



**Department
for Work &
Pensions**

CONTRACT

For

**The Provision of Research and Innovation Services for Managing Sickness Absences in
Small and Medium Enterprises: Phase 2**

Between

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

And

Healthy Working Futures 07629175

CONTRACT REFERENCE NUMBER: 21180-1

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This Contract is made on the

between the Parties

The Secretary of State for Work and Pensions

("the Authority") acting as part of the Crown.

Of

Quarry House
Leeds
LS2 7UA

And

Healthy Working Futures

with Company Registration
Number

07629175

having the main or registered
office at

22a Burton Street
Melton Mowbray
Leicestershire
LE13 1AF

("the Contractor")

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

A.GENERAL PROVISIONS

A1 Definitions and Interpretation

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

"Accounting Year" means the twelve (12) Month period from 1 April to 31 March.

"Administration" means the administrative receivership of a company under the management of an administrator under the Insolvency Act 1986.

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

"Approval" means the prior written consent of the Authority including written consent provided by email by an authorised representative of the Authority.

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

"Authority Data" means

- a) the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, designs, 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 including but not limited to Results ; or
- b) any Personal Data for which the Authority is the Data Controller.

“Authority’s Premises” means any premises owned by the Authority or for which the Authority has legal responsibility.

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

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Services, the 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 H5.6, as may be amended from time to time.

“Change Authorisation Note” means the description of any Contract Change as set out in the form at Appendix 3 as required under the Change Control Procedure.

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

“Change Control Procedure” means the procedure for proposing a Contract Change, as set out in Schedule 12 (Change Control Procedure).

“Change Request” means a written request for a Contract Change which shall be substantially in the form of Appendix 1 of Schedule 12 (Change Control Procedure).

“Commencement Date” means 29 November 2017.

“Commercially Sensitive Information” means the Information:

- (i) listed in Schedule 5 (Commercially Sensitive Information);

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

"Commercially Sensitive Information Schedule" means Schedule 5, containing a list of the Commercially Sensitive Information.

"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" means this written agreement between the Authority and the Contractor consisting of these terms and conditions of contract and any attached Schedules, and any document referred to in Schedule 1, including the Specification and the Tender.

"Contract Change" means any change, amendment, variation, restatement or supplement to this Contract other than an Operational Change.

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

- a) the date of expiry set out in clause A2, or
- b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

"Contracting Body" means the Department for Work and Pensions.

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

"Contractor 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 Commencement Date, and any other instructions and recommended practices notified by the Authority to the Contractor from time to time.

"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 (Prices and Rates), for the full and proper performance by the Contractor of its obligations under the Contract.

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

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

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

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

"Data Protection Legislation" means DPA and all applicable laws and regulations relating to the processing of personal data and privacy to which a Party is subject, including where applicable the guidance and codes of practice issued by the UK Information Commissioner (or any replacement or successor) or any relevant government department as updated from time to time.

"Data Protection Principle" means the eight data protection principles, as set out in Schedule 1 of the DPA.

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

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or 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.

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

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such 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.

"DWP Offshoring Policy" means the Authority's policy and procedures in relation to hosting or accessing official information outside of the UK including Landed Resources as advised to the Contractor by the Authority from time to time.

"Environmental Information Regulations" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"Fraud" means any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Contract, defrauding or attempting to defraud or conspiring to defraud the Crown.

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

"ICT" means information and communications technology.

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

"Impact Assessment" means an assessment of a Change Request in accordance with paragraph 5 of Schedule 12 (Change Control Procedure).

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

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

"Invitation to Tender" means the instructions to tenderers issued by the Authority on 24 August 2017.

"Key Personnel" means those persons named in ITT.

"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.

"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.

"Material" means any report, executive summary, paper, abstract or other document provided by the Contractor to the Authority for performance monitoring purposes.

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses B, D, E, F, H over any three (3) month period during the term of the Contract.

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

"Milestones" means the contract performance targets as set out in the plan at Schedule 4.

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

"Month" means calendar month.

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

- will not affect the Contract Price and will not result in any other costs to the Authority;

- may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; and
- will not require a change to this Contract.

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

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

"Participant" means the person(s) directly receiving the Services provided by the Contractor as specified in this Contract.

"Participant Personal Data" means the Personal Data of each Participant, where such Personal Data is Processed by either Party under, or in connection with, this Contract.

"Party" means a party to the Contract.

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

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

"Pre-Existing Intellectual Property Rights" means any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority or the Contractor of their obligations under this Contract and in respect of the Authority includes Authority Data.

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

"Prices & Rates Schedule" means Schedule 4 containing details of the Contract Price.

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

"Project" means the Research together with the Results.

"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.

"Research" means the scope of the research work, more particularly described in the Specification.

"Receiving Party" means the Party which receives a proposed Contract Change.

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

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

"Relevant Transfer" means a transfer of employment to which the TUPE 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 or where the Authority is providing replacement services of its own account, the Authority.

"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).

"Results" means any data or information or any other material generated by the Project.

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

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

"Security Policy" means the Authority's Security Policy 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.

"Services" means development of the innovative proposal into a working prototype and relevant testing of the prototype, more particularly described in the Specification and in line with the Tender response and Milestones.

"Specification" means the description of the Services to be supplied under the Contract as specified to in Schedule 1.

"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.

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

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

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

"Tender" means the document(s) submitted by the Contractor to the Authority in response to the Invitation to Tender for formal offers to supply it with the Services.

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

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

"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 The interpretation and construction of this Contract shall be subject to the following provisions:

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- c) Reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted;
- d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- e) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

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

A2 Contract Period

This Contract shall commence on the Commencement Date and shall expire after twelve (12) calendar months, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated.

A3 Contractor's Status

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

A4 Authority's Obligations

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

A5 Notices

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

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (delivered by hand or sent by registered post or 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 sooner where the other Party acknowledges receipt of such letter. 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, Department for Work and Pensions
For the attention of: Mental Health and AC Category Manager
- b) For the Contractor:
Address: 22a Burton Street
Melton Mowbray

Leicestershire
LE13 1AF

For the attention of: Simon Calvert[REDACTED]

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned 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 is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

A7.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A7.3 This clause A7 shall apply during the continuance of this Contract and for a period of two (2) years after its termination.

A8 Prevention of Fraud

A8.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Contractors and its Sub-contractors are required to:

- a) have an established system that enables Contractor and its Staff to report inappropriate behaviour by colleagues in respect of Contract performance claims;
- b) ensure that their performance management systems do not encourage individual Staff to make false claims regarding achievement of Contract performance targets;
- c) ensure a segregation of duties within the Contractor's or Sub-contractors operation between those Staff directly involved in delivering the service/goods

performance and those reporting achievement of Contract performance to the Authority;

- d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.

A8.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Contractor's Staff, including its directors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or Fraud has occurred or is occurring.

A8.3 If the Contractor and or its Staff commit Fraud 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 and/or its Staff (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.

A8.5 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 a Participant. 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 Exclusion of Sub-contractors

A9.1 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

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

A9.2 The Contractor shall include in every Sub-contract:

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

B. SUPPLY OF SERVICES

B1 The Services

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Authority's Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Authority's 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 Authority's Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.
- B2.4 The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
 - a) remove from the Authority's 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.

B2.6 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 Authority's Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Authority's Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its Staff.

B2.7 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 fair market value.

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 While not in anyway limiting any other provision of this Contract, in delivering the Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

B3.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.4 The Authority will conduct a review of the performance of this Contract at least annually during the Contract Period. During this review, a performance report will be agreed.

B3.5 The Contractor shall provide the Services in accordance with the Milestones set out in Schedule 4 and payment by the Authority shall be dependent upon Milestones being met and in accordance with the provisions of Schedule 4.

B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel, as detailed in the Invitation to Tender, are essential to the proper provision of the Services to the Authority.

B4.2 The Key Personnel shall not be released from supplying the Services without the prior written agreement of the Authority.

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

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

B5 Contractor's Staff

B5.1 The Authority does not anticipate that the Contractor will require access to the Authority's estate for the purpose of carrying out Services and 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.

B5.2 The Contractor shall further use all reasonable endeavours to ensure that its 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.

B6 Inspection of Premises

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.

B7 Not Used

B8 Not Used

B9 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.

B10 Employee Provisions on Expiry or Termination

Handover on Termination

B10.1 During the six (6) Months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of the Authority's request the Contractor shall fully and accurately disclose to the Authority and shall ensure that any relevant Sub-contractor accurately discloses any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Contractor or any Sub-contractor). This shall include all Relevant Employees who are to transfer as

a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:

- a) a list of employees employed by the Contractor, or any Sub-contractor;
- b) a list of agency workers, agents and independent contractors engaged by the Contractor;
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel
- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment;
- e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
- f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.2 Where the Contractor provides information in accordance with clause B10.1 and the Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information the Contractor shall notify the Authority within seven (7) days of any such change or discovery.

B10.3 The Contractor warrants that all of the information provided to the Authority pursuant to clauses B10.1 and B10.2 shall be accurate and complete. The Contractor authorises the Authority to use any and all the information as it considers necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B10.4 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall allow the Authority or persons authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.

B10.5 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Authority unless genuinely in the ordinary course of business:

- a) vary, purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;

- b) increase or decrease the number of employees employed in connection with the Services; or
- c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

B10.6 The Contractor confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Contractor. The Contractor warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

Indemnity

B10.7 The Contractor shall indemnify the Authority and any Replacement Contractor and keep the Authority and any Replacement Contractor indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority or any Replacement Contractor as a result of or in connection with:

- a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract; and
- b) any claim brought against the Authority or any Replacement Contractor as a result of the Contractor's failure to comply with any of its obligations under the TUPE Regulations and the TUPE obligations under this Contract.

B10.8 Notwithstanding any other provisions of this Contract for the purposes of clause B10 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred by it in this Contract in connection with this clause B10. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation or termination.

B10.9 This clause B10 shall apply during the Contract Period and indefinitely thereafter.

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

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

C2 Payment and VAT

C2.1 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate. The total amount to be paid by the Authority to the Contractor shall not exceed the amount specified in the payment model schedule at Schedule 4. Payment shall be made on a milestone basis dependent upon the Contractor meeting performance measures and in accordance with the dates and amounts specified in Schedule 4.

- C2.2 Invoices for payments shall be submitted once the payment milestones as set out in the payment model at Schedule 4 have been met, in arrears. Where the milestone is a monthly or quarterly payment, invoices should be submitted within 10 working days of month or quarter end. Where the Contractor submits an invoice to the Authority in accordance with clause C2.5, the Authority will consider and verify that invoice in a timely fashion.
- C2.3 The Contractor shall, when requested to do so, provide the Authority with a reasonable and appropriate level of evidence to support its invoices, as set out in Clause 3.2 of Schedule 2. Provided the Authority is satisfied that the Contractor is entitled to make the claim for payment, the Authority shall pay the Contract Price due to the Contractor under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed. The Contractor shall pay undisputed sums which are due from it to a Sub-Contractor within thirty (30) days of verifying that the invoice is valid and undisputed.
- C2.4 Where the Authority fails to comply with clause C2.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C2.3 after a reasonable time has passed.
- C2.5 The Contractor shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 2.
- C2.6 Where the Contractor enters into a Sub-contract for the purpose of performing its obligations under the Contract, the Contractor shall include in that Sub-contract:
- (a) provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract; and
 - (b) a provision requiring the counterparty to that Sub-contract to include in any Sub-contract which it awards provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract.
- C2.7 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following an undisputed claim for payment being notified by the Contractor in line with the provisions of Schedule 2.
- C2.8 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.8 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.9 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure

to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (amended 2013).

C2.10 Where payment by the Authority of all or any part of any payment submitted or other claim for payment by the Contractor is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Schedule 2.

C2.11 Without prejudice to clause C2.8, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to:

- (a) assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and
- (b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the Contract to HM Revenue & Customs ("HMRC").

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

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

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

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

C3 Recovery of Sums Due

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Not Used

C5 Euro

- C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C6 Third Party Revenue

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

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

- D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1. 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 member has:

- a) been subject to an investigation or prosecution which relates to an alleged prohibited act in clauses D1.1 or D1.2;
- b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
- c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a prohibited act in clauses D1.1 or D1.2.

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, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may;

- a) terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and
- b) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any Default of those clauses.

D1.8 Despite clause I (Disputes and Law), any dispute relating to:

- a) the interpretation of clause D1; or
- b) the amount or value of any gift, consideration or commission,

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

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

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.

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

D2.4 The Authority reserves the right to request a report from the Contractor regarding their adherence to the Equality Act 2010 at any time during the Contract Period, which must be provided within 15 working days of the receipt of the request from the Authority. In this instance, the Authority would provide the template and guidance. For the avoidance of doubt, this task would not be onerous on the Contractor and must be provided at no cost to the Authority.

D3 The Contracts (Rights of Third Parties) Act 1999

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

D4 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.

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 Authority's 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 acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.

D5.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

E. PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that 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 (3) 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.
- 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 process or transfer Authority Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Where the Authority has given its prior written consent to the Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with clause E1.9 of the Contract):
- a) the Contractor must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
 - b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

E1.11 Any breach by the Contractor of this clause E1 shall be a Material 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).

E1.12 In the event the Contractor goes into Liquidation as outlined in clause H1.1(b) and H1.1(c) or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1.1, 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 clause have been completed.

E1.13 In the event of a Sub-contractor being in liquidation (in accordance with clause F1.2) then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Authority that they have been recovered.

E1.14 In the event the Contractor is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the Administrator to ensure the Contractor is able to maintain Authority and other records they have created and held in accordance with clause E1 of this Contract and maintain these standards in the safekeeping of Authority information, i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

E1.15 Whilst in Administration the duty of the Administrator is to help the Contractor trade. This may involve the Administrator seeking an organisation to buy the Contractor's business or any part of it. The assignment or novation of this Contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior approval of the Authority obtained. Where the Contract is assigned or novated with the Authority's prior approval, the Contractor must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

E2 Protection of Personal Data

E2.1 For the avoidance of doubt the Authority does not intend to supply any Personal Data to the Contractor. The Contractor shall be registered under the DPA and both Parties will duly observe all of their obligations under the DPA, which arise in connection with this Contract.

E2.2 The Parties shall at all times comply with the DPA. The Authority shall be a Data Controller of the Personal Data provided by the Authority, collected and held by the Contractor in performing the Services. Such Personal Data provided by the Authority, shall form part of the Authority's Data.

E2.3 Notwithstanding the general obligation in clause E2.1, the Contractor shall:

- a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract as otherwise notified by the Authority to the Contractor during the Contract Period);
- b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any of the above, having regard to the nature of the Personal Data which is to be protected;
- d) take reasonable steps to ensure the competence of any Staff who have access to the Personal Data;
- e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Staff member for the provision of the Services;
- f) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- h) notify the Authority (within five (5) Working Days) if it receives;
 - i) a request from a Data Subject to have access to that person's Personal Data; or
 - ii) a complaint or request relating to the Authority's obligations under the DPA;
- i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by;
 - i) providing the Authority with full details of the complaint or request;
 - ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject within the timescales required by the Authority; and
 - iv) providing the Authority with any information requested by the Authority;
- j) permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- k) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data within the timescales required by the Authority.

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 E3 shall be a Material 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 the Contract, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Contract (clause F1.8), to a Replacement Contractor (clause H6.2) and for the purpose of the examination and certification of the Authority's accounts; or
 - f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all 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 E4.1-3 (inclusive) shall be a Material 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 E4.1-6 (inclusive) 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.

E5 Freedom of Information

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Contractor shall and shall procure that its Sub-contractors shall;

- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

E5.5 The Contractor acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services;

- a) in certain circumstances without consulting the Contractor; or
- b) following consultation with the Contractor and having taken their views into account;

E5.6 Where clause E5.5 (a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E5.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.8 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

E6.1 The Contractor shall not:

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

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

E6.2 Subject to the provisions of clause E4 (*Confidential Information*) and notwithstanding the provisions of clause E8 (*Intellectual Property Rights*) the Authority's authorised representative may, at any time after consultation with the Contractor, publish public summaries of the Material, Research and/or Results for any non-commercial purpose, including information about key Results attained and lessons learnt on the feasibility of the explored solution approaches and the potential for future deployment of solutions. Specific details shall not be disclosed; that are deemed by the Contractor to be against the legitimate commercial interest of the Contractor, that are contrary to the public interest, that would hinder application of the law or which could distort fair competition between Contractor and the other contractors in the Competition. The timing of any such publication will be subject as far as possible to prior consultation with the Contractor.

E6.3 Both Parties shall each take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority Premises 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 shall be agreed in accordance with the procedure in clause F3.

E7.5 Until and/or unless a change to the Contract Price 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 its Staff cease 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 Pre-Existing 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 All Intellectual Property Rights in any Authority Data or other material:

- a) furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; or

- b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.

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 ensure that the owner of those rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the Authority to sub-license, transfer, novate or assign to another Contracting Body, the Replacement Contractor or to any other third party supplying services to the Authority.

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 clauses 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 and conditions which are acceptable to the Authority;

and in the event that the Contractor is unable to comply with clauses E8.8 (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.

Exploitation of Intellectual Property Rights developed during the Project and Results

E8.11 The Contractor shall promptly inform the Authority of any Results which are capable of exploitation whether patentable or not.

E8.12 The Contractor shall, as appropriate, devise, publish, implement and maintain procedures for the management of Intellectual Property Rights in the Results and in particular, but without limitation, shall use all reasonable endeavours to ensure that:

- a) the Results of the Project are identified, recorded and carefully distinguished from the outputs of other research;
- b) prior to any publication of the Results of the Project, patentable inventions arising from the Results are identified, duly considered for patentability and, where it is reasonable so to do, patent applications in respect thereof are filed at the British or European Patent Office; and

- c) all such patent applications are diligently executed having regard to all relevant circumstances.

E8.13 The Contractor shall permit the Authority to monitor the operation and effectiveness of the Contractor's procedures for the management of Intellectual Property Rights in such a way as the Authority considers reasonably necessary.

E8.14 Consistent with the good management of Intellectual Property Rights and the agreement of the Authority, the Contractor shall use its best endeavours to:

- a) promote the dissemination of the Results of the Project; and
- b) where reasonable and practicable, exploit commercially such Results to generate either capital or revenue or both.

E9 Audit and the National Audit Office

E9.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor including its Staff shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

E9.3 Except where an audit is imposed on the Authority by a Regulatory body, the Authority may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an audit for the following purposes:

- a) to verify the accuracy of any charges that become due and payable by the Authority to the Contractor in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Contractor (including Sub-contractors) in the provision of Services;
- b) to review the integrity, confidentiality and security of the Authority Data;
- c) to review the Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
- d) to review the Contractor's compliance with its obligations under the Contract;

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

E9.4 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

E9.5 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:

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

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

E9.7 If an audit identifies that:

- a) the Contractor has committed a material Default capable of remedy; the Contractor shall correct such Default as soon as reasonably practicable and implement a remedial plan within a time limit specified by the Authority;
- b) the Authority has overpaid any charges that become due and payable by the Authority to the Contractor in respect of the Services, the Contractor shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the charges if the Contractor fails to make this payment; and

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

E10 Exceptional Audits

E10.1 The Contractor shall permit the Authority and/or its appointed representative's 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 Contractor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or
 - (iii) a breach of the Security Policy or the Security Plan has occurred under the Contract.

(each an "**Exceptional Circumstance**").

E10.2 If the Authority notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.5 as soon as reasonably practicable after such request and in any event within forty eight (48) hours.

E11 Audit Costs

E11.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses E9.3 to E10.2 (inclusive), unless an audit identifies a material Default by the Contractor in which case the Contractor shall reimburse:

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

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

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

- F1.1 Except where clauses F1.4 and F1.5 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.
- F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("the **Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1.4 shall be subject to:
- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
 - b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - c) the Authority receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

- F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least five (5) Working Days prior to submission of the relevant invoice.
- F1.7 The provisions of clause C (Payment and Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- a) any Contracting Body;
 - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority,

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

- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

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

F2 Waiver

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

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

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

F3 Contract Change

F3.1 No change, amendment, variation, restatement or supplement to this Contract shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 12 and signed on behalf of the Parties.

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

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

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 Remedies in the Event of Inadequate Performance

F5.1 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.
- F5.2 Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause F5.3 or clause H2 (Termination on Default) of the Contract (as appropriate).
- F5.3 In the event that the Authority reasonably believes that there has been a Default which is a Material Breach of the Contract 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.
- F5.4 Without prejudice to its rights under clause C3 Recovery of Sums Due the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party 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.
- F5.5 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.
- F5.6 In the event that:

- a) the Contractor fails to comply with clause F5.5 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 F5.5,

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

F6 Remedies Cumulative

Except as otherwise expressly provided for by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements set out in Schedule 3 (Monitoring Requirements) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F8 Financial Assurance

- F8.1 The Contractor is required to disclose immediately to the Authority any material changes to its organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on its organisation's profitability and stability where significant contracts are due to end.
- F8.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.
- F8.3 Only where requested by the Authority, the Contractor is required to provide any financial information which could include but is not limited to a copy of the Annual Accounts and Annual Returns.
- F8.4 If requested by the Authority, where a Parent Company Guarantee has been provided, the Contractor is required to provide the documents detailed in clause F8.3 for the Parent Company, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into £GB, stating the conversion rate used.

F9 Not Used

F10 Entire Agreement

- F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F10.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, 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.

F10.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- 1) the clauses of the Contract;
- 2) the Schedules;
- 3) any other document(s) referred to in the clauses of the Contract with the exception of the Tender;
- 4) Tender.

F11 Counterparts

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

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 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 and/or its Staff or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred in relation to a 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 of its 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 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 limit:

- a) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of one hundred percent (100%) of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises.

G1.5 Subject always to clause G1.1 and G2, in no event shall either Party be liable to the other for any:

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

G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G1.7 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

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 £2,000,000 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 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 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.

H.DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

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

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

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

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

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

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

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

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;

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

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

- a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is 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 by notice in writing where the **Contractor is a limited liability partnership** and:

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is 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 of any part of its assets;
 - g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.
- H1.6 References to the Insolvency Act 1986 in clause H1.5 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- H1.7 The Authority may at its sole discretion appoint a Replacement Contractor on the same terms and conditions as this Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Contractor provided that the Replacement Contractor meets the pre-qualification criteria *and* the change in contractor does not result in any other substantial amendments to the Contract.
- H2 Termination on Default**
- H2.1 The Authority may 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 Material Breach of the Contract.
- H2.2 Without prejudice to 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 three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.
- H2.3 If:
- a) twenty (20) Working Days after service of a Formal Warning Notice, the Contractor has failed to demonstrate to the 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 three (3) 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 three (3) month period and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur;

then the Authority may deem such failure shall constitute a Material Breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

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

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

H3 Break

H3.1 The Authority shall have the right to terminate the Contract at any time by giving 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.

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

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

H4 Consequences of Expiry or Termination

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

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss 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 H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause H3. The Contractor shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

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

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

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

- a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
- c) return all Personal Data and Authority Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority; and
- d) plan for the orderly handover of the Services to the Authority or its Replacement Contractor including compliance by the Contractor of the provisions of this clause H4.4 at no additional charge to the Authority or its Replacement Contractor.

H4.5 Unless otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration. Nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C (Payment and Contract Price), C3 Recovery of Sums, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E4 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E5 (Confidential Information), E6 (Freedom of Information), E9 (Intellectual Property Rights), E10 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

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

H6 Recovery upon Termination

- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Authority or as directed upon request all property (including materials, documents, information and access keys) used in the

performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any of its Staff. In the event the Contractor fails to do so, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Staff where any such items may be held.

- H6.2 At the expiry or early termination of the Contract Period (howsoever arising) or after the Contract Period the Contractor shall provide assistance to the Authority and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

I. DISPUTES AND LAW

I 1 Governing Law and Jurisdiction

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

I 2 Dispute Resolution

- I 2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.
- I 2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and its Staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten

(10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.

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

FORM OF AGREEMENT

This Contract has been entered into on the Commencement Date stated at A2 (Contract Period).

SIGNED for and on behalf of

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

SIGNED for and on behalf of

Healthy Working Futures

Name Claire Thomas[REDACTED]

Position Senior Commercial Lead,
MHAC – Health Services

Signature

Name Simon Calvert[REDACTED]

Position Managing Director

Signature

SCHEDULE 1 – THE SERVICES

1 General

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

Document	Dated
Specification	Published with Phase 1 Invitation to Tender on 7 October 2016
Contractors Tender	Submitted on 5 September 2017
Bid Clarification	Submitted on 8 September 2017
Management Plan	Submitted with Tender on 5 September 2017
Pricing Proposal	Submitted with Tender on 5 September 2017

2 Not Used

3 Not Used

4 Recruitment Through Jobcentre Plus

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

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS

1 Authority's Authorisation

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

Name: Claire Thomas[REDACTED]

Title: Authority's Representative

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

2 Contractor's Authorisation

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

Name: Simon Calvert [REDACTED]

Title: Contractor's Representative

3 Payment Information

- 3.1 The Authority and the Contractor shall exchange all orders, invoices, claims and payments via electronic methods. The Contractor will send all invoices via the Authority's Single Operating Platform (SOP) system following agreement from the Authority that amounts have been validated. Invoices shall contain a Purchase Order (PO) number provided by the Authority.

- 3.2 As detailed in clause C2 and Schedule 4, the Contractor shall, when required to do so, provide the Authority with a reasonable and appropriate level of evidence to support their claim for payment and before a claim is submitted for payment by the Authority. This may include information on timesheets, staff involved, milestone progress, draft or completed documents, research outcomes and any appropriate checks or monitoring arrangements made by the Contractor to demonstrate that they are entitled to make the claim.

4 Disputed Claims

- 4.1 Notwithstanding paragraph 4.5 of this Schedule 2, payment by the Authority of all or any part of any Contract Price rendered or other claim for payment by the Contractor shall not signify approval. The Authority reserves the right to verify Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.
- 4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Authority.

- 4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of undisputed sums of such claim.
- 4.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.
- 4.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.
- 5 Final Claims**
- 5.1 Provided all previous claims have been paid, the Authority shall have no further liability to make payment of any kind to the Contractor once the final claims have been paid.

SCHEDULE 3 – MONITORING REQUIREMENTS

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

1 Reviewing Contract Performance

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

escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the Contract.

2 Access

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

3 Health and Safety Responsibilities of the Authority Visiting Officers

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

4 Contractor Information (MI) Requirements

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

Contractor Information Required	Frequency or Date Required by
Full and final Security Plan in accordance with Schedule 6	Within twenty (20) Working Days after the Commencement Date and reviewed at least annually thereafter.
HMG Baseline Personnel Security Standard - Contractor's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors	Within four (4) weeks of the Commencement Date and submitted for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31 st January for year ending 31 st December)
Supply chain expenditure with SMEs (Quarterly return)	The Contractor, and where applicable, its Sub-contractors shall identify the volume of expenditure they undertake with SMEs in the delivery of this Contract and submit this information to the Authority on a quarterly basis.

Appendix A – Not Used

Appendix B – Performance Review for Contract Management

This is the measure by which performance of the Milestones will be assured in order to achieve payment of invoices. The Authority will provide a copy of the template and process to be following prior to the Commencement Date.

SCHEDULE 4 – PRICES AND RATES

1. For the performance of the Services, the Contractor shall be paid the Contract Price calculated using the prices and rates entered in this Schedule 4 (Payment Model).
2. In delivering the Services the Contractor acknowledges that it is under an obligation to meet the following performance Milestone deliverables and furthermore that failure to meet all or any of the defined such Milestones, shall entitle the Authority to serve notice to terminate on the Contractor.

Payment Milestones

Milestone	Indicative Date (s) due	% payment and amount (VAT Ex)
Initial payment one month after commencement of contract	29 December 2017	10% £8,166.08
Quarterly	28 February 2018 29 May 2018 29 August 2018	60% (3 monthly payments x 20%) £16,332.17
Final payment on completion of contract	28 November 2018	30% £24,498.24

3. The quarterly milestones are dependent on meeting the following performance measures:
 - 3.1 Meeting with the Department within 10 working days of each quarterly period end [28 February 2018, 29 May 2018 and 29 August 2018] to discuss progress and performance;
 - 3.2 Meeting the commitments as defined in the Contractor's Management Plan submitted at tender, containing a time bound programme of activities designed to deliver the output described in this document, timescales and resource requirements;
 - 3.3 Meeting the project cost profile as detailed in Contractor's Pricing Proposal submitted at tender.

SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION

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

Document	Page Number	Section	Condition Paragraph Number or	Explanation of harm which may result from disclosure and time period applicable to sensitivity.
None requested by Contractor when Tender was submitted				

2. The Contractor acknowledges that circumstances may arise that require disclosure and are outside the control of the Authority, for example, due to a legal requirement including a court order
3. The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
4. The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
5. The Authority will automatically publish all information provided by the Contractor **not** identified in this Schedule 5 as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
6. The Authority reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

1.1 This Schedule 6 covers;

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

2 Principles of Security

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor ICT system. The Contractor also acknowledges the confidentiality of the Authority's Data.

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

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

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

- a) loss of integrity of Authority Data;
- b) loss of confidentiality of Authority Data;
- c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;

- d) unauthorised access to network elements and buildings;
- e) use of the Contractor ICT system or services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services.
- g) Loss of confidentiality, integrity and availability of Authority Data through Cyber/internet threats

3 Security Plan Introduction

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period and after the end of the Contract Period in accordance with the Exit Management Strategy, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 6.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out in Appendix B.

Development

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

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
 - a) the provisions of this Contract; this Schedule 6 (including the principles set out in paragraph 2);

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

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Contractor annually, or from time to time to reflect:
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Contractor ICT system, the Services and/or associated processes; and
 - c) any new perceived or changed threats to the Contractor ICT system.
 - d) a reasonable request by the Authority.
- 3.11 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Authority request or change to the Schedule 1 or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

4 Audit and Testing

- 4.1 The Contractor shall conduct tests of the processes and counter measures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.12, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance with ISO/IEC 27001

- 5.1 The Contractor shall obtain independent certification of the Security Plan to ISO27001 as soon as reasonably practicable and will maintain such certification for the duration of the Contract
- 5.2 If certain parts of the Security Policy do not conform to good industry practice as described in ISO27002 and, as a result, the Contractor reasonably believes that its certification to ISO 27001 would fail in regard to theses parts, the Contractor shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement to certification in respect of the relevant parts.
- 5.3 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any

associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

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

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

6 Breach of Security

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

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

- a) immediately take all reasonable steps necessary to;
 - (i) remedy such breach or protect the Contractor ICT system against any such potential or attempted breach or threat; and
 - (ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract, then the Contractor shall be entitled to refer the matter to the Change Control Procedure in clause F3 (Variation) and Schedule 12.

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

Appendix A – Security Policy for Contractors

1. The Department for Work and Pensions (“DWP”, “**Department**” and “**Departmental**” shall be construed accordingly in this Appendix A) treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
2. In order to protect Departmental information appropriately, our Contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All contractors of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department’s relevant policies and standards.
3. The Chief Executive or other suitable senior official of each Contractor must agree in writing to comply with these policies and standards. Each Contractor must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all Staff, with access to the Services or Departmental information must be made aware of these requirements and must comply with them.
4. All contractors must comply with the relevant DWP Standards. The Standards are based on and follow the same format as ISO27001 and Cyber Essentials, but with specific reference to the Department’s use.
5. The following are key requirements and all contractors must comply with relevant DWP policies concerning:
 6. **Personnel Security**
 - 6.1 Staff recruitment in accordance with government requirements for pre-employment checks;
 - 6.2 Staff training and awareness of Departmental security and any specific contract requirements.
 7. **Secure Information Handling and Transfers**
 - 7.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
 8. **Portable Media**
 - 8.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
 9. **Offshoring**
 - 9.1 The Department’s Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

10. Premises Security

10.1 Security of premises and control of access.

11. Security Incidents

11.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

11.2 The Contractor must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

11.3 It is the contractor's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.

11.4 Failure to comply with any of these Policies or Standards could result in termination of current contract.

Appendix B – Draft Security Plan



Draft security plan

[REDACTED]

SCHEDULE 7 – Not Used

SCHEDULE 8 – Not Used

SCHEDULE 9 – Not Used

SCHEDULE 10 – Not Used

SCHEDULE 11 – Not Used

SCHEDULE 12 – CHANGE CONTROL PROCEDURE

1 General Principles of Change Control Procedure

- 1.1 This Schedule 12 sets out the procedure for dealing with Contract Changes and Operational Changes.
- 1.2 If either Party is in doubt about whether a change falls within the definition of an Operational Change, it must be processed as a Contract Change.
- 1.3 For any Change Communication to be valid under this Schedule 12, it must be sent in accordance with the provisions of clause A5 (*Notices*) as if it were a notice.

2 Costs

- 2.1 The Contractor shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and the Authority agrees to pay such increase.
- 2.2 The Contractor shall decrease the Charges if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3 Any change to the Charges resulting from a Contract Change, whether the change will cause an increase or a decrease in the Charges, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.4 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Operational Change Procedure

- 3.1 Any Operational Changes identified by either Party to improve operational efficiency of the Services may be implemented by the Contractor without following the Change Control Procedure provided they do not:
 - (a) involve the Authority in paying any additional Charges or other costs;
 - (b) have an impact on the business of the Authority;
 - (c) require a change to this Contract; or
 - (d) have a direct impact on use of the Services.
- 3.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Contract Period, and which may be sent by electronic mail, by letter or by facsimile transmission.
- 3.3 If the Party that receives an Operational Change Request wishes to agree to the

Operational Change it must submit an Operational Change Confirmation to the other Party.

- 3.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 3.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

4 Contract Change Procedure

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

5 Impact Assessment

- 5.1 An Impact Assessment shall be substantially in the form of Appendix 2.
- 5.2 Each Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact the proposed Contract Change will have on the Services and the Contractor's ability to meet its other obligations under this Contract;
 - (b) any additional changes to the terms of this Contract that will be required as a result of that impact which may include changes to:
 - (i) the Services;
 - (ii) the format of Authority Data, as set out in the Services;
 - (iii) the Implementation Plan and any other timetable previously agreed by

the Parties; and

(iv) other services provided by third party contractors to the Authority;

- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Services which comes into force after the Commencement Date;
- (e) any amendments to the Contract wording proposed in the Change Request Form;
- (f) such other information as the Authority may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

5.3 The calculation of costs for the purposes of paragraphs 5.1(g) and (h) shall:

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

5.4 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause E2 (Protection of Personal Data).

5.5 Subject to the provisions of paragraph 5.6, the Authority shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 6 within fifteen (15) Working Days of receiving the Impact Assessment.

5.6 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-

issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification.

- 5.7 At the Authority's discretion, the Parties may repeat the process described in paragraph 5.6 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 6.

6 Authority's Right of Approval

- 6.1 Subject to paragraph 5.6 and 5.7, within fifteen (15) Working Days, or timescale agreed between both Parties, of receiving the Impact Assessment from the Contractor, the Authority shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 6.5; or
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the Services to comply with any changes in Law.
- 6.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.5.
- 6.3 Unless the Authority expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.
- 6.4 Any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 6.5 If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 and it has not been rejected by the Contractor in accordance with paragraph 7, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 and send them to the Contractor. The Contractor shall sign both copies and deliver both signed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.
- ## **7 Contractor's Right Of Rejection**
- 7.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Authority would:
- (a) materially and adversely affect the risks to the health and safety of any person; and/or

- (b) require the Services to be performed in a way that infringes any Law,
- 7.2 then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2.
- 7.3 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 7.1.
- 8 Failure to Comply**
- 8.1 If the Contractor fails to complete an Impact Assessment, implement or successfully comply with the Contract Change by the required date, the Authority may:-
- (a) give the Contractor a further opportunity to implement or comply with the Contract Change; or
 - (b) escalate any issues arising out of the failure to implement or comply with the Contract Change to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in clause 12 (Dispute Resolution).
- 8.2 If, despite the measures taken under Clause 8.1(a) & 8.1(b), the Contractor fails to implement or comply with the Contract Change, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause 12 (Dispute Resolution).
- 9 Contract Management**
- 9.1 The Parties shall update the Contract to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Request and annotate with a reference to the Change Authorisation Note or Operational Change Request pursuant to which the relevant Contract Changes or Operational Changes were agreed.

APPENDIX 1 - Change Request Form

(For Completion by the Party Requesting Change)

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

APPENDIX 2 - Impact Assessment

(For Completion by DWP Contractor)

Change Request No:	Contract Title & Contract Number:	Contractor Name & Registered No:
Contract Change Title:		Contract Change Implementation Date:
Full Details of the Impact the proposed Contract Change will have on the services and your ability to meet your other obligations under this Contract:		
Any additional changes to this Contract that will be required as a result of the change – including any: 1. Format of Authority Data 2. Timetable for the Implementation, including testing 3. Amendments to contract wording 4. Cost of implementing the change – ongoing/increase/decrease in costs 5. Alteration in Resources – estimated volumes and applicable rates		
Impact Assessment Completed by: (Name & Position in Organisation)		
(For Completion by DWP) Impact Assessment Approved by: (Name & Date)		
Impact Assessment Rejected by: (Name & Date)		
Reason for Rejection:		

APPENDIX 3 - Change Authorisation Note

(For Completion by DWP)

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

(If the original was entered into as a Deed this Change Authorisation Note will need to be executed as a Deed – delete this signature box and use alternative below)

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

(Remove the signature box below if original was not entered into as a Deed)

Executed as a Deed for and on behalf of:

Signed on behalf of the Contractor:- Director Name: Director Signature: Date of Signature:	Witnessed on behalf of the Contractor in the presence of:- Witness Name: Witness Signature: Date of Signature:
AND	
The Secretary of State for Work and Pensions, for and on behalf of the Authority.	
Signed by:- Name: Signature: Date of Signature: Position in Organisation:	Secretary of State Seal:-

