Director e-mail: REDACTED
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herein after called the "**Parties**", each being a "**Party**".

SECTION B

1. FORMATION OF CONTRACT

- 1.1 BY SIGNING AND RETURNING THIS ORDER FORM the Contractor agrees to enter the Contract with the Authority to provide the Services.**
- 1.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Terms and Conditions (attached hereto) and by signing below agree to be bound by this Contract.**

For and on behalf of the Contractor:

Name and Title	REDACTED Governance Director
Signature	
Date	

For and on behalf of the Authority (acting as part of the Crown):

Name and Title	REDACTED Senior Commercial Manager
Signature	
Date	

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract capitalised expressions shall have the meanings as set out below. If a capitalised expression does not have an interpretation in this clause A1.1, it shall have the meaning given to it in the Umbrella Agreement. If no meaning is given to it in the Umbrella Agreement, it shall be interpreted in accordance with the meaning given in the edition of the Oxford English Dictionary current at the Call-Off Commencement Date:

"Accounting Year" means the 12 month period from 1 April to 31 March.

"Administration" means a rescue mechanism under the Insolvency Act 1986 where a company may be rescued or reorganised or its assets realised under the protection of a statutory moratorium. The company is put into Administration and an Administrator is appointed.

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure Event.

"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. For the avoidance of doubt "written" for this purpose may include email.

"Assignee" has the meaning set out in clause F1.7.

"Audit Agents" means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) the European Commission;
- (f) the European Court of Auditors;
- (g) any party formally appointed by the Authority and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and
- (h) successors or assigns of any of the above.

"Authority" means the Secretary of State for Work and Pensions.

"Authority's Category Management" means the strategic relationship management between the supplier (across all of the Authority's contracts)

"Authority Data" means:

- (a) the data, 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; and/or
- (b) any Personal Data for which the Authority is the Data Controller.

"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 System or which is necessary for the Authority to receive the Services.

"Authority Performance Manager" means the Authority's representative who will monitor and review the Contractor's supply of the Services in accordance the Minimum Performance Levels and the Minimum Services Levels.

"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.

"Authority's Representative" means the individual named at clause A11.1 or such other individual as the Authority may notify in writing to the Contractor from time to time and the Authority's Representative is authorised to act on behalf of the Authority on all matters relating to the Contract. For the avoidance of doubt "in writing" for this purpose may include email.

"BDGP Development Outcome" means the development of a BDGP in accordance with the Specification.

"BDGP Development Outcome Fee" means the Outcome Payment payable to a Contractor when a UC Claimant with Existing Businesses Participant has achieved the BDGP Development Outcome.

"Breach of Security" means the occurrence of unauthorised access to or use of the Premises, the Services, the Contractor System or any ICT or data (including the Authority's 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 H6.6, as may be amended from time to time.

"Business Development and Growth Plan" or "BDGP" means a plan setting out short, medium and long term goals to help the Participant's business grow and increase the Participant's earnings as set out in the Specification.

"Business Mentor and/or Business Advisor" means the paid business adviser to give specific guidance / support and/or deliver group sessions.

"Call Off Commencement Date" means the date from when this Contract becomes legally binding. The Contract will be deemed to take effect (is awarded or made) on the date of the second party's signature.

"Change Control Notice" means the notice referred to in clause F13 (Change Control).

"Change of Control" has the meaning set out in clause H1.2.

"Commencement of Trading Outcome" means where an Unemployed New Business Start Up has commenced trading, claimed the allowance element of NEA Phase 2 (where appropriate) and signed off benefits or a change of circumstances has been notified where the claimant is on Universal Credit.

"Commencement of Trading Outcome Payment" means the Outcome Payment payable to a Contractor when an Unemployed New Business Start Up has achieved the Commencement of Trading Outcome.

"Commercially Sensitive Information" means the Information:

- (a) listed in the Commercially Sensitive Information Schedule;
- (b) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information which is provided by the Contractor to the Authority in confidence; or
- (c) which constitutes a trade secret; or
- (d) which is Commercially Sensitive Information under the Umbrella Agreement.

"Commercially Sensitive Information Schedule" means Schedule 5

"Completion of 26 weeks Trading Outcome" means when an Unemployed New Business Start Up has been trading and off benefit or if claiming UC, reported a change of circumstances, for 26 weeks.

"Completion of 26 weeks Trading Outcome Payment" means the Outcome Payment payable to a Contractor when an Unemployed New Business Start Up has achieved the Completion of 26 weeks Trading Outcome.

"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

- (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" (referred to as **Call Off Contract** in the Umbrella Agreement) means the written agreement between the Authority and the Contractor (entered into pursuant to the Umbrella Agreement) consisting of the Order Form and these clauses and any attached Schedules, and any document referred to in Schedule 1 (The Services), including the Specification, the Tender and the Provider Guidance.

"Contracting Body" means the Department for Work and Pensions and any contracting body described in the OJEU Notice.

"Contract Period" means the period from the Call Off Commencement Date to:

- (a) the date of expiry of the Payment Tail 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, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4.

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

"Contractor Performance Manager" means the Contractor's representative who will monitor and review the Contractor's performance of the Services.

"Contractor's Group" means the Contractor, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of holding company and subsidiary being those set out in Section 1159 of the Companies Act 2006.

"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.

"Contractor's Representative" means the individual named at clause A11.3 or such other individual as the Contractor may notify in writing to the Authority from time to time and the Contractor's Representative is authorised to act on behalf of the Contractor on all matters relating to the Contract. For the avoidance of doubt "in writing" for this purpose may include email.

"Contractor System" means all documentation and files (regardless of whether in paper or electronic form), Equipment and (if applicable) the IT system of the Contractor used in the provision of the Services (including any Contractor Software and Third Party Software) (but excluding the Authority ICT System).

Controller, Data Protection Officer, Data Subject, Personal Data, Personal Data Breach, Process, Processing, Processor, Special Category Personal Data: take the meaning given in the GDPR;

"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.

"Customer Service Standards" means the set of service levels to which the Services must be provided as set out in Appendix A to Schedule 3 and any other service levels as notified by the Authority to the Contractor from time to time.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

"Data Protection Change" means any change in any Data Protection Legislation affecting this Contract.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;

"Data Subject" shall have the same meaning as set out in the DPA.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default" means any breach (including any anticipatory breach) of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term), any failure to supply the Services in accordance with the Contract (including any Service Failure) or any other default, act, omission, negligence or statement of the relevant Party or the Staff 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.

"Delivery Fee" means the fee payable by the Authority as set out in the Specification, such Delivery Fee to be paid in 28 monthly payments in accordance with the requirements of Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates).

"Dispute Resolution Procedure" means the procedures for resolving Disputes set out in Schedule 12.

"Disputes" means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control procedure or any matter where this Contract directs the Parties to resolve an issue by reference to clause 12.

"Document Retention End Date" means the date of the period ending 6 years after the date upon which the Contract terminates in accordance with clause **Error! Reference source not found.**

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to the National Insurance Contributions by the National Insurance Contribution (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

DPA: Data Protection Act 2018;

"Due Diligence Information" means any information supplied to the Contractor by or on behalf of the Authority prior to the Call Off Commencement Date.

"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.

"Earnings Increase Outcome" means an increase in the average earnings of a UC Claimants with Existing Businesses Participant to at least the UC Claimants with Existing Businesses Participant's Minimum Income Floor within 26 weeks of sign off of the UC Claimants with Existing Businesses Participant's Business Development and Growth Plan.

"Earnings Increase Outcome Fee" means the Outcome Payment payable to the Contractor when a UC Claimants with Existing Businesses Participant achieves an Earnings Increase Outcome.

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;

- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise; or
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

"Employee Liability Information" has the meaning given in Regulation 11 of the TUPE Regulations.

"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.

"Error Rate" means as described in clause C3.8(b).

"ESF Co-financing Organisation" means designated bodies including the Authority which channel both ESF and match funding to meet ESF priorities.

"ESF Requirements" means the requirements set out or referred to in Schedule 13 for contracts which are funded (in part or in full) using ESF monies and/or for contracts which are used as a match (in part or in full) for contracts funded (or part funded) using ESF monies including but not limited to:

- (a) the common principles, rules and standards for the European Social Fund as defined by Regulation (EU) No 1303/2013 of 17 December 2013; and
- (b) the European Commission's requirements; and
- (c) the Managing Authority's requirements; and
- (d) the Authority's requirements.

"Estimate" means the estimate that the Contractor is required to provide the Authority with in accordance with clause F13.5.

"European Social Fund" / "ESF" means one of the five European Structural and Investment Funds for which common principles, rules and standards are defined by Regulation (EU) No 1303/2013 of 17 December 2013.

"Exceptional Audit" has the meaning as set out in clause E10.1.

"Exceptional Circumstance" means any of the following:

- (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 and/or the Guarantor 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.

"Expiry" means the expiry of this Contract, however arising.

"Fees" means any payments made by the Authority to the Contractor and shall include, but are not limited to, Delivery Fees, Commencement of Trading Outcome Payments, Completion of 26 Weeks Trading Outcome Payments, UC Programme Start Outcome Fees, BDGP Development Fees and Earnings Increase Fees.

"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.

"Force Majeure Event" means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's or a Sub-contractor's supply chain.

"Force Majeure Notice" means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

"Formal Warning Notice" means the written notice the Authority can serve on the Contractor if 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) as set out in clause H2.5.

"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.

"GDPR": General Data Protection Regulation (*Regulation (EU) 2016/679*);

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence, efficiency, foresight and timeliness 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.

"Government's Apprenticeship Programme" means training which is funded by the Government via the National Apprenticeship Service.

"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 11 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

"Guarantor" means the body who has agreed to guarantee the due performance of the Contract by the Contractor and has entered into the Guarantee in the form set out in Schedule 11 (Parent Company Guarantee).

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"HMRC" means Her Majesty's Revenue and Customs.

"ICT" means information and communications technology.

"ICT Environment" means the Authority ICT System and the Contractor System.

"Implementation Commencement Date" means the date specified at paragraph 2 of Schedule 1

"Implementation Plan" means the plan (which is set out at Schedule 1A (Implementation Plan)) prepared by the Contractor and agreed with the Authority detailing the arrangements and activities which the Contractor must implement and carry out in advance of commencement of supply of the Services, or such amended version as agreed with the Authority.

"Independent Case Examiner" or "ICE" means the independent case examiner who reviews complaints from Participants about certain government organisations, including Jobcentre Plus, that deal with benefits and financial support, details of which are set out at: <https://www.gov.uk/government/organisations/independent-case-examiner>

"Ineligible Amount" means any claim for payment by the Contractor that is paid by the Authority which is determined by the Authority not to be eligible for payment.

"Information" has the meaning given under section 84 of the FOIA.

"Initial Assessment" means the assessment of the Participants that have completed a Link Up: Start Up Workshop and been referred for an assessment by Jobcentre Plus.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, methodologies, domain names, trade or business names, moral rights, goodwill and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"ITT" means the invitation to tender issued by the Authority in respect of the procurement for the Contract which for the avoidance of doubt shall include all the procurement documents as defined in the Public Contracts Regulations 2015.

"ISAE 3402" means the International Standard on Assurance Engagements No. 3402, Assurance Reports on Controls at a Service Organisation, issued in December 2009 by the

International Auditing and Assurance Standards Board, part of the International Federation of Accountants.

"**Key Personnel**" means those persons named Schedule 15 (Key Personnel).

"**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 Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

LED: Law Enforcement Directive (*Directive (EU) 2016/680*);

"**Link Up: Start Up Workshop**" means pre self-employment seminars lasting a minimum of 3 hours where Providers will give an overview of what being self-employed means and the level of commitment required to set up a business.

"**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 losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such losses are 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 Information**" or "**MI**" means:

- (a) the information provided by the Contractor to the Authority pursuant to the requirements set out in Schedule 3(Monitoring and Information Requirements);
- (b) any information arising out of or in connection with the supply of the Services; and
- (c) any other information which the Authority may require or which may come into the Authority's possession or otherwise comes to the Authority's attention in connection with the Contract and/or which the Authority considers may be beneficial to and/or assist the Authority.

"**Managing Authority**" means the Department for Work and Pensions ("DWP") Managing Authority (within DWP European Social Fund Division ("ESFD") operating on behalf of the Secretary of State which is the managing authority responsible for administering European Social Fund funds.

"**Mentor**" means the person engaged by the Contractor providing the Participant with support and guidance while they develop their business plan and to provide on-going support for the initial 52 weeks of trading.

"Merlin Accreditation" means accreditation in relation to the Merlin Standard in accordance with the requirements specified by the requirements specified by any organisation(s) from time to time appointed by the Authority to administer the Merlin Standard assessment and accreditation service. For the avoidance of doubt, such requirements include any terms and conditions agreed between such appointed organisation(s) and the Contractor.

"Merlin Standard" means the standard and accreditation process in respect of supply chain management as detailed in the Specification.

"Mini-Competition" has the meaning given to it in the Umbrella Agreement.

"Minimum Performance Levels" means the set of performance levels to which the Services must be provided as set out in Appendix A to Schedule 3 and any other performance levels as notified by the Authority to the Contractor from time to time.

"NEA Phase 2" means the Authority's scheme that aims to help eligible customers who want to move off benefits into self-employment and support UC customers who are already self-employed to develop and grow their business.

"NEA Phase 2 Eligibility Criteria" means the criteria set out in the Specification contained in Schedule 1.

"New Enterprise Allowance" or **"NEA"** means the Authority's scheme that aims to help eligible claimants who want to move off benefit into self employment.

"New Fair Deal" means the guidance set out in HM Treasury's Guidance *"Fair Deal for staff pensions: staff transfer from Central government"* issued in October 2013.

"Occasion of Tax Non-Compliance" means any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

- (a) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or
- (b) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or and equivalent or similar regime; or
- (c) the Contractor's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion.

"Off Benefit" shall have the meaning ascribed in the Provider Guidance.

"OJEU Notice" means the contract notice published in the Official Journal of the European Union.

"Open Book Data" means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Contract Price (including but not limited to any Outcome Payment(s)) already paid or payable and the Contract Price (including but not limited to any Outcome Payment(s)) forecast to be paid during the remainder of the Contract Period, including details and all assumptions relating to:

- (a) the Contractor's costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; and
- (b) operating expenditure relating to the supply of the Services including an analysis showing:
 - (i) the unit costs and quantity consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin;
 - (iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the supply of the Services);
 - (v) overheads;
 - (vi) all interest, expenses and any other third party financing costs incurred in relation to the supply of the Services;
 - (vii) the Contractor's profit margin achieved over the Contract Period and on an annual basis;
 - (viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor; and
 - (ix) an explanation of the type and value of risk and contingencies associated with the supply of the Services, including the amount of money attributed to each risk and/or contingency.

"Order" means the order for the Services in accordance with the provisions of the Umbrella Agreement.

"Order Form" means the order form set out on the front of these Terms and Conditions setting out the details of the Order.

"Outcome" means:

- (a) for Unemployed New Business Start Up Participants (1) the Commencement of Trading Outcome and (2) the Completion of 26 Weeks Trading Outcome; and
- (b) for UC Claimants with Existing Businesses Participants (3) a UC Programme Start Outcome (4) a BDGP Development Outcome and (5) an Earnings Increase Outcome;

each achievement as defined in the Specification contained in Schedule 1.

"Outcome Error Rate" means in respect of each Payment Validation Period, the percentage of failures, errors and/or over-claims which the Authority shall be entitled to assume have been made in respect of all of the Outcome Payments which have been paid by the Authority

to the Contractor (in respect of this Contract) in that Payment Validation Period and which shall be calculated as follows:

$(A/B) \times 100$ where:

A = Total Outcome Fails for that Payment Validation Period (as determined by the Authority); and)

B = the number of Outcome Payments comprised in the Outcome Sample,

expressed as a percentage.

"Outcome Fail" means an Outcome in respect of which the Authority in its absolute discretion determines that not all of the relevant qualifying criteria and requirements (in respect of that Outcome) have been satisfied.

"Outcome Payment" means the fee payable by the Authority to the Contractor on achievement of an Outcome and which shall be payable in accordance with the requirements of Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates).

"Outcome Technical Fail" means an Outcome in respect of which, arising in a difference in information that the Participant's employer or the Participant supplies to the Authority and information and details recorded on the Authority ICT System by the Contractor, the Authority determines (in its absolute discretion) that the relevant qualifying criteria and requirements (in respect of that Outcome) have not been satisfied.

"Outcome Validation Sample" means either a single sample of claims by the Contractor made in accordance with clause C2 or clause C3 drawn from across a Payment Validation Period or a composite of samples from periods (e.g. weekly, monthly) within and which taken together cover the Payment Validation Period.

"Participant" means the eligible individual who is referred by Jobcentre Plus to receive mentoring, assistance and other support being provided by the Contractor as more specifically set out in the Specification.

"Party" means a party to this Contract.

"PAT" means the Authority Provider Assurance Team.

"Payment Tail Period" means the period of fifty three (53) weeks after the Referral End Date.

"Payment Validation Period" means such period as the Authority notifies the Contractor of from time to time.

"Performance Action Plan" means the action plan to influence performance improvement which is produced and owned by the Contractor.

"Performance Improvement End Date" means the period provided for as set out in the Performance Improvement Plan;

"Performance Improvement Notice" means a written notice given by the Authority to the Contractor pursuant to clause B15 to initiate the Performance Improvement Process.

"Performance Improvement Period" means the period provided for as set out in the Performance Improvement Plan;

"Performance Improvement Plan" means the plan agreed in accordance with clause B15 for the resolution of a Contractor's Default.

"Performance Improvement Process" means the process set out in clause B15.

"Performance Managers" means the Contractor Performance Manager and the Authority Performance Manager.

"Performance Parameters" means the parameters that underpin the payment profile which shall include but not be limited to (a) customer volumes, (b) performance levels, (c) job outcome qualification criteria, and (d) fees (unit prices).

"Persistent Breach" means a Default which has occurred on three (3) or more separate occasions with a continuous period of six (6) months.

"Personal Data" shall have the same meaning as set out in the DPA.

"Pre start-up Period" means the period when the Participant has attended the Initial Assessment meeting and has been accepted onto the NEA Phase 2 Mentoring scheme.

"Premises" means the location where the Services are to be supplied or as otherwise agreed in writing by the Authority from time to time.

"Previous Contractor" means a third party who provided (in whole or in part) services similar to the Services prior to the Transfer Date.

"Prices & Rates Schedule" means Schedule 4.

Processor Personnel: all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

"Processing" shall have the same meaning as set out in the DPA and **"Process"** and **"Processed"** shall be construed accordingly.

"Project Specific Intellectual Property Rights" means:

- (a) Intellectual Property Rights in items created by the Contractor specifically for the purposes of this Contract and updates and amendments of these items; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Contractor's obligations under this Contract,

but shall not include the Contractor's pre-existing Intellectual Property Rights.

"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: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 6 (Security Requirements and Plan);

"Provider Guidance" means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Contractor prior to the Call Off Commencement Date, and any other instructions and recommended practices notified by the Authority to the Contractor from time to time.

"Providers" means the providers of NEA Phase 2 Mentoring. This includes all sub contractors involved in service delivery under the Contractor's delivery model.

"Provider Referrals and Payments System" or **"PRaP"** means the Authority prescribed ICT system which will be used to refer Participants and pay providers, and for the avoidance of doubt, where PRaP is not available, a clerical system will be adopted by the Authority in its place.

"Provision" means those aspects of the Services which are delivered directly to the Participants as set out in the Specification.

"Provision Cessation Date" means:

- (a) for Unemployed New Business Start Up Participants the Unemployed New Business Allotted Time after the Referral End Date; and
- (b) for UC Claimants with Existing Businesses Participants the UC Claimants with Existing Businesses Allotted Time after the Referral End Date.

"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.

"Referral" means eligible Participants identified by the Authority whose details are entered into PraP by the Authority to be referred to the Contractor as described in the Specification.

"Referral End Date" means 28 March 2021.

"Referral Start Date" means the date set out in the Implementation Plan which shall be a date no later than the Referral Start Longstop Date.

"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.

"Relevant Employees" means the employees of the Contractor (including the Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are/will be the subject of a Relevant Transfer by virtue of the application of the TUPE Regulations.

"Relevant Tax Authority" means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies.

"Replacement Contractor" means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

"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).

"Required Action" means, in relation to a Step In event, the action the Authority wishes to take and in particular the Services that it wishes to control as set out in clause F1.1(a).

"S&BCT" means the Security and Business Continuity Team.

"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 (Security Requirements and Plan).

"Security Policy" means the Authority's Security Policy annexed to Schedule 6 (Security Requirements and Plan) as updated from time to time.

"Security Tests" means conduct tests of the processes and countermeasures contained in the Security Plan.

"Serious Breach" means:

- (a) a material breach; or
- (b) a Default that is serious in the widest sense of having a serious effect on the benefit which the party against whom the Default is committed would otherwise derive from:
 - (i) the Contract; or
 - (ii) any of the obligations set out in clauses B, D, E, F, H and/or the Schedules,

and in deciding whether any breach is a Serious Breach no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

"Services" means the services to be supplied as specified in the Specification and referred to as Call Off Services in the Umbrella Agreement.

"Service Failure" means a failure by the Contractor to deliver any part of the Services in accordance with: (a) any of the Minimum Performance Levels; and/or (b) any of the Customer Service Standards.

"Service Levels" means the service levels to which the Services are to be provided, as set out in the Specification and in Schedule 3, Monitoring Requirements.

"Service Transfer" means any transfer of the Services (or any part thereof), for whatever reason, from the Contractor or any Sub-contractor to the Authority or any third party (whether during or on Expiry, or after the Contract Period).

"Specification" (referred to as **Call Off Specification** in the Umbrella Agreement) means the description of the Services to be supplied under the Contract as referred to in Schedule 1 (The Services), including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

"Staff" mean all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-contractors used 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.

"Start Date" shall have the meaning described in the Provider Guidance.

"Step-In Notice" means the notice served by the Authority on the Contractor when a Step-In Trigger Event occurs.

"Step-In Trigger Event" means:

- (a) any event which gives the Authority the right to terminate the Contract in accordance with clause H;
- (b) a Default by the Contractor that is materially preventing or materially delaying the supply of the Services or any material part of the Services;
- (c) a Force Majeure Event that is materially preventing or materially delaying the supply of the Services or any material part of the Services;
- (d) the Authority considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under the Contract;
- (e) the Authority being advised by a regulatory body that the exercise by the Authority or its rights under clause F5 is necessary;
- (f) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (g) a need by the Authority to take action to discharge a statutory duty.

"Step-Out Date" means the date on which the Authority plans to end the Required Action.

"Step-Out Notice" means the written notice the Authority shall deliver to the Contractor before ceasing to exercise its step in rights.

"Structural Funds Regulations" means the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements (including National Eligibility Rules) issued by the Managing Authority. The following Regulations are particularly relevant: Regulation (EU) No 1303/2013; Regulation (EU) No 1304/2013; Commission Delegated Regulation (EU) No 480/2014; Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or

replacements; and European Community State Aid Rules applicable at the date that the Aid is granted to the recipients of the Aid. The Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

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

Sub-processor: any third Party appointed to Process Personal Data on behalf of that Processor related to this Contract

"Subject Access Request" means a request made by a Data Subject to access his Personal Data pursuant to section 7 of the DPA.

"Tender" means the document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers to participate in a Mini-Competition for this Contract and which, for the avoidance of doubt, includes any post-tender clarifications made by the Contractor to the Authority prior to the Call Off Commencement Date.

"Termination" means the termination of this Contract or a part thereof for whatever reason has been given.

"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.

"Transfer Date" means the one or more dates on which a Relevant Transfer takes place as a consequence of commencement of the Services (or any part of them).

"Transferring Employees" means those employees of the Authority and any Previous Contractor whose contracts of employment transfer to the Contractor or a Sub-contractor pursuant to the TUPE Regulations as a consequence of the commencement of the Services (or any part of them).

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

"Type 2 Report" has the meaning given in ISAE 3402.

"UC Claimants with Existing Businesses" means Participants referred to the Contractor by Jobcentre Plus that at the time of referral meet the UC Claimants with Existing Businesses Eligibility Criteria.

"UC Claimants with Existing Businesses Allotted Time" means the maximum period of time of sixty six (66) weeks in which all Outcomes for a UC Claimants with Existing Businesses Participant must be achieved.

"UC Claimants with Existing Businesses Eligibility Criteria" means the criteria set out in the Specification contained in Schedule 1.

"UC Programme Start Outcome" means when a UC Claimants with Existing Businesses Participant has been accepted onto the NEA Phase 2 scheme

"UC Programme Start Outcome Fee" means the Outcome Payment payable to the Contractor when a UC Claimants with Existing Businesses Participant has achieved a UC Programme Start Outcome.

"Umbrella Agreement" means the umbrella agreement dated 12 January 2017 for the provision of employment and health related support services with contract reference number 2016/S 193-347401 Lot 4 between the Authority and the Contractor pursuant to which this Contract has been entered into.

"Unable To Validate Outcome Payment" means an Outcome Payment in respect of which:

- (a) notwithstanding that the Contractor has provided supporting information to the Authority, the Authority has not been able to contact the Participant's employer or the Participant; and/or
- (b) the Participant's employer or the Participant is unable and/or unwilling to provide the information requested by the Authority so as to enable the Authority to validate the Outcome and therefore the Authority has been unable to verify that all of the relevant qualifying criteria and requirements in respect of that Outcome have been satisfied.

"Unemployed New Business Allotted Time" means the maximum period of time of one hundred and eighteen (118) weeks in which all Outcomes for an Unemployed New Business Start Up Participant must be achieved.

"Unemployed New Business Start Up" means Participants referred to the Contractor by Jobcentre Plus that at the time of referral meet the NEA Phase 2 Eligibility Criteria.

"Universal Credit" or **"UC"** means the Government initiative of that name which is more particularly described in the Specification.

"Variation" has the meaning given to it in clause F3.1 (Variation).

"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 In this Contract, unless the context otherwise requires:

- (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"; and
- (f) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Contract Period

A2.1 This Contract shall commence on the Call Off Commencement Date and shall expire automatically on **02 July 2023** unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, subject to and in accordance with the milestones set out in clauses A2.3 and A2.4.

A2.2 Without prejudice to the terms of this Contract:

- (a) the Authority can make Referrals to the Contractor until and including 28 March 2021;
- (b) Notwithstanding clause A2.2(a) the Contractor shall continue to supply the Services in accordance with the Contract up to and including 02 July 2023; and
- (c) the Contractor shall not submit any claim whatsoever and howsoever arising in respect of any Outcome Payment after 07 May 2023 and the Authority shall not have any liability to the Contractor under the Contract or otherwise in respect of any such claim submitted after **07 May 2023**.

A2.3 The Authority may, at any time prior to and including 28 March 2021 serve written notice to the Contractor that it will cease making any Referrals to the Contractor from any date that it shall specify in such notice (The "Early Cessation Date") PROVIDED THAT such Early Cessation Date is no less than 60 Working Days after the date of such notice.

A2.4 If the Authority exercises its right to cease making Referrals from an Early Cessation Date pursuant to clause A2.3 above:

- (a) The Delivery Fee for the month in which the Early Cessation Date occurs shall be reduced pro rata. For the avoidance of doubt the Contractor acknowledges and agrees that following payment of this pro rata Delivery Fee no further Delivery Fee shall be payable to the Contractor.
- (b) For the avoidance of doubt, the Contractor acknowledges and agrees that it shall make no claim and shall have no right to receive any payment in respect of the exercise by the Authority of its right to cease making Referrals from the Early Cessation Date including, without limitation, in respect of any alleged lost opportunity to earn Outcome Payments from Referrals that may have been made to the Contractor had the Authority not exercised its right to cease making Referrals under clause 2.3."

A3 Contractor's Status

A3.1 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 of this Contract.

A4 Authority's Obligations

A4.1 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 (confirmed in either case by letter) or by letter (sent by hand, post, registered post or by the recorded delivery service). 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: Commercial Directorate
Employment Category
Ground Floor, Hartshead House
Hartshead Square
Sheffield
S1 2FD

For the attention of: REDACTED

Tel: REDACTED

Email: REDACTED

For the Contractor:

Address: 6th Floor
Edmund House,
12-22 Newhall Street,
Birmingham
B3 3EWF

Tel:

Email: REDACTED

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

A6 Mistakes in Information

- A6.1 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 by the Authority by 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 are 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 during the continuance of this Contract and for a period of two (2) years after its Expiry or 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. The Contractor and its Sub-contractors are required to:
- (a) have an established system that enables Contractor and Sub-contractor 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 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; and
 - (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 directors, employees or Sub-contractors. 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, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Authority) 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; or
- (b) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any Default of this clause.

A8.4 Any act of Fraud committed by the Contractor or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Body) shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Contractor, by serving written notice on the Contractor and shall be considered a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

A8.5 If the Authority finds that the Contractor has deliberately or recklessly submitted false claims for the Contract Price with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Contractor, with immediate effect and shall be considered a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

A8.6 The Contractor shall co-operate fully with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding Fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.

A9 ESF Funding

A9.1 The Contractor acknowledges that the Authority may at its absolute discretion, whether from the Call Off Commencement Date or from any later date during the term of this Contract, either fund the delivery of all or part of this Contract using ESF monies or use this Contract as match (in part or in full) for contracts funded (or part funded) using ESF monies.

A9.2 Where the Authority uses ESF monies to fund the delivery of all or part of this Contract or uses this Contract as match (in part or in full) for contracts funded (or part funded) using ESF monies, the Contractor and any Sub-contractors appointed by it shall be bound by the ESF Requirements and the provisions of Schedule 13 (ESF Requirements) shall apply.

A10 Volumes

The Contractor acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Authority in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Authority.

A11 Representatives of the Parties

A11.1 The following person is the Authority's Representative:

Name **REDACTED**

Title: **Authority's Representatives**

A11.2 The Authority's Representative may approve deputy Authority's Representatives to exercise the Authority's Representative's powers on his/her behalf. The Authority's Representative may notify the Contractor of any such deputy in accordance with clause A5.

A11.3 The following person is the Contractor's Representative:

Name **REDACTED**

Title: **Contractors Representative**

A11.4 The Contractor's Representative may approve deputy Contractor's Representatives to exercise the Contractor's Representative's powers on his/her behalf. The Contractor's Representative may notify the Authority of any such deputy in accordance with clause A5.

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 the Contract (including for the avoidance of doubt, in accordance with the Specification, the ESF Requirements and the Provider Guidance) in consideration of the payment of the Contract Price.

B1.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information.

B1.3 The Contractor shall not be excused from the performance of any of its obligations under this Contract as a result of any misinterpretation of the Authority's requirements and/or any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

B1.4 The Contractor shall implement the Implementation Plan to the satisfaction of the Authority and satisfy the requirement of clause C9.6 with effect from the Implementation Commencement Date in accordance with the terms of the Implementation Plan and in accordance with the timescales set out in the Implementation Plan and failure to do so shall be considered a Serious Breach.

B1.5 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 including the dates specified in the Specification and the Implementation Plan. The Authority may also

inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.6 An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that all Sub-contractors and Staff also do, or refrain from doing, such act or thing.

B1.7 The Contractor shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

- (a) the existence of an unresolved Dispute; and/or
- (b) any failure by the Authority to pay any of the Contract Price,

unless the Contractor is entitled to terminate this Contract under clause H2.8 for failure to pay undisputed sums of money when due under this Contract.

B2 No Exclusivity

The Contractor acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Authority for Services from the Contractor and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

B3 Provision and Removal of Equipment

B3.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B3.2 The Contractor shall not deliver any Equipment nor provide any work on the Authority's Premises without obtaining Approval.

B3.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B3.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B3.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is hazardous, noxious or not in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B3.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B3.7 The Authority may at its option purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the Expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the higher of the fair market value and the net book value.

B4 Manner of Carrying Out the Services

B4.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. 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 all applicable Law and Good Industry Practice and deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

B4.2 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.

B4.3 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.

B4.4 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.

B4.5 To the extent required by the Authority, the Contractor shall comply with the provisions of:

- (a) Schedule 9 (Welsh Language Scheme) in providing the Services in the Welsh language; and
- (b) Schedule 14 (Life Chances).

B5 Participant Complaints

B5.1 The Contractor shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Contractor (and/or any of its Sub-contractors) including any of the Services.

B5.2 If the dispute between any Participant and the Contractor (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.

B5.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Contractor shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Contractor for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Contractor or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Contractor or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Contractor (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.

- B5.4 Without prejudice to clauses B5.1 to B5.3, the Authority shall 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 materials or procedures the Contractor uses; or
 - (e) any other matter connected with the performance of the Contractor's obligations under the Contract.
- B5.5 Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold any complaint and take further action in accordance with clause E13 or clause G4.2 of this Contract.

B6 The Merlin Standard

- B6.1 The Contractor shall, with effect from the Call Off Commencement Date and throughout the Contract Period, comply with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains.
- B6.2 Where the Authority has approved the appointment of a Sub-contractor, the Contractor shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) any other guidance and/or codes of practice issued by the Authority and shall achieve Merlin Accreditation no later than twelve (12) Months after the Call Off Commencement Date and shall maintain such Merlin Accreditation throughout the Contract Period.
- B6.3 For the avoidance of doubt and without prejudice to the rest of this clause B6, the Contractor shall comply with all necessary requirements to maintain Merlin Accreditation which may include, without limitation, notifying the relevant Merlin Standard authorisation body if it changes its name or undergoes a Change of Control.
- B6.4 The Contractor acknowledges that all decisions relating to Merlin Accreditation are made by the relevant Merlin Standard authorisation body.
- B6.5 The Contractor consents to the publication by and on behalf of the Authority of all its scores relating to the Merlin Standard.
- B6.6 Any breach by the Contractor of this clause B6 shall be a deemed Serious Breach for the purpose of this Contract.

B7 Key Personnel

- B7.1 The Contractor acknowledges that the Key Personnel are essential to the proper supply of the Services.
- B7.2 The Contractor shall give notice to the Authority of any proposed changes to the Key Personnel in accordance with the provisions of clause A5.
- B7.3 The Contractor shall not remove or replace any Key Personnel unless:

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Contractor obtains Approval.

B7.4 The Contractor shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice; and
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services.

B7.5 Any replacements to the Key Personnel shall be subject to 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.

B7.6 The Authority shall not unreasonably withhold its Approval under clauses B7.3 or B7.5. Such Approval 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.

B8 Contractor's Staff

B8.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

B8.2 At the Authority's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- B8.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B8.2 shall be final and conclusive.
- B8.4 The Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.
- B8.5 The Contractor shall comply with all applicable Law relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B8.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B8.7 The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B8.8 The Contractor shall further use all reasonable endeavours to ensure that Staff who are not EC nationals are legally entitled to be resident 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.
- B8.9 If the Contractor, in the reasonable opinion of the Authority, fails to comply with clauses B8.4, B8.5, B8.6, B8.7 and B8.8 the Authority shall be entitled to consider that failure a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.
- B8.10 The Parties agree that the Contractor shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Contractor or any Contractor's Staff.

B9 Inspection of Premises

- B9.1 The Authority shall be entitled to inspect the Contractor's Premises prior to the Referral Start Date and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract.
- B9.2 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Authority's Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract.

B10 Licence to Occupy Premises

- B10.1 To the extent that any land or Premises is made available from time to time to the Contractor by the Authority in connection with this Contract this shall, subject to the provisions of any

additional agreement entered into by the Parties as may be required by the Authority, be made available to the Contractor on a non-exclusive licence basis, free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- B10.2 Subject to clause B10.1, the Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B10.3 Subject to clause B10.1, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B10.4 Subject to clause B10.1, the Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- B10.5 Subject to clause B10.1, should the Contractor request modifications to the Authority's Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Authority at the Contractor's expense. Ownership of such modifications shall rest with the Authority.

B11 Property

- B11.1 Where the Authority provides Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B11.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise in writing within five (5) Working Days of receipt.
- B11.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B11.4 The Contractor shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.

B11.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority in writing within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B12 Offers of Employment

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.

B13 Staff Transfer

The Parties agree that:

B13.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, and involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 16 (Staff Transfer) shall apply;

B13.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part B of Schedule 16 (Staff Transfer) shall not apply; and

B13.3 Part D of Schedule 16 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services

B14 Minimum Performance Levels and Customer Service Standards

B14.1 The Contractor shall ensure that the Services meet or exceed the Minimum Performance Levels and the Customer Service Standards at all times from the Call Off Commencement Date as outlined in Appendix A to Schedule 3.

B14.2 The Authority shall monitor the Contractor's performance in respect of each of the Minimum Performance Levels and the Customer Service Standards in accordance with the provisions of this clause B14 and any other requirements notified by the Authority to the Contractor from time to time.

B14.3 If there is a Service Failure, the Contractor shall:-

- (a) take all reasonable steps to notify the Authority immediately of the Service Failure (and in any event as soon as the Contractor becomes aware that the Service Failure has occurred);
- (b) provide the Authority with a Performance Improvement Plan in accordance with clause B15.5;
- (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
- (d) carry out the actions identified in Performance Improvement Plan in accordance with its terms.

B14.4 The Authority shall review the Minimum Performance Levels throughout the Contract Period. The Authority may, at its sole discretion, elect to make changes to the Minimum Performance Levels from time to time. If the Authority elects to make changes to the Minimum Performance

Levels, the Authority shall propose such variation by serving a Change Control Notice on the Contractor, and the Contractor shall promptly comply with the Change Control procedure as detailed at clause F13 (Change Control).

B15 Performance Improvement Process

B15.1 Where the Authority believes that a Service Failure has occurred, the Authority may at any time (in its absolute discretion) elect to give a Performance Improvement Notice to the Contractor in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this clause B15.

B15.2 A Performance Improvement Notice given in accordance with this clause B15 shall indicate:

- (a) that it is a Performance Improvement Notice;
- (b) the Service Failure;
- (c) the actions the Authority in its absolute discretion requires the Contractor to take to satisfy the Authority that the Contractor can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure where it is capable of remedy; and
- (d) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice.

B15.3 For the avoidance of doubt, the Authority may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Authority's right to do so.

B15.4 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the Contract pursuant to any other termination rights under the Contract.

B15.5 Within such timescales as notified by the Authority to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall either:

- (a) submit a draft Performance Improvement Plan; or
- (b) inform the Authority that it does not intend to submit a Performance Improvement Plan, in which event the Authority shall be entitled to consider this a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

B15.6 The Authority shall either approve the draft 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 clause B15.5(a), or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Authority within a period of ten (10) Working Days (or such other period as notified by the Authority to

the Contractor) of its receipt of the Authority's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.

B15.7 Once agreed the Contractor shall immediately start work on the actions set out in the Performance Improvement Plan.

B15.8 If, despite the measures taken under clause B15.6 a revised Performance Improvement Plan cannot be agreed within the 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 comments in respect of the Contractor's draft Performance Improvement Plan then the Authority may elect to end the Performance Improvement Process and refer the matter for resolution by the dispute resolution procedure set out in schedule 12 or shall be considered a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

B15.9 If a Performance Improvement Plan is agreed between the Parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Contractor fails to rectify the Service Failure and/or undertake all the actions specified by the Authority in the Performance Improvement Notice by the Performance Improvement End Date, the Authority may:

- (a) consider this a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2; or
- (b) give a new Performance Improvement Notice to the Contractor in respect of the Service Failure and thereby initiate a new Performance Improvement Process in accordance with this clause B15; or
- (c) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Contractor's commercial director (or equivalent) under the dispute resolution procedure set out in schedule 12.

B15.10 Any subsequent Service Failure which the Authority regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this clause B15 which occurs within six (6) Months of the Performance Improvement End Date shall be a Serious Breach for the purposes of clause H2 and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

B16 Universal Credit

B16.1 The Contractor acknowledges that the Authority is intending to alter the benefit system such that Universal Credit will replace a number of existing benefits.

B16.2 The Contractor is required to support the implementation of the Universal Credit insofar as it may impact on the Services, including (without limitation):

- (a) assisting in notifying Participants for which it is responsible how the change to Universal Credit will impact the Services as applicable to those Participants; and/or
- (b) notification to the Authority of the data relevant to the impact of Universal Credit on the Services.

B16.3 At any time, as a consequence of, or in connection with the implementation of Universal Credit, the Authority reserves the right to:

- (a) review all systems and processes used and implemented by the Contractor in connection with delivery of the Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Authority's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or
- (b) require the Contractor to make such changes to the Contractor's systems and processes as the Authority may determine.

B17 Services Improvement

B17.1 The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services in accordance with this clause B17. As part of this obligation the Contractor shall identify and report to the Authority in accordance with Schedule 3:

- (a) the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Services, and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
- (e) changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

B17.2 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority requests.

B17.3 If the Authority wishes to incorporate any improvement identified by the Contractor the Authority shall send the Contractor a Change Request in accordance with the Change Control procedure at clause F13.

C Charges and Invoicing

C1 Contract Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 and clause C3.

C2 Contract Price and Payment

- C2.1 Subject to Clause C2.2, the Authority shall pay the Contract Price to the Contractor in accordance with the provisions of this clause C2, Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates) via a self-billing process approved by HMRC.
- C2.2 Subject to clause H2.1 and clause H2.3, the Authority reserves the right to suspend payment the Contract Price if, at any time during the period when the Contract Price is payable, there is a material interruption to delivery of the Services which is attributable in whole or part to the Default of the Contractor until such time as such interruption is rectified.

Unemployed New Business Start Ups

- C2.3 In respect to Participants referred to the Contractor that are Unemployed New Business Start Ups, the Contractor shall input such information as specified by the Authority in the Provider Guidance (including details of a Commencement of Trading Outcome Payment and a Completion of 26 Weeks Trading Outcome Payment) onto the IT System in the format also specified by the Authority in the Provider Guidance. Subject to the Contractor inputting such information onto the IT System as the Authority specifies in the Provider Guidance (and in the format specified) Contract Price will be generated in accordance with the provisions of Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates).
- C2.4 The Contractor shall notify the Authority of any eligible Commencement of Trading Outcome Payment and any Completion of 26 Weeks Trading Outcome Payment under clause C2.3 within two (2) Months of the date when the qualifying criteria for such Outcomes have been met.
- C2.5 The Contractor shall only notify the Authority of any eligible Commencement of Trading Outcome Payment and Completion of 26 Weeks Trading Outcome Payment under clause C2.3 within four (4) Months of the date when the qualifying criteria for such Outcomes have been met.
- C2.6 Subject always to Schedule 2 (Administration Requirements), the Authority shall pay a Commencement of Trading Outcome Payment and a Completion of 26 Weeks Trading Outcome Payment within thirty (30) calendar days of an eligible Outcome being notified by the Contractor under clause C2.4. Payment will be made at the rate prevailing for the contract year within which the Participant was first referred to the Contractor and in line with Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates). The Authority may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.

C3 Contract Price and Payment – UC Claimants with Existing Businesses

- C3.1 In respect to Participants referred to the Contractor that are UC Claimants with Existing Businesses, the Contractor shall input such information as specified by the Authority in the Provider Guidance (including details of a UC Programme Start Outcome Fee, a BDGP Development Fee and an Earnings Increase Fee) onto the IT System in the format also specified by the Authority in the Provider Guidance. Subject to the Contractor inputting such information onto the IT System as the Authority specifies in the Provider Guidance (and in the format specified) Contract Price will be generated in accordance with the provisions of Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates).

- C3.2 The Contractor shall notify the Authority of a UC Programme Start Outcome Fee, a BDGP Development Fee and an Earnings Increase Fee under clause C3.1 within four (4) Months of the date when the qualifying criteria for such Outcome have been met.
- C3.3 The Contractor shall only notify the Authority of an eligible of a UC Programme Start Outcome Fee, a BDGP Development Fee and an Earnings Increase Fee and submit a claim for payment in respect of such fees where it has carried out sufficient checks to ensure that such claims meets all of the relevant qualifying criteria and requirements as detailed in the Specification.
- C3.4 Subject always to Schedule 2 (Administration Requirements), the Authority shall pay a UC Programme Start Outcome Fee, a BDGP Development Fee and an Earnings Increase Fee within thirty (30) calendar days of an eligible Outcome being notified by the Contractor under clause C3.2. Payment will be made at the rate prevailing for the contract year within which the Participant was first referred to the Contractor and in line with Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates). The Authority may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.
- C3.5 If the Contractor fails to input information onto the IT System in the prescribed manner or fails to submit the appropriate supporting information when necessary, the Authority shall not be in default of the Contract if it fails to make payment within thirty (30) calendar days of the payment becoming due provided that the Authority has not unnecessarily delayed payment of the relevant claim.
- C3.6 Details of the Contractor's bank account and address must be notified to the Authority via the IT System. The Authority shall send notifications of payments to that address.
- C3.7 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Authority to the Contractor) the Authority shall be entitled to validate any claim for payment made by the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Authority.
- C3.8 Where the supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C3.9 Without prejudice to anything else in this clause C, the Authority shall have no obligation to make any Outcome Payments to the Contractor in respect of claims for payment identified by the HMRC RTI or submitted to the Authority by the Contractor after the Payment Tail Period.

C4 Outcome Validation & Extrapolation

- C4.1 Before payment of any Fees by the Authority to the Contractor subject to claims made by the Contractor in accordance with clause C2 and C3, the Authority may undertake a check(s) to verify the validity of such claims as detailed in the Specification. For the avoidance of doubt, where the Authority has undertaken checks pursuant to this clause C4.1 it reserves the right to verify any type of Fee in the relevant Outcome Validation Sample for the Payment Validation Period in which it falls.
- C4.2 The Authority shall be entitled to reject any claims for payment made by the Contractor which fail any check(s) undertaken by the Authority pursuant to clause C4.1 without undertaking any

further check(s) and where such claims are rejected the Authority shall be entitled to remove the relevant records from the PRaP to reflect such rejection.

- C4.3 The Authority may select an Outcome Validation Sample in respect of each Payment Validation Period.
- C4.4 For the avoidance of doubt, any sample of claims selected by the Authority pursuant to clause C4.3 shall be selected by the Authority on a random basis except in cases where such a sample is composed from 100% of Outcome Payments in the relevant Payment Validation Period.
- C4.5 The Authority may at any time check each Outcome Validation Sample to verify that in respect of each and every Fee payment in the Outcome Validation Sample the relevant qualifying criteria and requirements have been satisfied.
- C4.6 In checking an Outcome Validation Sample pursuant to clause C4.5, the Authority may (but shall not be obliged to):
- (a) carry out checks of data pertaining to the Participant arising out of or in connection with the Contract against HMRC data;
 - (b) carry out checks of data pertaining to the Participant arising out of or in connection with the Contract against the Authority's data;
 - (c) contact the Participant;
 - (d) contact the Participant's employer; and/or
 - (e) treat any Unable to Validate Outcome Payment as an error or over claim for the purposes of clause C4.8.
- C4.7 The Contractor hereby agrees to use its best endeavours to procure, if required by the Authority at any time, the written consent of the Participant for the Authority to contact the Participant's employer and the Contractor shall retain copies of such written consent or, where it has been unable to obtain such consent, detailed records of the steps it has taken to attempt to procure such consent as part of the Contractor's record keeping obligations under the Contract including, without limitation, clauses A9 (ESF Funding) and E9 (Audit and the National Audit Office and Open Book Data). The Authority reserves the right to inspect such written consent or such detailed records from time to time.
- C4.7A The Contractor shall input such information and in such format as the Authority specifies in the Provider Guidance from time to time (in its absolute discretion) into PRaP (or successor system). For the avoidance of doubt, such information shall as a minimum include (a) a current and working telephone number which reaches the relevant Participant at the time the Authority validates any claim for Outcome Payment [in respect of that Participant] and (b) a current address at which the relevant Participant receives correspondence at the time the Authority validates any claim for payment in respect of that Participant. Subject to the Contractor inputting such information in accordance with this clause C4.7A the Contract Price will be calculated in accordance with the provisions of Schedule 2 (Administration Requirements) and Schedule 4 (Fees and Payments)."

Recovery of Outcome Payments

- C4.8 On expiry of each Payment Validation Period, where any error or over-claim has been identified by the Authority (in its sole opinion) in an Outcome Validation Sample, the Authority shall be entitled to:
- (a) recover in full from the Contractor the amount or value of all Outcome Fails and/or Outcome Technical Fails;
 - (b) determine (in its sole discretion) the Outcome Error Rate;
 - (c) extrapolate the Outcome Error Rate across all of the Outcome Payments which have been paid by the Authority to the Contractor (in respect of this Contract) in that Payment Validation Period to produce an aggregate value of monies overpaid (the "**Outcome Aggregate Error Amount**");
 - (d) recover in full from the Contractor a sum or sums equal to the Outcome Aggregate Error Amount less the sum of any monies recovered by the Authority pursuant to clause 1.1(a).
- C4.9 For the avoidance of doubt, the Authority's rights in this clause C4 shall be without prejudice to any other rights or remedies that the Authority has under the Contract (including for the avoidance of doubt any rights of set-off pursuant to clause C5 (Recovery of Sums Due)).

C5 Recovery of Sums Due

- C5.1 If any claim for payment by the Contractor is paid by the Authority but such claim or any part of such claim is determined by the Authority not to have been eligible for payment (an "Ineligible Amount") then the Contractor shall forthwith repay such Ineligible Amount to the Authority.
- C5.2 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 default 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.
- C5.3 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.
- C5.4 The Contractor shall make any 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.
- C5.5 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.
- C5.6 Where the Contractor requests the removal of a Participant or an Outcome from PRaP and such request leads to a reduction in the Outcome Payment, such reduction in Outcome Payment shall be entirely at the risk of the Contractor. For the avoidance of doubt, the Contractor shall not be entitled to any reimbursement or set-off of such sums.

C6 Not Used

C7 Euro

C7.1 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 free of charge to the Authority.

C7.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C8 Third Party Revenue

C8.1 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 Approval.

C8.2 Neither the Contractor nor its agents or Sub-contractors, shall levy any charge, fee or any other sum on the Participants in connection with the Services without Approval which may be granted or refused at the Authority's sole discretion.

C9 VAT

C9.1 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 eligible claim for payment being notified by the Contractor in line with the provisions of Schedule 2 (Administration Requirements).

C9.2 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 C9.2 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.

C9.3 Without prejudice to clause C9.2, 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 HMRC.

C9.4 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;

- (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 does not provide accurate information to the Authority for it to calculate the VAT on an invoice produced by the self-billing process, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date. Further, in this scenario C9.4(d), the Contractor shall be obliged to repay any overpayment by the Authority on demand.

C9.5 The Contractor acknowledges that the Authority has advised the Contractor that the Contractor should seek 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.

C9.6 Without prejudice to clause C9.2 and C9.3, the Contractor shall comply with the Law governing self-billing contracts including, without limitation, as more particularly described in HMRC Notice 700/62 it shall:

- (a) prior to the Referral Start Date, confirm the rate(s) of VAT that the Authority should apply to each part of the funding model used in the Contract on the Call Off Commencement Date and on each anniversary thereof;
- (b) enter into an annual self-billing agreement with the Authority on or around the Commencement Date and on each anniversary thereof, for the duration of the Contract (a template of the current version of which is set out in Annex 1 to Schedule 4 (Prices and Rates)); and
- (c) complete the VAT confirmation documentation as required by the Authority (a template of the current version of which is set out in Annex 1 to Schedule 4 (Prices and Rates)).

C10 Methods of Payment

C10.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment. All payments of fees under this Contract are conditional upon the Contractor providing the Services in accordance with the terms of the Contract.

C10.2 Payments are made on the condition that the Contractor's entitlement to such payments can be verified on request by the production of the records required under this Contract (including as specified in the Specification and the Provider Guidance). The Authority shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that no delivery of Services has taken place and that any such purported delivery of Services constitutes "Unsupported Services". The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Services from the Contractor and the Contractor shall repay such sums on demand.

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. 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 improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) commits any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - (iv) 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, excluding any arrangement of which full details have been disclosed in writing to the Authority before 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 prevents 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 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 as set out in clauses D1.1 or D1.2; 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.

D1.6 If the Contractor notifies the Authority that it suspects or knows that there may be a Default of clauses D1.1 or D1.2, the Contractor must respond promptly to the Authority's enquiries, cooperate 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 clauses D1.1 or D1.2, the Authority may;

- (a) consider this a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 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 Despite clause H8 (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.

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 conduct.

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.

D3.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D3.2 Notwithstanding clause D3.1, the parties to this Contract may, without the consent of any third party vary, terminate or rescind this Contract or waive any rights under it, notwithstanding that this may extinguish or alter the benefits or rights conferred by clause D3.1.

D4 Environmental Requirements

D4.1 In delivering the Services, the Contractor shall comply at all times with the requirements set out in Schedule 7 (Sustainable Development Requirements) or such other requirements as notified by the Authority to the Contractor from time to time.

D4.2 If the Contractor purchases new products partially or wholly to provide the Services, the Contractor must ensure that:

- (a) any purchase of products or goods listed in Schedule 1 to the Energy Information Regulations 2011 (products with energy labels) has the highest energy efficiency class possible;
- (b) any purchase of products listed in Schedule 1 to the Energy Information Regulations 2011, which is not a product with energy labels within the meaning of clause D4.2(a), complies with the relevant energy efficiency benchmark for that product in paragraph 4 to Schedule 1 of the Eco-Design for Energy-Related Products Regulations 2010;
- (c) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and
- (d) any purchase of tyres carrying a label as specified in Annex II to Regulation (EC) Number 1222/2009 of the European Parliament and of the Council of 25 November 2009 (on the labelling of tyres with respect to fuel efficiencies and other parameters) has the highest fuel energy efficiency class (as defined by that Regulation).

D4.3 The new purchases that the Contractor makes in clause D4.2 should be cost-effective and technically suited to the Services. For the avoidance of doubt, the Contractor is not required to purchase products under clause D4.2 where those products are not cost-effective or are not technically suited to the provision of the Services.

D4.4 The Contractor shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

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 Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- D5.3 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D5.4 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other Laws relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D5.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

D6 Tax Compliance

- D6.1 The Contractor represents and warrants that as at the Call Off Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- D6.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps taken by the Contractor and any steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may require.

D7 Termination Rights due to any Occasion of Tax Non-Compliance

- D7.1 The Authority shall be entitled to terminate the Contract in the event that:
- (a) the warranty given by the Contractor pursuant to clause D6.1 is false;
 - (b) the Contractor commits a Serious Breach of its obligations to notify the Authority of any Occasion of Tax Non-Compliance as required by clause D6.2; or

- (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable.

D8 Equality and Diversity

- D8.1 In delivering the Services, the Contractor shall, and shall ensure that its Sub-contractors, assist and cooperate with the Authority in satisfying equality duties by fully complying with the requirements of Schedule 8.

D9 Apprenticeships and Skill Requirements

The Contractor shall comply with the provisions of Schedule 10 in respect of apprenticeships and skills.

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 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 Contractor's Business Continuity Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than three Monthly intervals.
- 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 or Personal 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 or Personal 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 or Personal 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 offshore 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 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 Any breach by the Contractor of this clause E1 shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.
- E1.12 In the event the Contractor and/or the Guarantor is put into Liquidation in any of the ways outlined in clause H1.1(b) and H1.1(c) or otherwise or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1.1, 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 and Participant Personal Data/Information; in accordance with the Authority instructions;
 - (b) return all such records 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 paragraph have been completed.
- E1.13 In the event of a Sub-contractor of the Contractor being in Liquidation 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 in any of the ways outlined in clause H1.1(a) or otherwise the Authority will work closely with the Administrator to ensure the Contractor is able to maintain Authority, Participant and other records they have created and held in accordance with 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 up the Contractor. 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 Approval obtained. Where the Contract is assigned or novated with 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.

- E1.16 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.

E2 Protection of Personal Data

- E2.1 The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a Data Controller in respect of the Processing of the Personal Data, as follows:

- (a) the Authority shall be a Data Controller of the Personal Data relating to the Participants where such data is being Processed for purposes not directly connected with the Services and/or this Contract;
- (b) the Contractor shall be a Data Controller of the Personal Data relating to the Contractor's Staff whether or not such Personal Data is Processed pursuant to this Contract;
- (c) the Authority and the Contractor shall each be a joint Data Controller where they Process (or procure the Processing of) the Personal Data in relation to the Services and/or otherwise perform their respective obligations and/or receive the benefit of their respective rights under this Contract. Such Personal Data provided by the Authority, and collected and held by the Contractor in performing the Services, shall form part of the Authority Data.
- (d) the Contractor shall have no right or authority to Process the Personal Data other than under, or in connection with, this Contract, save in respect of Personal Data relating to the Contractor's Staff; and
- (e) the Parties do not anticipate that the Contractor will Process Personal Data as Data Processor on behalf of the Authority. Notwithstanding the foregoing, if and to the extent that the Contractor is Processing Personal Data on behalf of the Authority, clause **Error! Reference source not found.** shall apply to such Processing.

- E2.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 17. The only Processing that the Processor is authorised to do is listed in Schedule 17 by the Controller and may not be determined by the Processor.

- E2.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

- E2.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

- (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; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.5 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:

- (a) Process that Personal Data only in accordance with Schedule 17, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Schedule 17);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor 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 Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

E2.6 Subject to clause E.2.7, the Processor shall notify the Controller 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, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

E2.7 The Processor's obligation to notify under clause E2.6 shall include the provision of further information to the Controller in phases, as details become available.

E2.8 Taking into account the nature of the Processing, the Processor shall provide the Controller 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 Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- E2.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the Processing is not occasional;
 - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.10 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- E2.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- E2.12 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2.12 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- E2.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- E2.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- E2.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- (a)

E2.16 The Contractor shall indemnify on demand and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, 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 caused, which the Authority may suffer or incur arising out of, in respect of, or in connection with, any breach by the Contractor (or any Sub-contractor) of this clause E2.

E2.17 The Contractor shall be responsible for, and bear the risk and cost of, compliance with any change in any Data Protection Legislation affecting this Contract (a "**Data Protection Change**"), and shall seek to implement all necessary changes required to this Contract to address a Data Protection Change, as shall be agreed between the Parties in accordance with the Change Control Procedure (for the purposes of which, a Data Protection Change shall constitute a Contract Change).

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 its 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 E2.1 shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

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 prior to its disclosure by the information owner;
- (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 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.
- E4.5 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.
- E4.6 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, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies 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, the Crown or any Contracting Body;
 - (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 this Contract, including (but not limited to) for auditing purposes, to a body to novate, assign or dispose of its rights under this Contract (clause F1.11), to a Replacement Contractor (clause H7.2) 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.
- E4.7 The Authority shall use reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, 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.
- E4.8 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.
- E4.9 Any breach by the Contractor of clauses E4.1 to E4.3 shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute

discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E4.10 Clauses E4.1 to E4.6 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, 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. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish the Contract.

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 E5.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced 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 the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

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 Approval, which shall not be unreasonably withheld or delayed.
- E6.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority including any examination of the Contract by Audit Agents or otherwise.
- E6.3 The Contractor shall ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.
- E6.4 The Contractor shall pay the utmost regard to the standing and reputation of the Authority and shall ensure that neither it, nor any of its Affiliates or Staff does anything (by act or omission) which causes material adverse publicity for the Authority, brings the Authority into disrepute, damages the reputation of the Authority or harms the confidence of the public in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under the Contract.
- E6.5 The Contractor shall at all times supply the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- E6.6 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its Sub-contractors.
- E6.7 If so requested by the Authority the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

E6.8 Without prejudice to its obligations under clause A9, where the Authority funds the delivery of all or part of this Contract using ESF monies and/or or uses this Contract as match (in part or in full) for contracts funded (or part funded) using ESF monies, the Contractor shall observe the European Commission's and the Secretary of State for Work and Pensions' publicity requirements and regulations regarding ESF projects, as amended from time to time. The Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Contractor shall provide a copy of its formal marketing and publicity plan clearly setting out the publicity arrangements used by the Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing plan is requested by the Authority, the Contractor shall retain copies of its plan (as revised from time to time) as part of the Contractor's record keeping obligations under this Contract.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority premises in accordance with its standard security requirements. 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 procure the compliance of its Staff, 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 must be agreed in accordance with the procedure in clause F3.

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, free licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Contractor to supply the Services. The Contractor shall have the right to sub license the Sub-contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Contractor shall cease use, and shall ensure that any Sub-contractor ceases use of the Authority's Intellectual Property Rights.

E8.3 The Contractor shall grant the Authority a non-exclusive, revocable, free licence for the Contract Period to use the Contractor's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Contractor's Intellectual Property Rights.

E8.4 The Parties agree that:

- (a) all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
- (b) any Project Specific Intellectual Property Rights arising shall belong to the Authority and in such regard, the Contractor hereby assigns with full title guarantee and free from all third party rights, any project Specific Intellectual Property Rights 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 Approval, use or disclose any such Authority Intellectual Property Rights (including any Project Specific Intellectual Property Rights).

E8.5 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall grant to the Authority (or procure the grant to the Authority) of those rights a non-exclusive licence to use, reproduce, modify, develop and maintain the material. Such licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence shall also include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Bodies, the Replacement Contractor or to any other third party supplying services to the Authority.

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, losses, 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 Right in connection with the performance of the Contractor's obligations under the

Contract. The Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.4(a) or (b).

E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.

E8.10 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 which are acceptable to the Authority;

and in the event that the Contractor is unable to comply with clauses E8.10(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.

E9 Audit and the National Audit Office and Open Book Data

E9.1 The Contractor shall at all times keep and maintain, until the date specified in clause E9.2, the Open Book Data.

E9.2 Without prejudice to clauses A9 and E9.1, where the delivery of this Contract is funded in whole or in part by the Authority using ESF monies and/or where the Authority uses this Contract as match (in part or in full) for contracts funded (or part funded) using ESF monies, the Contractor and any Sub-contractors appointed by it shall additionally be bound by the ESF Requirements, including but not limited to the requirement to maintain the Open Book Data until at least the Document Retention End Date.

E9.3 The Contractor shall provide (or procure provision of) access at all reasonable times to the Authority, its duly authorised staff or agents and any Audit Agents to inspect the Open Book Data and such records and accounts (including those of Sub-contractors) as the Authority may require from time to time. The Authority shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Authority to do so.

E9.4 Duly authorised staff or agents of the Authority shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to Participants during the hours when the Contractor is supplying the Services with a view to verifying that the Contractor is supplying the Services in accordance with the Contract.

- E9.5 The Contractor shall provide the Open Book Data and all records and accounts referred to in this clause E9 (together with copies of the Contractor's published accounts) until the end of the Payment Tail Period, and shall provide such records and accounts on request until the Document Retention End Date, to the Authority and the Audit Agents.
- E9.6 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Audit Agents is outside of the control of the Authority.
- E9.7 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Body under this clause E9.
- E9.8 The Contractor shall provide the rights set out in this clause E9 to any duly authorised staff or agents of the Authority, the National Audit Office, the European Court of Auditors, the European Commission, the Audit Agents and any third parties as notified by the Authority to the Contractor from time to time.
- E9.9 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to supply of the Services, the Authority reserves for itself and any Audit Agents or any government department the right of immediate access to the Open Book Data and all records and accounts referred to in this clause E9 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract or at any time thereafter.
- E9.10 The Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, 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 Sub-contractor) of this clause E9.

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 and/or the Guarantor 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 Subject to the provisions of clause E10.3, 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 E9.3 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours.

E10.3 Without prejudice to clause E10.2, if the Authority notifies the Contractor of an Exceptional Circumstance to which the provisions of clause E9.9 also apply and that it wishes to conduct an Exceptional Audit, the Contractor shall provide immediate access in accordance with clause E9.9.

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 and E10, unless an audit identifies a material Default by the Contractor in which case:

- (a) the Contractor shall reimburse 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 Audit Agents appoint another Contracting Body identified in the OJEU Notice to conduct an audit under clauses E9 and E10, the Authority shall be able to recover on demand from the Contractor the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

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 losses 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, Third Party Software licensed to the Contractor (and/or any Sub-contractor) 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, Third Party Software licensed to the Authority or the Authority Data (whilst the Authority Data was under the control of the Authority).

E13 Provision of Management Information

E13.1 Throughout the Contract Period, the Contractor shall promptly make full disclosure to the Authority of any and all Management Information within the timescales set out in Schedule 3 (Monitoring and Information Requirements).

E13.2 The Authority may share the Management Information (together with any analysis or statistics produced using the Management Information) with:-

- (a) any Crown Body;
- (b) any other Contracting Body;
- (c) any organisation involved in delivery of the Services, including but not limited to local authorities and/or their agents, and the sub-contractors or other agents of all contractors in order to enable the Authority to manage the detail and efficiency of the supply of the Services; and/or
- (d) any other third party as may be agreed by the Authority and the Contractor from time to time.

E13.3 The Authority may use (and permit others to use) the Management Information to produce official statistics and the Contractor hereby gives its consent to such use of the Management Information (together with any associated publication or release).

E13.4 The Authority may publish (and permit others to publish) the Management Information (together with any analysis or statistics produced using the Management Information) and the Contractor hereby gives its consent to such publication.

E13.5 The Management Information may form part of an official statistics publication. To support the Authority in meeting its commitment to transparency, neutrality and comprehension in statistical release practices, the Contractor shall not, (and shall procure that its Sub-contractors shall not), without Approval, at any time publish, disclose or divulge any of the Management Information to any third party until the date of publication of the official statistics (save that the Contractor may disclose the Management Information prior to the date of publication of the official statistics to any of its Affiliates or any of its Sub-contractors who are directly involved in the supply of the Services and who need to know the information, and the Contractor shall ensure that such Affiliate or Sub-contractor are aware of, and shall comply with these obligations as to the confidentiality of Management Information).

E13.6 At all times prior to the publication of the official statistics, the Contractor shall treat the Management Information as confidential.

E13.7 The Authority may make changes to the Management Information which the Contractor is required to disclose to the Authority in accordance with clause E13.1. The Authority will make any such changes in accordance with clause F3.

E14 Records Relating to the Provision of the Services

E14.1 Notwithstanding the provisions of clauses E9 in respect of Open Book Data, the Contractor shall, during the Contract Period and a period of at least six (6) years following the Expiry or termination of this Contract, maintain or cause to be maintained, complete and accurate documents and records in relation to the provision of the Services.

F CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without 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 Contractor entering into a sub-contract, a copy of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority within ten (10) Working Days of the Authority's request.
- F1.4 The Contractor shall ensure that each Sub-contract shall include:
- (a) provisions which will enable the Contractor to discharge its obligations under the Contract, including but not limited to adherence to the Minimum Performance Levels and the Customer Service Standards;
 - (b) a right under the Contracts (Rights of Third Parties) Act 1999 for the Authority to enforce any provisions under each Sub-contract which are capable of conferring a benefit on the Authority;
 - (c) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under each Sub-contract to the Authority or any Replacement Contractor without restriction (which for the avoidance of doubt shall mean without any need to obtain any consent or approval from any Sub-contractor) or payment by the Authority;
 - (d) obligations no less onerous on each Sub-contractor than those imposed on the Contractor under this Contract in respect of
 - (i) data protection requirements set out in clause E;
 - (ii) FOIA requirements set out in clause E;
 - (iii) the obligation not to cause material adverse publicity or damage the reputation of the Authority set out in clause E;
 - (iv) the keeping of records in respect of the services being provided under the Sub-contract; and
 - (v) the conduct of audits set out in clause E.
 - (e) provisions enabling the Contractor to terminate each Sub-contract on terms no more onerous on the Contractor than those imposed on the Authority under clause H of the Contract;
 - (f) a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services supplied under each Sub-contract without first seeking Approval
 - (g) a provision enabling the Contractor, the Authority or any other person on behalf of the Authority to itself supply or procure the supply or all or part of the services being supplied under each Sub-contract on substantially the same terms as are set out in clause F5; and
 - (h) all such other provisions as may be required to be set out elsewhere in this Contract.

- F1.5 The Contractor shall not terminate or materially amend the terms of any Sub-contract without Approval.
- F1.6 The Authority may require the Contractor to terminate a Sub-contract where:
- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to clause G4.2; and/or
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise.
- F1.7 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 F1.7 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C;
 - (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 F1.8 and F1.9.
- F1.8 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.3, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.9 The Contractor shall ensure that the Assignee notifies the Authority, at least five (5) Working Days prior to submission of any invoice, of the Assignee's contact information and bank account details to which the Authority is requested to make payment.
- F1.10 The provisions of clause C2 shall continue to apply in all other respects after any such assignment and shall not be amended without Approval.
- F1.11 Subject to clause F1.13, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Body;
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.12 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.11, 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.

F1.13 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.11 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

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

F1.14 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.

F1.15 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.

F1.16 The Contractor shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days from the receipt of a valid invoice;
- (b) include within the Management Information a summary of its compliance with clause F1.16(a), such data to be certified each quarter by a director of the Contractor as being accurate and not misleading.

F1.17 The Contractor shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Contractor to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice; and
- (b) a right for the Authority to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period.

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 Variation

F3.1 The Authority may from time to time during the Contract Period, by written notice to the Contractor, request a variation of the Contract provided that such variation does not amount to a material change to it. Such a change is hereinafter called a "Variation".

F3.2 Following such notice, the Authority and the Contractor shall enter into good faith negotiations to agree the Variation and any variation in the Contract Price. Any variation in the Contract Price shall, in all the circumstances, properly and fairly reflect the nature and extent of the proposed Variation. The Parties shall negotiate for:

- (a) not more than thirty (30) Working Days from the date of the written notice to the Contractor; or
- (b) such shorter period as the Authority directs where, in the reasonable opinion of the Authority, the Variation is necessary as a matter of urgency.

F3.3 If the Parties are unable to agree such matters within the relevant period set out in clause F3.2, the Authority shall by written notice to the Contractor:

- (a) agree that the Parties shall continue to perform their obligations under the Contract without the Variation; or
- (b) if the Parties, acting reasonably, are unable to agree the Variation in the Contract Price referred to in clause F3.3, the matter shall be referred to dispute resolution under clause 12. Pending resolution of the matter the Contractor shall nonetheless implement and comply with the Variation.
- (c) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in schedule 12.

F3.4 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in clause F3.2, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

F3.5 Any such Variation shall be communicated in writing by the Authority to the Contractor in accordance with clause A5. All Variations shall form an addendum to the Contract.

F4 Severability

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 Step-In Rights

F5.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Contractor (a "**Step-In Notice**") that it will be taking action under this clause F5, either itself or with the assistance of a third party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to clause E4). The Step-In Notice shall set out the following:

- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
- (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Contractor's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Contractor's premises and/or the Premises; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Contractor's obligations to supply the Services during the period that the Required Action is being taken.

F5.2 Following service of a Step-In Notice, the Authority:

- (a) may take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) shall keep records of the Required Action taken and provide information about the Required Action to the Contractor;
- (c) shall co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to supply the Services in relation to which the Authority is not assuming control; and
- (d) shall act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this clause F5.

F5.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Contractor shall not be obliged to supply the Services to the extent that they are the subject of the Required Action; and
- (b) the Authority shall pay to the Contractor the Contract Price after subtracting the Authority's costs of taking the Required Action.

F5.4 If the Contractor demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-achievement of a Minimum Performance Level or a Minimum Service Level that which would have been achieved had the Authority not taken the Required

Action, then the Contractor shall be entitled to an agreed adjustment of the Contract Price.

F5.5 Before ceasing to exercise its step in rights under this clause F5 the Authority shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and
- (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause F5.6.

F5.6 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

F5.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

F5.8 The Contractor shall bear its own costs in connection with any step-in by the Authority under this clause F5, provided that the Authority shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
- (b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor's Default).

F6 Partial Termination

F6.1 In the event that the Authority reasonably believes that there has been a Default by the Contractor, then the Authority may, without prejudice to its rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:

- (a) require the Contractor to submit a performance improvement plan detailing why the breach has occurred and how it will be remedied within ten (10) Working Days or such other period of time as the Authority may direct;
- (b) 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;
- (c) 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

- (d) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.
- (e) In the event that the Authority reasonably believes that there has been a Default by the Contractor, then the Authority may, without prejudice to its rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:

F6.2 Without prejudice to its rights under clause C4, 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 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.

F6.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

F6.4 In the event that:

- (a) the Contractor fails to comply with clause F6.3 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause F6.3,

the Authority may terminate the Contract with immediate effect by notice in writing.

F7 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 and do not exclude any rights or remedies provided by Law, in equity or otherwise. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F8 Monitoring of Contract Performance

F8.1 The Authority (including any representative of the Authority) shall monitor the Contractor's performance in supplying the Services in accordance with the provisions of Schedule 3 (Monitoring and Information Requirements) and the Provider Guidance or such other requirements as notified by the Authority to the Contractor from time to time.

F8.2 The Performance Managers shall have regular meetings to monitor and review:

- (a) the performance of the Contract;
- (b) the achievement of the Minimum Performance Levels;
- (c) the achievement of the Customer Service Standards;
- (d) the supply of the Services; and

(e) any other matter the Parties consider appropriate,

and the Contractor shall comply with the provisions of Schedule 3 (Monitoring and Information Requirements) in relation to the monitoring and reporting of its performance. The Authority may organise regular monitoring and spot checks of the Premises at any time to ensure the Contractor is complying with its obligations under the Contract and the Contractor shall co-operate fully, at its own cost, with the Authority. The Authority shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the supply of the Services by the Contractor.

F8.3 The Authority may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Contractor's performance in supplying the Services and the Contractor will co-operate with the assessor and take all necessary steps to implement recommendations made. Any changes to any Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with clause F13.

F8.4 The Contractor shall ensure that the Authority (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in clause F8 including putting in place arrangements to permit legal access to information as may be required.

F8.5 With effect from the Call Off Commencement Date, the Authority and the Contractor shall meet at the times and with such frequency as specified in Schedule 2 (Minimum Performance Levels and Customer Service Standards), Schedule 3 (Monitoring and Information Requirements) or as notified by the Authority to the Contractor from time to time. Such meetings shall be convened by the Authority upon the Authority giving written notice to the Contractor.

F8.6 The Authority shall monitor the Contractor's (and any Sub-contractors') performance in supplying the Services to assess compliance with competition law. Where (in the opinion of the Authority), the Contractor (or any Affiliate or any of the Contractor's Group) has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law, without prejudice to any other rights or remedies that the Authority has under the Contract the Authority shall be entitled to consider this as a Serious Breach for the purposes of clause H2 entitling the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

F8.7 Where (in the opinion of the Authority), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law, the Authority may require the Contractor to terminate the Sub-contract with immediate effect. For the avoidance of doubt, the Authority shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract.

F9 Financial Assurance

F9.1 The Contractor is required to disclose immediately to the Authority any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

- F9.2 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.
- F9.3 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 its Annual Accounts, Annual Returns, management accounts, evidence to the Authority's satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes.
- F9.4 If requested by the Authority, where a Guarantee has been provided in accordance with clause G3.2, the Contractor is required to provide the documents detailed in clause E9.3 for the Guarantor, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into pound sterling, stating the conversion rate used.

F10 Not Used

F11 Entire Agreement

- F11.1 This Contract together with the Umbrella Agreement constitute 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.
- F11.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, 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 shall be for breach of contract under the terms of the Contract.
- F11.3 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 accordance with the following order of precedence:
- (a) the clauses of the Contract;
 - (b) the Schedules and any Appendices or Annexes;
 - (c) the Specification;
 - (d) the Tender;
 - (e) the Provider Guidance;
 - (f) the Umbrella Agreement; and
 - (g) any other document(s) referred to in the clauses of the Contract.
- F11.4 In the event that the Contractor becomes aware of any inconsistency between the requirements contained in the above documents, the Contractor shall immediately notify the Authority's Representative in writing of such inconsistency and the Authority's Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

F12 Counterparts

F12.1 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.

F13 Change Control

F13.1 The Authority has the right to propose variations to the Contract (including a request by the Authority for the Contractor to cease any part of the Services) in accordance with this clause F13. Where the Authority proposes to vary any part of the Contract the Authority shall serve a Change Control Notice on the Contractor, and the Contractor shall promptly comply with such Change Control procedure as detailed in this clause F13.

F13.2 Without prejudice to the generality of Authority's right to vary the Contract, such variations may include the following:-

- (a) cessation of any part of the Services
- (b) additions to any part of the Services;
- (c) change of the Authority's business or policies imposed by Her Majesty's Government;
- (d) quality of the Services; and/or
- (e) change or addition to any Provider Guidance, the Staff Vetting Procedures or any other guidance and/or codes of practice issued by the Contracting Body.

F13.3 Without prejudice to the generality of the Authority's rights under clause F13.1, following:

- (a) a review(s) and/or the monitoring of the Contract by the Authority at any time during the Contract Period; and/or
- (b) (at the sole discretion of the Authority), a request by the Contractor,

the Authority may determine that it is necessary to change any of the Performance Parameters that underpin the Contract and may propose a variation to the Contract. The Authority shall propose such variation by serving a Change Control Notice on the Contractor, and the Contractor shall promptly comply with such Change Control procedure as detailed in this clause F13. Any changes in the Performance Parameters may apply at a national level or at Contract Package Area level, and will be applied consistently to all Welfare to Work contracts within the impacted Contract Package Area(s).

F13.4 The Change Control Notice shall:-

- (a) set out the change to the Contract required by the Authority in sufficient detail to enable the Contractor to provide an estimate; and
- (b) require the Contractor to provide the Authority with an estimate ("**the Estimate**") in accordance with clause F13.5 below.

F13.5 The Contractor shall provide the Authority with the Estimate within ten (10) Working Days of the receipt of the Change Control Notice or such longer period as is appropriate as determined by the Authority acting reasonably. The Estimate shall be consistent with all

changes (including changes to Performance Parameters) specified by the Authority in its Change Control Notice, and shall include:-

- (a) a statement of opinion of the Contractor on the impact of the proposed change on the delivery of the Services;
- (b) a description of any amendment required to the Contract or the Appendices to accommodate the proposed change including, without limitation, any changes to the labour requirements, delivery plans, performance targets and key performance indicators;
- (c) an overview (including reference to how the Contractor has discharged its general duty of cost efficiency under the Contract) of the net costs of, or savings from, implementing the proposed change as the case may be;
- (d) any other information reasonably requested by the Authority or appearing to the Contractor to be relevant; and
- (e) an updated financial model, reflecting changes to all projected performance, revenues and input costs from the scheduled date of implementation of the variation, and a reconciliation of the updated financial model to its predecessor.

F13.6 In developing the Estimate, the Contractor shall provide the Authority with financial information on a transparent basis.

F13.7 As soon as practicable after the Contractor provides the Authority with the Estimate, the Authority and the Contractor shall meet to discuss any issues arising from the Change Control Notice or from the Estimate provided by the Contractor. For the avoidance of doubt, any discussions held between the Authority and the Contractor pursuant to this clause F13.7 shall be without prejudice and subject to contract.

F13.8 As soon as practicable after any part of the contents of the Estimate have been discussed in accordance with clause F13 the Authority shall confirm in writing that it wishes:

- (a) to proceed with the Change Control Notice (or that part of it which has been agreed or determined as above); or
- (b) to withdraw the Change Control Notice (or the relevant part).

F13.9 If the Authority confirms that it wishes to proceed with the Change Control Notice, the Contract shall be deemed to have been amended accordingly and an updated financial model, reflecting changes to all revenues, input costs and savings from the scheduled date of implementation of the variation shall be appended to the Contract.

F13.10 The Contractor shall comply with any proposed variation to the Contract. If the Contractor fails to implement or successfully comply with the variation by the required date, the Authority may:

- (a) give the Contractor a further opportunity to implement or comply with the variation; or
- (b) escalate any issues arising out of the failure to implement or comply with the variation to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in schedule 12 (Dispute Resolution).

F13.11 If, despite the measures taken under clause F13.10(a), the Contractor fails to implement or comply with the variation, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in schedule 12 (Dispute Resolution).

F13.12 If the Authority has not confirmed that it wishes to proceed with the Change Control Notice within thirty (30) calendar days of the date of the discussion in clause F13.7 above or has not withdrawn the Change Control Notice within thirty (30) calendar days of the date of the discussion in clause F13.7 above then the Change Control Notice (or the relevant part) shall be deemed to have been withdrawn.

F13.13 The Authority shall not be liable for any costs incurred by the Contractor in implementing the procedures pursuant to this clause F13.13, save that the Authority shall be liable for any reasonable, proportionate and proven costs incurred by the Contractor in implementing the procedures pursuant to this clause F13 where the Authority withdraws the Change Control Notice in accordance with clause F13.8. The Authority reserves the right to access all records to validate a claim under this clause F13.13.

F13.14 Variations of a minor or temporary nature may be required to the Contract from time to time and, where such variations are requested, they shall be evidenced in writing. Without prejudice to the foregoing, the Contractor shall accommodate such minor or temporary variations at no extra cost to the Authority, provided they do not involve additional cost to the Contractor.

F13.15 Notwithstanding the service of a Change Control Notice in accordance with the Change Control procedure as detailed in this clause F13, the Contractor shall continue to fulfil its obligations under the Contract until such time as the Authority confirms to the Contractor that the Authority wishes to proceed with the Change Control Notice.

F13.16 Without prejudice to any of the other rights of the Contractor, the Contractor may propose variations to the Contract which shall be referred to the Authority for consideration. Such variations shall be detailed in a Change Control Notice between the Authority and the Contractor and the Contract may be varied in accordance with the Change Control procedure as detailed in this clause F13.

F14 Further assurances

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 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.

G1.2 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, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- (b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Participant; and
- (c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of:
 - (i) the supply (or the late or purported supply), of the Services;
 - (ii) the performance or non-performance by the Contractor of its obligations under the Contract;
 - (iii) the presence of the Contractor or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Contractor; or
 - (iv) any other loss which is caused directly or indirectly 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 to clause G1.3 responsibility for the control, management and supervision of all Participants shall rest entirely with the Contractor subject to the Participant complying with all reasonable instructions and directions which the Contractor may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant.

G1.5 Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for Defaults that result in direct loss of or damage to the property of the other under or in connection with the Contract (including the Authority Premises unless a higher limit has been agreed in a separate document) shall in no event exceed five million pounds sterling (£5,000,000); and

- (b) the annual aggregate liability under the Contract of either Party for all Defaults (including any liability incurred under G1.5(a) but excluding any liability under G1.5(c) shall in no event exceed one hundred and twenty five per cent (125%) of the Contract Price paid and payable by the Authority to the Contractor in the year in which the liability arises.

provided that:

- (c) the liability of the Contractor under clause E2 (Protection of Personal Data), clause E4 (Confidential Information) or clause E8 (Intellectual Property Rights) shall not be limited or capped.

G1.6 Subject always to clause E2.16, G1.1 and G2, and other than as expressly set out in this Contract, 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.

G1.7 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.

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 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.

G1.10 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.

G1.11 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.

G1.12 The Contractor shall indemnify and keep indemnified the Authority against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any Default by the Contractor of clause A9 which, for the avoidance of doubt, include any claims, demands, actions, costs (including legal costs and disbursements) and losses which relate to the Authority's obligations as an ESF Co-Financing Organisation or connected with the ESF Requirements. The Contractor's liability under this indemnity is not limited under clauses G1.5 and G1.6.

G2 Professional Indemnity

- G2.1 The Contractor shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than that which would be expected of a supplier similar to the Contractor providing services similar to or the same as the Services for each individual claim (or such higher limit as the Authority may reasonably require, and as required by law from time to time). Such insurance shall be maintained for a minimum period of six (6) years following the expiration or earlier termination of the Contract.
- G2.2 Any excess or deductibles under the insurance referred to in clause G2.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or Sub-contractors, as applicable.
- G2.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.
- G2.4 The Contractor shall, on request, provide the Authority with copies of all insurance policies referred to in clause G2.1 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.
- G2.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this clause then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

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 Call Off 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;
 - (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 ongoing business concern or its ability to fulfil its obligations under the Contract.

G3.2 If at any time a Party becomes aware that a representation or warranty given by it under this Contract been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

G4 Deed of Guarantee

G4.1 The Contractor shall procure that the Guarantor shall:

- (a) execute and deliver to the Authority the Guarantee; and
- (b) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.

G4.2 Where the Guarantor does not provide the documents set out in clause G4.1 within one month of the Call Off Commencement Date, such non-provision will be deemed a Serious Breach and the Authority shall have the right to terminate the Contract by providing written notice to the Contractor in accordance with clause H2.1.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect (or with effect from the date specified by the Authority in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H5.5) by notice in writing where the **Contractor or Guarantor is a company** and in respect of the Contractor or Guarantor:

- (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 H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Authority immediately if the Contractor and/or Guarantor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Contract by notice in writing with immediate effect (or with the effect from the date specified by the Authority in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H5.5) 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 (or with effect from the date specified by the Authority in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H5.5) 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 (or with effect from the date specified by the Authority in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H5.5) by notice in writing where the **Contractor or Guarantor is a partnership** and in respect of the Contractor and/or Guarantor:

- (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 for any reason dissolved;
- (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 (or with effect from the date specified by the Authority in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H5.5) by notice in writing where the **Contractor or Guarantor is a limited liability partnership** and respect of the Contractor and/or Guarantor:

- (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 for any reason dissolved;
- (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 14 days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets;
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

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

H2 Termination on Default

H2.1 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Serious Breach of the Contract.

H2.2 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if, in the reasonable belief of the Authority, Providers are unable to commence Provision of the Services to Participants by the Referral Start Longstop Date.

H2.3 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if a Force Majeure Event endures for a continuous period of more than ninety (90) days.

H2.4 The Contractor may terminate the Contract by written notice to the Authority with immediate effect if a Force Majeure Event endures for a continuous period of more than ninety (90) days.

H2.5 Without prejudice to any other rights or remedies that the Authority has under the Contract (including without limitation clause B14 and the provisions of clause H1 or H2.1, 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 (a "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 six (6) 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.

H2.6 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 six (6) 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 six (6) 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 be a Default which is a Material Breach of the Contract not capable of remedy for the purposes of clause H2.1(b).

H2.7 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.

H2.8 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 C.

H3 Break

H3.1 The Authority shall have the right to terminate the Contract at any time by giving three (3) 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. Save in relation to any previous Default, in the event of termination pursuant to this clause H3.1 neither Party shall have any right or rights against the other arising out of or as a consequence of such termination, other than as provided for by clause H5.3.

H4 Termination under Regulation 73(1)

Without affecting any other right or remedy available to it, the Authority may terminate the Contract with immediate effect on giving written notice if any provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

H5 Consequences of Expiry or Termination

- H5.1 Where the Authority is entitled to terminate the Contract (howsoever arising) the Authority shall also be entitled to terminate any other contract entered into between the Parties procured under the same Mini-Competition.
- H5.2 Where the Authority terminates the Contract under clause F6 or clause H2 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 F6 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.
- H5.3 Subject to clause H5.4, 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 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 losses 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 H5.3 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. The Contractor shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.
- H5.4 The Authority shall not be liable under clause H5.3 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.
- H5.5 On the Expiry or termination of this Contract or any part thereof:
- (a) the Contractor shall repay at once to the Authority any monies paid up to and including such date of termination other than monies in respect of the Service(s) or part thereof properly performed in accordance with this Contract; and
 - (b) the Contractor shall 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.
- H5.6 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 A9 (ESF Funding), C2 (Contract Price and Payment), C Recovery of Sums Due (Welfare to Employment), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office and Open Book Data), F7 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Contractor shall take reasonable care to ensure that in performing of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 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.
- H6.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect by notice in writing.
- H6.5 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.
- H6.6 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 information technology systems) to the Contractor's operations, and those of Sub-contractors to the Contractor, 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.

H7 Recovery and Obligations upon Termination

- H7.1 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 permitted suppliers or Sub-contractors. 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 permitted suppliers or Sub-contractors where any such items may be held.

H7.2 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.

H8 Force Majeure

H8.1 Subject to the remaining provisions of this clause H8, an Affected Party may claim relief under this clause H8 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.

H8.2 The Affected Party shall as soon as reasonably practicable issue a written notice ("Force Majeure Notice"), which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H8.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause H8 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

H8.4 Subject to clause H8.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

H8.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

H8.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to clause H2.2 or clause H2.4; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;

- (b) the Contractor fails to perform its obligations in accordance with this Contract:
 - (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under clause F5 (Step-In Rights) as a result of such failure; and
 - (ii) the Contractor shall be entitled to receive payment of the Fees only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

H8.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

H8.8 Relief from liability for the Affected Party under this clause H8 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under clause H8.7.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and the Parties irrevocably submit to the 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.

I2 Dispute Resolution

I2.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the dispute resolution procedure set out in schedule 12.

I2.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

FORM OF AGREEMENT

This Contract has been entered into on the Call Off Commencement Date.

SIGNED for and on behalf of

SIGNED for and on behalf of

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

Name **REDACTED**

Name **REDACTED**

Position **Senior Commercial Manager**

Position **Governance Director**

REDACTED

REDACTED

Signature

Signature

REDACTED

REDACTED

Date

Date