



Department
for Work &
Pensions

AGREEMENT

For

The Provision of Work Choice Services

Between

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

And

Remploy Ltd

AGREEMENT REFERENCE NUMBER: UI_DWP_101387

CONTENTS PAGE

A. GENERAL PROVISIONS	9
A1 Definitions and Interpretation	9
A2 Initial Contract Period	26
A3 Prime Contractor's Status	26
A4 Authority's Obligations	26
A5 Notices	27
A6 Mistakes in Information	28
A7 Conflicts of Interest	28
A8 Prevention of Fraud	28
A9 Volumes	30
A10 Non Exclusivity	30
B. SUPPLY OF SERVICES	30
B1 The Services	30
B2 Provision and Removal of Equipment	31
B3 Manner of Carrying Out the Services	31
B4 Participant Complaints	32
B5 The Merlin Standard	32
B6 Key Personnel	33
B7 Prime Contractor's Staff	33
B8 Offers of Employment	34
B9 Transfer of Undertakings (Protection of Employment (TUPE))	34
B10 Employee Provisions on Expiry or Termination	34
B11 Performance Indicators and Key Performance Indicators	38
B12 Not Used	40

B13 Not Used	40
B14 Universal Credit	40
C. PAYMENT AND CONTRACT PRICE	41
C1 Contract Price	41
C2 Contract Price and Payment	41
C3 Outcome Validation & Extrapolation	42
C4 Recovery of Sums Due	44
C5 Price adjustment on extension of the Initial Contract Period	45
C6 Euro	46
C7 Third Party Revenue	46
C8 VAT	46
C9 Methods of Payment	47
C10 Disputed Claims	48
C11 Final Claims	48
D. STATUTORY OBLIGATIONS AND REGULATIONS	48
D1 Prevention of Bribery and Corruption	49
D2 Discrimination	51
D3 The Contracts (Rights of Third Parties) Act 1999	51
D4 Environmental Requirements	51
D5 Health and Safety	52
D7 Tax Compliance	53
D8 Termination Rights due to any Occasion of Tax Non-Compliance	53
E. PROTECTION OF INFORMATION	53
E1 Authority Data	53
E2 Protection of Personal Data (Authority is Data Controller)	56

E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989	58
E4 Confidential Information	58
E5 Freedom of Information	61
E6 Publicity, Media and Official Enquiries	62
E7 Security	63
E8 Intellectual Property Rights	63
E9 Audit and the National Audit Office	66
E11 Open Book Data	69
E12 Exceptional Audits	70
E13 Audit Costs	70
E14 Malicious Software	70
F. CONTROL OF THE CONTRACT	71
F1 Transfer and Sub-Contracting	71
F2 Waiver	73
F4 Severability	73
F5 Remedies in the Event of Inadequate Performance	74
F6 Remedies Cumulative	76
F7 Monitoring of Contract Performance	76
F8 Financial Assurance	76
F9 Extension of Initial Contract Period	77
F10 Entire Agreement	77
F11 Counterparts	78
F12 Change Control	78
G. LIABILITIES	81
G1 Liability, Indemnity and Insurance	81
G2 Professional Indemnity	84

G3 Warranties and Representations	84
G4 Deed of Guarantee	86
H. DEFAULT, DISRUPTION AND TERMINATION	86
H1 Termination on Insolvency and Change of Control	86
H2 Termination on Default	87
H3 Break	89
H4 Consequences of Expiry or Termination	89
H5 Disruption	91
H6 Recovery upon Termination	92
I. DISPUTES AND LAW	92
I 1 Governing Law and Jurisdiction	93
I 2 Dispute Resolution	93
J EUROPEAN SOCIAL FUND (ESF)	95
J1 ESF Funding	95
J2 Publicity	96
J3 Evaluation Requirements	96
J4 Records	96
J5 Indemnity	97
SCHEDULE 1 – THE SERVICES	101
1 General	
2 Working Hours	
3 Recruitment Through Jobcentre Plus	
SCHEDULE 2 – ADMINISTRATION REQUIREMENTS	102
1 Authority's Authorisation	
2 Prime Contractor's Authorisation	
3 Charges on Participants	

4	Additional Costs	
5	Volumes	
6	RECOVERY OF SUMS	
7	Prime Contractor's Records	
8	Interuption of Service	
9	WORKING CAPITAL	
	SCHEDULE 3 – MONITORING REQUIREMENTS	104
1	Reviewing Contract Performance	
2	Assuring Prime Contractors' Systems	
3	Access	
4	Health and Safety Responsibilities of the Authority Visiting Officers	
	103	
5	Prime Contractor Information (MI) Requirements	
	APPENDIX A – CONTRACT PERFORMANCE TARGETS	110
	SCHEDULE 4 – PRICES AND RATES	112
	SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION DN: TBA	116
	SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN DN: TBA	117
1	Introduction	
2	Principles of Security	
3	Security Plan	
4	Audit and Testing	
5	Compliance with ISO/IEC 27001	
6	Breach of Security	
	APPENDIX A – SECURITY POLICY FOR PRIME CONTRACTORS	123
	APPENDIX B – DRAFT SECURITY PLAN	125

SCHEDULE 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS 126

1 General

2 Compliance

SCHEDULE 8 – DIVERSITY AND EQUALITY REQUIREMENTS 128

1 General

2 Compliance

3 Monitoring and Reporting

SCHEDULE 9 – WELSH LANGUAGE SCHEME 132

1 General

2 The DWP Welsh Language Scheme

3 Delivery of Services Through the Medium of Welsh

SCHEDULE 10 – APPRENTICESHIPS AND SKILLS REQUIREMENTS 134

1 General

2 Compliance

3 Monitoring and reporting

SCHEDULE 11 – PARENT COMPANY GUARANTEE 137

1 Interpretation

2 Obligations of The Guarantor

3 Liability

4 Addendum Or Variation

5 Guarantee

6 Outstanding Payments

7 Change of Control

8 Payment And Expenses

9 Settlement

10 Warranties

11	Assignment	
12	Notices	
13	Waiver	
14	Severability	
15	Contracts (Rights of Third Parties) Act 1999	
16	Governing Law	
17	Entire Agreement	
SCHEDULE 12 EXIT AND SERVICE TRANSFER ARRANGEMENTS		146
SCHEDULE 13 INTERWORK EMPLOYEE SERVICE REQUIREMENTS		147

This Agreement is made on
the

between the Parties

The Secretary of State for Work and Pensions

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

of

1 Hartshead Square
Sheffield
S1 2FD

and

Remploy Ltd

with registered number

09457025

having the main or registered
office at

18c Meridian East
Meridian Business Park
Leicester
LE19 1US

("the Prime Contractor")

and hereinafter called "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 12 month period from 1 April to 31 March.

"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.

"Annex" means an annex to the Specification.

"Approval" means the prior written consent of the Authority; this includes by email.

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

"Authority Data" means

- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - i) supplied to the Prime Contractor by or on behalf of the Authority; or
 - ii) which the Prime Contractor is required to generate, process, store or transmit pursuant to this Contract; or
- b) any Personal Data for which the Authority is the Data Controller.

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

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

“Breach of Security” means the occurrence of unauthorised access to or use of the Premises, the Services, the Prime Contractor System, the Authority ICT System or any ICT or data (including the Authority’s Data) used by the Authority or the Prime 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 and Disaster Recovery Plan” or **“BCDR Plan”** means any plan prepared pursuant to clauses H5.6 – H5.8, as may be amended from time to time.

“Change Control Notice” means the notice referred to in clause F12 (Change Control).

“Cohort” means the Starts per Month.

“Cohort Profile” means the expected monthly profile of Job Entries; Short Job Outcomes; Supported Short Job Outcomes; Unsupported Short Job Outcomes and Progressions and Sustained Job Outcomes

over a period of time the totals of which shall equate to the respective PIs and KPIs as set out in Schedule 3.

“Commencement Date” means 7th April 2015.

“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 of this Contract) which has been clearly marked as Commercially Sensitive Information which is provided by the Prime Contractor to the Authority in confidence; or
- (iii) which constitutes a trade secret.

“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 Prime 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 the written agreement between the Authority and the Prime Contractor consisting of:

- a) these clauses;
- b) the Schedules with their Appendices;
- c) the Specification with its Annexes;
- d) the Provider Guidance; and
- e) the Tender.

“Contract Package Area” or “CPA” means a contract package area as detailed in paragraph 1.46 -1.48 of the Specification.

“Contract Period” means the period from the Commencement Date to:

- a) the date of expiry set out in clause A2.2(b)(iii) (Initial Contract Period); or
- b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the period set out in clause A2.2(b)(iii);
- c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

All subject to and in accordance with the provisions of clauses A2.2 and F9.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Prime Contractor by the Authority under the Contract, as set out in Schedule 4 (Prices and Rates), for the full and proper performance by the Prime Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C5 (Price Adjustment on Extension of Initial Contract Period).

“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 Subject” shall have the same meaning as set out in the DPA.

“Data Processing” 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

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

“DPA” 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 the Authority ICT System or official information outside of the UK including Landed Resources as advised to the Prime Contractor by the Authority from time to time.

“Employee” has the meaning given to it in the Sale and Purchase Agreement.

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive.

“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 Prime Contractor’s and any Sub-contractor’s equipment, plant, materials and such other items supplied and used by the Prime Contractor in the performance of its obligations under the Contract.

“Exit and Service Transfer Arrangements” means the arrangements set out in Schedule 12 (Exit and Service Transfer Arrangements) which

shall apply in the event of the expiry or termination (however arising) of the Contract

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

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

“General Anti-Abuse Rule” means:

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

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence 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.

“Government Apprenticeship Programme” means training which is funded by the Government via the National Apprenticeship Service.

“Guarantee” means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Schedule 11 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

“Guarantor” means the body who has agreed to guarantee the due performance of the Contract by the Prime Contractor pursuant to Clause G4 and the Guarantee.

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

“ICT” means information and communications technology.

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

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

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause A2.2(b)(iii) (Initial Contract Period) subject to and in accordance with the provisions of clause A2.2, or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

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

“Interwork Employees” means employees of the Prime Contractor who are placed in employment with another employer, but who remain on the employment terms of the Prime Contractor.

“Interwork Employee Service” means the supported transfer of Interwork Employees from the Prime Contractor to another employer, including exiting the terms of the Prime Contractor as set out in Annex 4 paragraph 2 of the Specification.

“Interwork Employee Fees” means a one twelfth proportion of the yearly value for the continuous employment of an Interwork Employee who:

- a) is in the employment of another employer for the period of claim;
- b) is not in the process of being, or due to be, made redundant from the Prime Contractor for any reason other than the supported transfer to another employer;

“Interwork Service Purchase Fee Payment” means a one off payment of no more than [Redacted] to purchase the remaining service requirement within the Interwork Employee Service following the third anniversary of the Commencement Date, based on the value of support to an Interwork Employee calculated as:

- a) on-going support costs of [Redacted] per person;
- b) funding linked to remaining Interwork Employees in employment of Prime Contractor at third anniversary of Contract;

all as further detailed in Schedule 13.

“Job Entry” means the point at which a Participant enters employment which is expected to result in a Short Job Outcome which is either Supported or Unsupported.

“Job Outcome” means a Short Job Outcome or a Sustained Job Outcome.

“Job Outcome Error Rate” means, in respect of each Payment Validation Period, the percentage of failures, errors and/or over-claims which the Authority shall be entitled to assume have been made in respect of all of the Job Outcome Payments claimed by the Prime Contractor in respect of the Payment Validation Period (which, for the avoidance of doubt, shall have passed the check(s) undertaken by the Authority pursuant to Clause C3.2 and have been paid by the Authority to the Prime Contractor) and which shall be calculated as follows:

(A/B) x 100 where:

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

(b) B = the number of Job Outcome Payments comprised in the Job Outcome Sample for the Payment Validation Period (expressed as a percentage).

“Job Outcome Fails” means a Short Job Outcome or Sustained Job Outcome that has failed any of the checking and validation processes set out in Clause C3.

“Job Outcome Payment” means a Short Job Outcome Payment or Sustained Job Outcome Payment.

“Job Outcome Progression” means where a Supported Participant meets the criteria of a Short Job Outcome and then progresses to being Unsupported and meets the definition of a Short Job Outcome as if the Participant entered employment at the point of transfer from Supported to Unsupported employment.

“Job Outcome Samples” has the meaning given in Clause C3.4.

“Job Outcome Technical Fails” means a Job Outcome that the Authority is unable to check as part of a Job Outcome Sample.

“Key Personnel” means those persons named in Appendix D of Schedule 1 (The Services).

“Key Performance Indicators” (or “KPIs”) means the key performance indicators as set out in Schedule 3 Appendix A and comprising the following:

- a.Key Performance Indicator 1: total Short Job Outcomes as a percentage of Starts;
- b.Key Performance Indicator 1a: Supported Short Job Outcomes as a percentage of Starts;
- c.Key Performance Indicator 1b: Unsupported Short Job Outcome as a percentage of Starts;
- d.Key Performance Indicator 2: Job Outcome Progressions as a percentage of Supported Short Job Outcomes (and for the avoidance of doubt this will result in a Supported Short Job Outcome becoming a Unsupported Short Job Outcome such that only one Short Job Outcome payment shall be payable per Start);
- e.Key Performance Indicator 3: Sustained Job Outcome as a percentage of Starts;

and **“Key Performance Indicator”** or **“KPI”** shall be construed accordingly.

“Landed Resources” means when the Prime 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 Prime Contractor is bound to comply.

“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.

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

“Minor Breach” has the meaning given to it in Clause B11.3.

“Month” Unless expressly stated within the clauses of this Contract month means calendar month.

“National Apprenticeship Service” means the government agency so named that coordinates apprenticeships in England (or any replacement body) and the equivalent bodies for Wales and Scotland.

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

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

“OJEU Notice” means the contract notice published in the Official Journal of the European Union under reference number 2014/S 142-255455.

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the charges already paid or payable and charges forecast to be paid during the remainder of the Contract Period, including details and all assumptions relating to:

- (a) the Prime Contractor’s costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;

- (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Prime Contractor's profit margin; and
 - (iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the performance of the Services) ;
- (c) overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Prime Contractor's profit achieved over the Contract Period and on an annual basis;
- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Prime Contractor; and

an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency.

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

"Participant's records" means the records prepared and maintained by the Prime Contractor (in whatever form or storage media) concerning an individual Participant.

"Party" means a party to the Contract.

"Payment Validation Period" means such period as is determined from time to time by the Authority and notified to the Prime Contractor as being the period over which the Authority will check Job Outcome Samples.

"Performance Improvement Plan" means the plan agreed in accordance with clause B11 for the resolution of a Prime Contractor's Default.

"Performance Improvement Notice" means a written notice given by the Authority to the Prime Contractor pursuant to clause B11 to initiate the Performance Improvement Process.

“Performance Improvement Process” means the process for resolving certain of the Prime Contractor’s Defaults as set out in clause B11.

“Performance Indicators” (or “PIs”) means the performance indicators as set out in Schedule 3 Appendix A and comprising the following:

f. Performance Indicator 1: Job Entries as a percentage of Starts;

g. Performance Indicator 1a: Supported Job Entries as a percentage of Starts;

h. Performance Indicator 1b: Unsupported Job Entries as a percentage of Starts;

and **“Performance Indicator”** or **“PI”** shall be construed accordingly.

“Performance Manager” means the Authority’s representative who will work with the Prime Contractor to support delivery of the Performance Indicators (PIs) and Key Performance Indicators (KPIs).

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

“Persistent Breach” means a Default (other than a Serious Breach) which has occurred on three or more separate occasions within a continuous period of three (3) Months.

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

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

“Pricing Proposal” means the Pricing Schedule submitted by Maximus Health and Human Services Limited with its BAFOin response to the requirements for the same set out in the Invitation to Negotiate;

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

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

“Prime Contractor System” means the ICT system used by the Prime Contractor or any Sub-contractor in performing the Services, excluding any such system as forms part of the Authority ICT System.

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

“Provider Guidance” means the Authority’s guidance published on the internet entitled “Work Choice: DWP provider guidance” and all related instructions and recommended practices, including the Authority’s published generic provider guidance and any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, access to which has been provided by the Authority to the Prime Contractor prior to the Commencement Date and any other instructions and recommended practices notified by the Authority to the Prime Contractor from time to time.

“Provider Referrals and Payments System” or **“PRaP”** means the Authority’s prescribed IT systems which will be used to refer Participants and pay the Prime Contractor.

“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 Prime Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

“Referral” means the referral of a prospective Participant to the Prime Contractor by the Authority as described in more detail in the Specification.

“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 Prime Contractor or any Sub-contractor (including any Employee) who are wholly or mainly assigned to work in the provision of the Services and who are/will be the subject of a Relevant Transfer by virtue of the application of the Employment Regulations.

“Relevant Tax Authority” means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Prime Contractor is established.

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

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

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

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

“Security Plan” means the Prime 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.

“Serious Breach” means, in relation to Clause B11, a Default of the Prime Contractor which the Authority shall be entitled to treat as a material breach of Contract which is not capable of remedy under Clause H2.1(b).

“Services” means the services to be supplied as specified in the Specification.

“Service Fee” means the non-outcome based fee payable to the Prime Contractor by the Authority for delivery of the Services at the rates set out in Schedule 4 (Prices & Rates).

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

“Short Job Outcome” means continuous employment or self-employment (with one or more employers) which:

- the Participant enters which is Supported or Unsupported;
- requires at least 16 hours of work per week;
- has lasted 13 weeks or more with no breaks in employment (or, in the case of a self-employed Participant, they have traded independently for at least 13 weeks, as defined in Provider Guidance (and specifically Part 6 of the Authority's published generic Provider Guidance); and
- started prior to the Participant leaving the Services or within the six week Tracking Period.

“Short Job Outcome Payment” means the outcome based fee payable to the Prime Contractor by the Authority on achievement of each Short Job Outcome at the rates set out in Schedule 4 (Prices & Rates);

“Specification” means the description of the Services to be supplied under the Contract as referred to in Schedule 1, The Services., including, where appropriate, the Key Personnel, the Locations) and the Quality Standards.

“Staff” mean all persons employed by the Prime Contractor to perform its obligations under the Contract together with the Prime 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 Prime Contractor by the Authority.

“Start” means a new Participant starting on the Services on the starting date recorded on PRaP.

“Start Date” shall have the meaning described in the Provider Guidance.

“Stock Service Fee” means a one off payment to the Prime Contractor by the Authority, at the rate included in Table 1 of this Schedule 4.

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

“Supported” means where a Participant enters employment with the support of the Prime Contractor or one of its Sub-contractors.

“Sustained Job Outcome” means continuous employment or self-employment (independent trading) which:

- a) started after the Participant left the Services and within the Tracking Period;
- b) is not Supported;
- c) has lasted for at least 26 weeks out of 30,
- d) requires at least 16 hours of work per week; and
- e) includes breaks in employment totalling no more than 4 weeks.

“Sustained Job Outcome Payment” means the outcome based fee payable to the Prime Contractor by the Authority on achievement of each Sustained Job Outcome, at the rates set out in Schedule 4 (Prices & Rates);

“Tender” means the document(s) submitted by the Prime Contractor to the Authority in response to the Authority’s invitation to submit a best and final offer (“BAFO”)

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

“Tracking Period” means the six week period (or such other longer period as the Authority shall agree with the Prime Contractor from time to time) during which the Prime Contractor may track the destination to which the Participant leaves the Services and, if appropriate, make a claim in respect of a Job Outcome. This period starts on the date the relevant Participant leaves module one of the Services (as described in the Provider Guidance), or in relation to the final claim provisions of paragraph A2.2 (b), the date on which the Contract expires or terminates.

“Type 2 Report” has the meaning given in ISAE 3402.

“Unsupported” means where a Participant enters employment without the support of the Prime Contractor or one of its Sub-contractors.

“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**.

“Welfare to Employment Contracts” means contracts entered into between the Secretary of State for Work and Pensions and contractors for the provision of employment related support services as part of the

Department of Work and Pension's Welfare to Employment Programme.

“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”;
- f) Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- g) In the event of any conflict or inconsistency between the documents comprising this Contract, such conflict or inconsistency shall be resolved according to the following descending order of priority:
 - (i) the clauses forming the main body of this Contract;
 - (ii) the Schedules and their Appendices (apart from the documents referred to in paragraph 1 of Schedule 1 (The Services));
 - (iii) the Specification and its Annexes;

- (iv) the other documents referred to paragraph 1 of Schedule 1 (the Services) other than the Services Requirement and the Tender;
- (v) the Tender.

A2 Initial Contract Period

A2.1 The Contract shall take effect on the Commencement Date.

A2.2 The Initial Contract Period shall be the period commencing on the Commencement Date and (unless terminated earlier in accordance with the Contract or extended under clause F9) ending at midnight on 6th May 2019, subject to and in accordance with clauses A2.2(a) and A2.2(b).

(a) Delivery of the Services by the Prime Contractor (including, without limitation, receipt and processing of new Referrals) shall commence on the Commencement Date.

(b) Without prejudice to clause F9:

- i. the Prime Contractor shall cease to receive new Referrals at midnight on 6th April 2017;
- ii. delivery of the Services by the Prime Contractor in relation to existing Participants shall continue up to and including 6th March 2019; and
- iii. taking into account the period referred to in clause C2.3, the Prime Contractor's entitlement to receive payment for Job Outcomes under the Contract shall cease at midnight on 6th May 2019.

A3 Prime Contractor's Status

At all times during the Contract Period the Prime Contractor shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract. The Prime Contractor shall not say or do anything that may lead any other person to believe that the Prime Contractor is acting as an agent of the Authority.

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 Prime Contractor.

A5 Notices

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

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed in either case by letter), by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause A5.3.

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

a) For the Authority:
Address: [Redacted]
For the attention of: [Redacted]
Tel: [Redacted]
Email: [Redacted]

c) For the Prime Contractor:

Address: [Redacted]
For the attention of: [Redacted]
Tel: [Redacted]
Email: [Redacted]

(c) Copied to: [Redacted]

Address: [Redacted]
Phone: [Redacted]
Mobile: [Redacted]
Email: [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 Prime Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Prime 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 Prime Contractor shall take appropriate steps to ensure that neither the Prime 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 Prime Contractor and the duties owed to the Authority under the provisions of this Contract. The Prime 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 Prime 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. The Authority agrees and acknowledges that the Prime Contractor's existing contracts with the Authority or existing contracts that the Authority has with any parent company or affiliate do not constitute actual conflict, or a potential conflict, between the financial or personal interests of the Prime Contractor and the duties owed to the Authority under the provisions of this Contract.

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. Prime Contractors and Sub-contractors are required to:

- a) have an established system that enables Prime Contractor and Sub-contractor staff to report inappropriate behaviour by colleagues in respect of Contract performance claims;

- b) ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of Contract performance targets;
- c) ensure a segregation of duties within the Prime Contractor's or Sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority;
- d) ensure that an audit system is implemented to provide periodic checks, at a minimum of three (3) Monthly intervals and a maximum of six (6) Monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.

A8.2 The Prime 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 Prime Contractor's directors, employees or Sub-contractors. The Prime 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 Prime Contractor, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

- a) terminate the Contract and recover from the Prime 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 Prime 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 Prime Contractor or its Sub-contractors shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Prime Contractor, by serving written notice on the Prime Contractor.

A8.5 If the Authority finds that the Prime Contractor has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Prime Contractor, with immediate effect.

A8.6 The Prime 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 Prime Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding Fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.

A9 Volumes

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

A10 Non-exclusivity

The Parties hereby expressly acknowledge and agree that the Prime Contractor shall not be the Authority's exclusive supplier or provider of the Services and the Authority shall be entitled at its discretion to procure any aspect of the Services from other suppliers or providers at any time during the Contract Period.

B.SUPPLY OF SERVICES

B1 The Services

B1.1 The Prime 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 Prime Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 Without prejudice to its other rights and remedies under or in connection with the Contract, if the Authority informs the Prime 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 Prime 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 Prime Contractor shall provide all the Equipment necessary for the supply of the Services.

B3 Manner of Carrying Out the Services

- B3.1 The Prime 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 Prime Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Prime Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in any way limiting any other provision of this Contract, in delivering the Services, the Prime 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 Prime Contractor shall ensure that all Staff supplying the Services shall do so in accordance with the Law and Good Industry Practice 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 ICT Interface

- (a) The Prime Contractor shall, at its own cost, ensure that the Prime Contractor System interfaces appropriately with the Authority ICT System.
- (b) Without prejudice to the generality of clause B3.5(a), in respect of network, communications, computer or other Equipment provided by or used by the Prime Contractor and/or its Sub-Contractors in the provision of the Services that do or are required to interface with the Authority ICT System, the Prime Contractor shall have primary management responsibility, at its own cost, for incident or problem resolution, including (without limitation):
- (i) for ensuring that such requirement does not interfere with the provision of the Services in accordance with the Contract; and
 - (ii) for taking all necessary steps within its power, and in full consultation with the Authority, to ensure that the interface is successfully achieved, including the provision of all

necessary resources and personnel to rectify any incidents or problems.

B4 Participant Complaints

- B4.1 The Prime Contractor shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Prime Contractor (and/or any of its Sub-contractors).
- B4.2 If the dispute between the DWP Participant and the Prime Contractor (and/or the Sub-contractor) cannot be resolved the dispute shall be referred to the **Independent Case Examiner ("ICE")** for mediation.
- B4.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 (plus VAT) contribution to costs paid by the Prime Contractor or the Sub-contractor who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Prime Contractor or Sub-contractor is dismissed, no costs shall be payable. Any costs in respect of complaints that have been upheld against the Prime Contractor or Sub-contractor and any financial redress due to the DWP Participant shall be paid within four (4) weeks of the date of the ICE final investigation report

B5 The Merlin Standard

- B5.1 The Prime Contractor shall apply for Merlin Standard accreditation within 6 months of the Commencement date and to achieve full Merlin accreditation within 12 months of Commencement. Any breach by the Prime Contractor of this clause B5 shall be a material breach of the Contract for the purposes of clause H2. The Prime Contractor shall operate in accordance with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains.
- B5.2 Where the Authority has approved the appointment of a Sub-contractor, the Prime Contractor shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) any other guidance and/or codes of practice issued by the Authority and, where applicable, shall maintain accreditation with the relevant Merlin Standard authorisation body. Any breach by the Prime Contractor of this clause B5.2 shall be a Default for the purpose of this Contract.

B6 Key Personnel

- B6.1 The Prime Contractor acknowledges that the Key Personnel, as detailed in Annex J of the Invitation to Tender, are essential to the proper provision of the Services to the Authority.
- B6.2 The Key Personnel shall not be released from supplying the Services without the prior written agreement of the Authority.
- B6.3 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.
- B6.4 The Authority shall not unreasonably withhold its agreement under clauses B6.2 or B6.3. Such agreement shall be conditional on appropriate arrangements being made by the Prime Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B7 Prime Contractor's Staff

- B7.5 The Prime Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B7.6 The Prime Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Prime Contractor confirms that all persons employed or engaged by the Prime Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B7.7 The Prime Contractor shall provide training on a continuing basis for all Prime Contractor Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B7.8 The Prime 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 Prime Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- B7.9 If the Prime Contractor, in the reasonable opinion of the Authority, fails to comply with clauses, B7.5 and the Authority will be entitled to

consider that failure a material breach of the Contract and may terminate the Contract in accordance with clause H2.

B8 Offers of Employment

- B8.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Prime 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.

B9 Transfer of Undertakings (Protection of Employment (TUPE))

- B9.1 The Parties acknowledge the transfer of the Employees to the Contractor pursuant to clause 9 of the Sale and Purchase Agreement.

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 Prime 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 (including 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 Prime Contractor, or any Sub-contractor;
 - (b) a list of agency workers, agents and independent contractors engaged by the Prime 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 of their current employment, 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 Prime Contractor provides information in accordance with clause B10.1 and the Prime Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information the Prime Contractor shall notify the Authority within seven (7) days of any such change or discovery.

B10.3 The Prime Contractor warrants that all of the information provided to the Authority pursuant to clause B10.1 and B10.2 shall be accurate and complete. The Prime 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 Prime 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 Prime 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 Prime Contractor confirms that it will comply fully with its obligations under the Employment Regulations in respect of providing

information to any Replacement Contractor. The Prime Contractor warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

Indemnity

B10.7 The Prime 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 Prime Contractor's failure to comply with any of its obligations under the Employment Regulations.

B10.8 Notwithstanding any other provisions of this Contract for the purposes of this 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. 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 Clauses B10.6 – B10.8 inclusive shall apply during the Contract Period and indefinitely thereafter.

TUPE Frustration

B10.10

- (a) Clauses B10.10 (b) – (d) shall apply where, on expiry of this Contract or on termination of this Contract under clause H3 (Break), the Employment Regulations do not apply to some or all of those employees of the Prime Contractor or of any Sub-contractor (including for the avoidance of doubt Interworker Employees) who are wholly and exclusively providing the Services ("Affected Employees"), as a result of the Authority's failure to re-procure the Services or its decision not to re-procure the Services or to re-procure them in a way that has the effect of excluding the application of the Employment Regulations on such re-procurement in whole or in part (in any such case a "TUPE Frustration Event").

- (b) Subject to Clause B10.10(c), the Authority shall indemnify the Prime Contractor against all direct redundancy payments reasonably incurred arising out of the termination of employment of any Affected Employees who have been included in the information disclosed in accordance with Clause B10.1; Provided That:
- (i) such redundancy payments arise solely from the failure of the Employment Regulations to apply to the Affected Employees as a result of a TUPE Frustration Event and not from any other factors including (without limitation) the failure of the Prime Contractor to submit a tender (or a successful tender) in any re-procurement of the Services conducted by the Authority; and
 - (ii) the Authority is satisfied that the redundancy payments are reasonably and necessarily incurred and do not exceed the contractual or statutory entitlement (whichever is higher) of the Affected Employees and do not include, without limitation, any payments or enhanced payments of a discretionary nature.
- (c) The obligation of the Authority to indemnify the Prime Contractor in accordance with Clause B10.10(b) is subject to the following:
- (i) the Prime Contractor acting (and/or procuring that any relevant Sub-contractor acts) in accordance with all applicable employment procedures set out in applicable Law and in accordance with the statutory and contractual rights of the Affected Employees and taking all reasonable steps to mitigate any such redundancy payments (for example by redeployment or re-engagement);
 - (ii) the Prime Contractor complying with (and/or has procured that any relevant Sub-contractor has complied with) Clause B10.5; and
 - (iii) the Prime Contractor notifying the Authority of the redundancy payment within 6 months after expiry or qualifying termination of the Contract, and providing such supporting information as the Authority shall reasonably require.
- (d) In this clause B10.10 “redundancy payment” means a payment pursuant to Part XI of the Employment Rights Act 1996 or, if higher, a payment to which the relevant Affected Employee is entitled in accordance with his or her contract in circumstances to which Part XI of the Employment Rights Act 1996 applies.

B11 Performance Indicators (PIs) and Key Performance Indicators (KPIs)

- B11.1 The Prime Contractor shall ensure that the Services meet or exceed the PIs and the KPIs at all times from the Commencement Date.
- B11.2 The Authority shall be entitled to measure the Prime Contractor's performance under the Contract on a profiled cohort basis (both on a per CPA basis and Contract-wide) net of any extrapolation error and where there is no measure for a cohort the last known extrapolation error shall be used for determining net performance for performance management purposes. When an extrapolation error is established for a cohort then that revised extrapolation error shall be used.
- B11.3 The PIs and KPIs shall apply for each individual profiled cohort (as such profiled cohort is determined by the Authority) and not on a cumulative cohort basis. For the avoidance of doubt, the Authority shall be entitled to treat each cohort independently and not add cohorts together. Failure by the Prime Contractor against any one KPI for an individual profiled cohort shall be deemed a Default which is not a material breach of Contract under Clause H2.1 (which Default, for the purposes of this Clause B11, shall be called a "Minor Breach") regardless of any satisfactory or over performance by the Prime Contractor in other cohorts in the same period. The Authority may at its discretion consider such Minor Breach in the context of all profiled cohorts in the relevant reporting period prior to determining if formal action should be taken in respect of such Minor Breach .
- B11.4 Failure to meet any one of the KPIs on a three month rolling basis shall be a Minor Breach. For the avoidance of doubt the Authority may at its discretion consider the performance of all cohorts in a reporting period before determining if the Authority will take action in respect of such Minor Breach .
- B11.5 The Prime Contractor shall be deemed to have committed a Minor Breach where, in relation to any one of the KPIs, it fails to achieve the profiled cohort targets. For the avoidance of doubt the Authority may at its discretion consider the performance of all profiled cohorts in a reporting period before determining if the Authority will take action in respect of such Minor Breach.
- B11.6 Where there is a Minor Breach pursuant to the provisions of this Schedule 2 Annex 6 the Authority shall notify the Prime Contractor in writing (such notification being a "Performance Improvement Notice" or "PIN") giving sufficient information such that the Prime Contractor can understand the nature of the Minor Breach.
- B11.7 The Prime Contractor shall have 10 days to meet with the Authority to discuss the Minor Breach and any proposed remedial action. The

Authority and Prime Contractor shall agree an action plan (such plan being a “Performance Improvement Plan” or “PIP”) to address the Minor Breach. In the event of failure to agree a timescale for rectification then the Prime Contractor shall have no longer than 28 days to rectify the Minor Breach.

B11.8 Failure by the Prime Contractor to remedy such Minor Breach within the applicable timescale shall be deemed a second Minor Breach and failure to remedy such second Minor Breach shall, subject to Clauses B11.10 and B11.11, be deemed a Serious Breach. .

B11.9 Where there are two or more Minor Breaches of the same KPI in a rolling 12 month period this shall, subject to Clause B11.10 and B11.11, be deemed to be a Serious Breach.

B11.10 In the event of a Serious Breach occurring under this Clause B11, the Authority shall serve a PIN on the Prime Contractor giving sufficient information such that the Prime Contractor can understand the nature of the breach (or breaches). The Prime Contractor shall within 10 days provide the Authority with a PIP setting out its plan to remedy or rectify the breach to the Authority’s satisfaction. Failure to remedy and/or undertake action set out in the PIP and/or provide a PIP to the Authority’s satisfaction shall entitle the Authority to service notice of its intention to terminate the Contract under Clause H2.1(b).

B11.11 Notwithstanding Clause B11.10, in the event of a Serious Breach occurring or being deemed to occur under this Clause B11, the Authority shall be entitled to take, or require the Prime Contractor to take, the following additional or alternative actions:

- a. itself preparing a PIP which the Prime Contractor shall follow;
- b. requiring costs arising from the preparation and/or implementation of any PIP to be met by the Prime Contractor;
- c. relieving the Prime Contractor of undertaking some or part of the Services at the Prime Contractor’s cost in terms of substitute or step-in services;
- d. providing for a PIP to extend post rectification/remedy for a period of time such that the Authority becomes confident in the Prime Contractor’s ability to meet its contractual obligations on a sustained basis.

B11.12 For the avoidance of doubt, the provisions set out above regarding action in relation to Minor Breaches and Serious Breaches relate to failures by the Prime Contractor to meet KPIs. Failure by the Prime Contractor to meet any of the PIs shall be considered by the Authority as an early indication of a potential failure of a KPI and the Parties shall agree and initiate a PIP with the express intention of ensuring

that the relevant KPI(s) will be met. Where such a PI-related PIP is agreed but there is still a failure by the Prime Contractor to meet the relevant KPI(s) then the Authority shall be entitled to take performance action in accordance with this Clause B11 as if the PI-related PIP was not in place.

B11.13 For the avoidance of doubt, the Authority shall be entitled to apply the provisions of this Clause B11 on a CPA and/or Contract-wide basis depending on the nature of the Minor Breaches and/or Serious Breaches in question. In relation to CPA based Minor Breaches and Serious Breaches any references to the Authority's right to terminate in this Cause B11 shall be taken to permit termination of the Prime Contractor's right to provide the Services in that particular Contract Package Area without relieving the Prime Contractor of its obligation to deliver the Services in the remainder of the Contract Package Areas.

B12 Not Used

B13 Not Used

B14 Universal Credit

B14.1 The Prime Contractor acknowledges that the Authority is intending to alter the benefit system such that Universal Credit will replace a number of existing benefits.

B14.2 The Prime Contractor is required to support the implementation of the Universal Credit insofar as it may impact on the provision of the Services, including without limit:

- i. Assisting in notifying Participants for which it is responsible how the changes to universal credits will impact the Services as applicable to those Participants;
- ii. Notification to the Authority of the data relevant to the impact of Universal Credit on the Services.

B14.3 At any time, as a consequence of, or in connection with the implementation Universal Credit, the Authority reserves the right to:

- i. review all systems and processes used and implemented by the Prime Contractor in connection with delivery of the Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Authority's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or

- ii. require the Prime Contractor to make such changes to the Prime Contractor's systems and processes as the Authority Body may determine subject to the application of clause F12 (Change Control).

B15 Interwork Employee Service

- B15.1 The provisions of Schedule 13 shall apply in respect of the Interwork Employee Service to be delivered by the Prime Contractor under this Contract.

C.PAYMENT AND CONTRACT PRICE

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

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

C2 Contract Price and Payment

- C2.1 The Authority shall pay the Contract Price to the Prime Contractor in accordance with the provisions of this Clause C2.1, Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates) via a self-billing process approved by Her Majesty's Revenue and Customs.
- C2.2 The Prime Contractor shall input such information as specified by the Authority in the Provider Guidance (including details of Job Outcomes) onto the IT System in the format also specified by the Authority in the Provider Guidance. Subject to the Prime Contractor inputting such information onto the IT System as the Authority specifies in the Provider Guidance (and in the format specified) Contract Price will be generated in accordance with the provisions of Schedule 2 (Administration Requirements) and Schedule 4 (Prices and Rates).
- C2.3 The Prime Contractor shall notify the Authority of an eligible Job Outcome under Clause C2.2 within two (2) Months of the date when the qualifying criteria for such Job Outcome have been met.
- C2.4 Subject always to Schedule 2 (Administration Requirements), the Authority shall pay Job Outcome Payments within thirty (30) calendar days of an eligible Job Outcome being notified by the Prime Contractor under Clause C2.3. Payment will be made at the rate prevailing for the Contract year within which the Participant was first referred to the Prime Contractor and in line with Schedule 2 (Administration

Requirements) and Schedule 4 (Prices and Rates). The Authority may at its discretion require the Prime Contractor to provide any appropriate supporting information it considers necessary before making payment.

- C2.5 If the Prime Contractor fails to input information onto the IT System in the prescribed manner or fails to submit the appropriate supporting information when necessary, the Authority shall not be in default of the Contract if it fails to make payment within thirty (30) calendar days of the payment becoming due provided that the Authority has not unnecessarily delayed payment of the relevant claim.
- C2.6 Details of the Prime Contractor's bank account and address must be notified to the Authority via the IT System. The Authority shall send notifications of payments to that address.
- C2.7 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Authority to the Prime Contractor) the Authority shall be entitled to validate any claim for payment made by the Prime Contractor. At all times the Prime Contractor shall provide all necessary assistance as requested by the Authority (including, without limitation, procuring the consent of the Participant for the Authority to contact the Participant's employer) to enable the Authority to validate any claim for payment made by the Prime Contractor.

C3 Outcome Validation & Extrapolation

- C3.1 At any time during the Contract Period (including, for the avoidance of doubt, at any time before and/or after payment by the Authority to the Prime Contractor) the Authority shall be entitled to validate any claim for payment made by the Prime Contractor. At all times the Prime Contractor shall provide all necessary assistance as requested by the Authority (including, without limitation, procuring, if required at any time, the consent of the Participant for the Authority to contact the Participant's employer) to enable the Authority to validate any claim for payment made by the Prime Contractor.
- C3.2 Before payment of any Job Outcome Payment by the Authority to the Prime Contractor, and in respect of each Job Outcome Payment, the Authority may undertake a check(s) to verify that the Participant (to whom the Job Outcome relates) was in employment for the requisite period for such Job Outcome.
- C3.3 The Authority shall be entitled to reject any claims for payment made by the Prime Contractor which fail the check(s) undertaken by the Authority pursuant to Clauses 3.1 and/or 3.2 without undertaking any further check(s).

- C3.4 Following the last Working Day of each Month (or other such period as may be notified by the Authority) during the Payment Validation Period, the Authority shall select for checking a sample (the size and/or composition of which shall, for the avoidance of doubt, be determined and/or vary at the sole discretion of the Authority in line with the National Audit Office guidance on sampling methodology) of the Job Outcome Payments which have been paid by the Authority to the Prime Contractor in respect of that Payment Validation Period (each such sample hereinafter being referred to as a "Job Outcome Sample"). For the avoidance of doubt, where there are 100 claims or fewer for the relevant Payment Validation Period 100% shall be checked; where there are more than 100 claims for the relevant Payment Validation Period a representative sample (selected using best practice) shall be checked (subject to the Authority's right to check up to 100% of claims should it so determine).
- C3.5 For the avoidance of doubt, any sample of Job Outcome Payments selected for checking by the Authority pursuant to Clause C3.4 shall be selected by the Authority on a random basis.
- C3.6 In checking any Job Outcome Sample pursuant to Clause C3.4, the Authority may (but shall not be obliged to):
- (a) carry out checks of data pertaining to the Participant arising out of or in connection with the Contract against Her Majesty's Revenue and Customs' data; and/or
 - (b) contact the Participant; and/or
 - (c) contact the Participant's employer(s); and/or
 - (d) require the Prime Contractor to supply or provide access to information and/or evidence collected and held by the Prime Contractor under the Contract.
- C3.7 The Prime Contractor hereby agrees to procure, if required at any time, the written consent of the Participant for the Authority to contact the Participant's employer and the Prime Contractor shall retain copies of such written consent as part of the Prime Contractor's record keeping obligations under the Contract. The Authority reserves the right to inspect such written consent from time to time.
- C3.8 In respect of each Payment Validation Period, the Authority shall compile a Job Outcome Sample for both Short Job Outcomes and Sustained Job Outcomes which (unless otherwise notified by the Authority) shall comprise the Job Outcome Sample for the Payment Validation Period.
- C3.9 On expiry of each Payment Validation Period, where any error or over-claim has been identified by the Authority (in its sole opinion) in the Job Outcome Sample, the Authority shall be entitled to:

- (e) recover in full from the Prime Contractor the amount or value of all Job Outcome Fails and/or Job Outcome Technical Fails;
- (f) determine (in its sole discretion) the Job Outcome Error Rate;
- (g) extrapolate the Job Outcome Error Rate across all of the Job Outcome Payments which have been paid by the Authority to the Prime Contractor in the Payment Validation Period to produce an aggregate value of monies overpaid (the "Job Outcome Aggregate Error Amount"); and
- (h) recover in full from the Prime Contractor a sum equal to the Job Outcome Aggregate Error Amount less the sum of any monies recovered by the Authority pursuant to Clause C3.9(a).

C3.10 For the avoidance of doubt, the Authority's rights in this Clause C3 shall be without prejudice to any other rights or remedies that the Authority has under the Contract (including without limitation any rights of recovery and/or set-off pursuant to Clause C4 Recovery of Sums Due).

C3.11 Without prejudice to Clause C3.9, the Authority reserves the right to apportion the financial risk of those claims that it has been unable to validate and recover payment based on the following:

- (i) the percentage of risk equivalent to the percentage of claims checked as part of a Payment Validation Period that failed validation being recovered from the Prime Contractor;
- (j) the percentage of risk equivalent to the percentage of claims checked as part of a Payment Validation Period that passed validation being assumed by the Authority.

C4 Recovery of Sums Due

C4.1 Wherever under the Contract any sum of money is recoverable from or payable by the Prime Contractor (including any sum which the Prime Contractor is liable to pay to the Authority in respect of any default of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Prime Contractor under the Contract or under any other agreement or contract with the Authority.

C4.2 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.

- C4.3 The Prime Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Prime Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Prime Contractor.
- C4.4 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.

C5 Price adjustment on extension of the Initial Contract Period

- C5.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F9 (Extension of Initial Contract Period), the Authority may, where applicable, in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Prime Contractor (for a period of not more than thirty (30) Working Days) to agree to a variation in the Contract Price, subject always to clause C5.4. For the avoidance of doubt both Parties accept and acknowledge that any variation to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Prime Contractor in a manner not provided for in the terms of the Contract.
- C5.2 If the Parties are unable to agree a variation in the Contract Price (applicable to the period of extension) in accordance with clause C5.1, the Contract shall terminate at the end of the Initial Contract Period.
- C5.3 If a variation in the Contract Price is agreed between the Authority and the Prime Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- C5.4 Any increase in the Contract Price pursuant to clause C5.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Prices & Rates Schedule) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

C6 Euro

- 6.1 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 Prime Contractor free of charge to the Authority.

- 6.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause C6.1 by the Prime Contractor.

C7 Third Party Revenue

- 7.1 The Prime 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.

C8 VAT

- 8.1 The Prime Contractor shall add VAT to the Contract Price at the prevailing rate if applicable to your VAT circumstances and the Authority shall pay the VAT to the Prime Contractor following an eligible claim for payment being notified by the Prime Contractor in line with the provisions of Schedule 2 Administration Requirements.

- 8.2 Without prejudice to Clause 8.5, 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")

- 8.3 The Prime Contractor acknowledges that the Authority has advised the Prime 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.

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

a) where the Prime Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;

b) where the Prime 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 Prime 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.

8.5 The Prime 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 Prime Contractor's failure to account for or to pay any VAT relating to payments made to the Prime Contractor under the Contract. Any amounts due under this clause C8 shall be paid by the Prime 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.

C8.6 At such times as the Prime Contractor changes its treatment of VAT, but no less than annually, the Prime Contractor shall notify the Authority of the correct VAT rate to be applied by Authority on the Self Billing system. If the Authority fails to apply the correct VAT rate due to the fault of the Prime Contractor, the Prime Contractor shall be liable for any costs and or penalties arising from such failure to inform the Authority of the correct VAT rate. In the event the Authority fails to apply the correct VAT, through no fault of the Prime Contractor, the Authority shall be liable for the costs and penalties arising from such failure by the Authority to apply the correct VAT rate on the Self Billing system. Failure of the Authority to apply the correct VAT rate on the Self Billing system shall not relieve the Contractor of promptly notifying the Authority of any change to the VAT rate.

C9 Methods of Payment

C9.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment. All payment of Fees are conditional upon the Prime Contractor providing the Services in accordance with the terms of the Contract

C9.2 Payments are made on the condition that the Prime Contractor's entitlement to such payments can be verified on request by the production of the records required under this Contract (including as specified in the Provider Guidance). The Authority shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that no delivery of Services has taken place and that any such purported delivery of Services constitutes "Unsupported Services". The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Services from the Prime Contractor and the Prime Contractor shall repay such sums on demand.

C10 Disputed Claims

C10.1 Notwithstanding Clause 10.5, payment by the Authority of all or any part of any Contract Price rendered or other claim for payment by the Prime Contractor shall not signify approval. The Authority reserves the right to verify the Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.

C10.2 If any part of a claim rendered by the Prime Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Prime 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 Prime Contractor shall promptly provide such evidence in a form satisfactory to the Authority.

C10.3 If any part of a claim rendered by the Prime Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.

C10.4 If any fee rendered by the Prime 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 Prime Contractor shall forthwith repay such part to the Authority.

C10.5 The Authority shall be entitled to deduct from sums due to the Prime 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.

C11 Final Claims

C11.1 Provided all previous claims valid and accepted have been paid, the Authority shall have no further liability to make payment of any kind to the Prime Contractor once the final claims have been received.

D.STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Prime 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 Prime 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 Prime 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 Prime 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 Prime 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 Prime Contractor shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any Staff has:

- a) been subject to an investigation or prosecution which relates to an alleged prohibited act in Clauses D1.1 or D1.2;
- b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or

- c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a prohibited act in clauses D1.1 or D1.2.

D1.6 If the Prime Contractor notifies the Authority that it suspects or knows that there may be a Default of clauses D1.1 or D1.2, the Prime 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 Prime Contractor, its Staff or anyone acting on the Prime 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 Prime 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 Prime 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 Prime 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 Prime 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 Prime Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.
- D2.3 The Prime Contractor shall comply with the provisions of the Human Rights Act 1998.

D3 The Contracts (Rights of Third Parties) Act 1999

A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. 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 Prime 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 Prime Contractor from time to time.
- D4.2 If the Prime Contractor purchases new products partially or wholly to provide the Services, the Prime Contractor must ensure that:
- (a) any purchase of products or goods listed in Schedule 1 to the Energy Information Regulations 2011 (products with energy labels) has the highest energy efficiency class possible;
 - (b) any purchase of products listed in Schedule 1 to the Energy Information Regulations 2011, which is not a product with energy labels within the meaning of clause D4.3(a), complies with the relevant energy efficiency benchmark for that product in paragraph 4 to Schedule 1 of the Eco-Design for Energy-Related Products Regulations 2010;
 - (c) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the

agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and

- (d) any purchase of tyres carrying a label as specified in Annex II to Regulation (EC) Number 1222/2009 of the European Parliament and of the Council of 25 November 2009 (on the labelling of tyres with respect to fuel efficiencies and other parameters) has the highest fuel energy efficiency class (as defined by that Regulation).

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

D5 Health and Safety

D5.1 The Prime 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.

D5.4 The Prime Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.5 The Prime 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 Premises in the performance of its obligations under the Contract.

D5.6 The Prime 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.

D7 Tax Compliance

D7.1 The Prime Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any occasions of Tax Non-Compliance.

D7.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Prime Contractor shall:

- a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- b) promptly provide to the Authority:
 - (i) details of the steps taken by the Prime Contractor and any steps that the Prime Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may require

D8 Termination Rights due to any Occasion of Tax Non-Compliance

D8.1 The Authority shall be entitled to terminate the Contract in the event that:

- a) the warranty given by the Prime Contractor pursuant to Clause D7.1 is false;
- b) the Prime Contractor commits a material breach of its obligations to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause D7.2; or
- c) the Prime Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable.

E.PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Prime Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Prime Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Prime 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 Prime Contractor, the Prime Contractor shall supply that data to the Authority as requested.
- E1.4 The Prime Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of that data.

- E1.5 The Prime 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 Prime Contractor's Business Continuity Plan. The Prime Contractor shall ensure that such back-ups are available to the Authority upon reasonable request.
- E1.6 The Prime Contractor shall ensure that any system or media on which the Prime Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Schedule 6 Appendix A.
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Prime Contractor's default so as to be unusable, the Authority may:
- a) require the Prime Contractor (at the Prime Contractor's expense) to restore or provide for the restoration of the Authority Data or Personal Data and the Prime Contractor shall do so as soon as practicable but not later than **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 Prime Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Prime 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 Prime Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Prime 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 Prime Contractor and any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Prime 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 Prime Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with E1.9 of the Contract):
- a) the Prime 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 Prime 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 Prime 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 Prime Contractor is put 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 Prime Contractor (or a liquidator or provisional liquidator acting on behalf of the Prime 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 Prime Contractor which contain Authority Data/Information and Participant Personal Data/Information; in accordance with the Authority instructions;
- b) return all such records to the Authority in accordance with their instructions;
- c) permanently destroy all copies of any relevant electronic records; and
- d) provide written confirmation to the Authority that the actions outlined above in this paragraph have been completed.

E1.13 In the event of a Sub-contractor of the Prime Contractor being in liquidation (in accordance with clause F1.2) then it is the responsibility of the Prime 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 Prime Contractor is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the Administrator to ensure the Prime Contractor is able to maintain Authority, Participant and other records they have created and held in accordance with clause E1 of this contract and maintain these standards in the safekeeping of Authority information, i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

E1.15 Whilst in Administration the duty of the Administrator is to help the Prime Contractor trade. This may involve the Administrator seeking an organisation to buy up the Prime Contractor. The assignment or novation of this contract to new ownership is not automatic and the

Authority must be consulted (in accordance with clause F1.1) and prior Approval obtained. Where the contract is assigned or novated with the Authority's prior Approval, the Prime 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 (Authority is Data Controller)

E2.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Authority is the Data Controller and that the Prime Contractor is the Data Processor.

E2.2 The Prime 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 Prime 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 Sub-contractors or agents 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 other 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 Prime 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 Prime 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 Prime Contractor for processing Personal Data within the timescales required by the Authority; and
- l) not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii) any reasonable instructions notified to it by the Authority.

E2.3 The Prime Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

E3.1 The Prime Contractor shall comply with, and shall ensure that it's Staff comply with, the provisions of:

- a) the Official Secrets Acts 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

E3.2 Any breach by the Prime 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 Prime 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 Prime 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 Prime 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 Prime Contractor's Confidential Information:
- a) to any government department, any part of the Crown and any government department and any part of the Crown receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown ;
 - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
 - e) on a confidential basis for the purpose of the exercise of its rights under the agreement, including (but not limited to) for auditing purposes (Clause E9), to a body to novate, assign or dispose of its rights under the Agreement (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.

Save where such disclosure is essential to the delivery by a Replacement Contractor of any replacement services to the Services and subject to the Replacement Contractor entering into a confidentiality and non-disclosure agreement that meets the requirements of Good Industry Practice, in no event will the Authority disclose the Prime Contractor's Confidential Information to any competitor of the Prime Contractor or to any Replacement Contractor.

- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, part of the Crown, employee, third party or Sub-contractor to whom the Prime 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 Prime Contractor of clauses E4.1-3 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 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 Prime 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 Prime Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Prime Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Prime 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 (or longer period agreed between the Parties) 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 acting reasonably 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 Prime Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.
- E5.5 The Prime 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 Prime Contractor or the Services;
- a) in certain circumstances without consulting the Prime Contractor; or
 - b) following consultation with the Prime Contractor and having taken their views into account;

- E5.6 Where E5.5 (a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Prime Contractor advanced notice, or failing that, to draw the disclosure to the Prime Contractor's attention after any such disclosure.
- E5.7 The Prime 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 Prime Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

- E6.1 The Prime Contractor shall not:
- a) make any press announcements or publicise this Contract or its contents in any way; or
 - b) use the Authority's name or brand in any promotion or marketing or announcement of orders;
- without the written consent of the Authority, which shall not be unreasonably withheld or delayed.
- E6.2 Both Parties shall take reasonable steps to ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.
- E6.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Prime Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Prime Contractor or its Sub-contractors.
- E6.4 If so requested by the Authority the notepaper and other written material of the Prime Contractor and Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Prime Contractor (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for Approval, and no such items shall be printed (other than for Approval purposes) until such approval is received.

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 Prime 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 Prime Contractor shall ensure that the Security Plan produced by the Prime Contractor fully complies with the Security Policy.
- E7.3 The Prime 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 Prime 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 Prime 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 Prime Contractor shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Prime 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 Prime 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 Prime Contractor to supply the Services. The Prime Contractor shall have the right to sub license the Sub- Prime Contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Prime Contractor shall cease use, and shall ensure that any Sub-Prime Contractor ceases use of the Authority's Intellectual Property Rights.
- E8.3 The Prime Contractor shall grant the Authority a non-exclusive, revocable, free licence for the Contract Period to use the Prime Contractor's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Prime Contractor's Intellectual Property Rights.

E8.4 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- a) furnished to or made available to the Prime Contractor by or on behalf of the Authority shall remain the property of the Authority;
or
- b) prepared by or for the Prime Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Prime Contractor of its obligations under the Contract shall belong to the Authority;

and the Prime 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 Prime 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 Prime 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-license shall also include the right for the Authority to sub-license, transfer, novate or assign to other Crown bodies, the Replacement Contractor or to any other third party supplying services to the Authority.

E8.6 The Prime Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Prime 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 Prime Contractor under any provision of the Contract.

E8.7 The Authority shall notify the Prime 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 Prime Contractor. The Prime 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 Prime Contractor, provided always that the Prime 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 Prime Contractor provide to the Prime Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Prime Contractor for infringement or alleged infringement of any Intellectual Property Right by the Prime Contractor in connection with the performance of the Prime Contractor's obligations under the Contract. The Prime Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so if the action is brought as a result of the acts or omissions of the Prime Contractor. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.4 (a) or (b).

E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Prime 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 Prime Contractor is likely to be made, the Prime Contractor shall notify the Authority and, at its own expense (if the claim is as a result of the acts or omissions of the Prime Contractor) and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- a) modify any or all of the Services without reducing the performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the

provisions herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on Terms which are acceptable to the Authority;

and in the event that the Prime Contractor is unable to comply with clauses E8.10 (a) or (b) within twenty (20) Working Days of receipt of the Prime Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E9 Audit and the National Audit Office

- E9.1 The Prime Contractor shall, and shall procure that each Sub-contractor shall, at all times 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, information, documents, accounts and the like, in possession of, or available to, the Prime Contractor relating to the Contract, including information, documents and full and accurate records of all expenditure reimbursed by the Authority, all payments made by the Authority and all costs incurred and payments made by the Prime Contractor while carrying out the services showing in detail:

- a) administrative overheads; and
- b) payments made or received from Sub-contractors; and
- c) capital and revenue expenditure; and
- d) the Prime Contractor's consolidated income statement and audited financial statements for each of its annual financial periods; and
- e) such other items as the Authority may reasonably require from time to time to monitor the amount of profit made or being made by the Prime Contractor and/or to conduct cost audits for verification of cost expenditure or estimated expenditure for the purposes of this Contract

(together the "Financial Records")

The Prime Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority from time to time in connection with the Contract.

- E9.2 Without prejudice to the generality of the foregoing, the Prime Contractor shall, at all times, upon written request by the Authority, provide written confirmation of a summary of any of the Financial Records, including details of any funds held by the Contractor specifically to cover its on-going costs, in such other form and detail as the Authority may reasonably require, to enable the Authority to monitor

the performance by the Contractor of its obligations under this Contract its solvency, and the level of profit it is making from its performance of the Services.

E9.3 The Prime Contractor (and its agents) 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 Prime 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 Prime Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

E9.4 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 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 Prime Contractor in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers (including Sub-Prime Contractors) of the Services;
- b) to review the integrity, confidentiality and security of the Authority Data;
- c) to review the Prime Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
- d) to review the Prime 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 Prime 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 agreement.
- E9.5 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Prime Contractor or delay the provision of the Services.
- E9.6 Subject to the Authority's obligations of confidentiality, the Prime 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 Prime 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 Prime Contractor Software and ICT Environment; and
 - e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.
- E9.7 Where the audit is to be conducted by a third party such as the National Audit Office, 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.
- E9.8 If an audit identifies that:
 - a) the Prime Contractor has committed a material Default the Authority shall be entitled to exercise its remedies under this Contract including (without limitation) under clause F5.4, and/or clause H2 (and, for the avoidance of doubt, this clause E9.6(a) shall be without prejudice to the Authority's right to exercise such remedies where a material Default by the Contract is identified other than through an audit);
 - b) the Authority has overpaid any charges that become due and payable by the Authority to the Prime Contractor in respect of the Services, the Prime 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 Prime Contractor fails to make this payment; and

- c) the Authority has underpaid any charges that become due and payable by the Authority to the Prime Contractor in respect of the Services, the Authority shall pay to the Prime 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 Prime Contractor within twenty (20) Working Days.

E9.9 Without prejudice to clause 9.1, where the Authority funds the delivery of this Contract using European Social Fund (ESF) funds or in its role as a Co-financing Organisation uses this Contract as a match for ESF provision, either at the outset of the Contract or at any point during the life of the Contract, the Prime Contractor and any Sub-contractors appointed by it shall be bound by the corresponding additional requirements detailed within relevant Provider Guidance, including the maintaining of records until at least 31 December 2023.

E9.10 With regard to Section E9 the contractor shall work with the Authority to specify the requirement and mechanism to be adopted during Post Contract Negotiations and before contract signature.

E11 Open Book Data

During the Contract Period and for a period of 7 years (without prejudice to any longer period required under clause E9.8) following the end of the Contract Period the Prime Contractor shall

- a) maintain and retain the Open Book Data; and
- b) disclose and allow the Authority and / or any auditor access to the Open Book Data.

E12 Exceptional Audits

E12.1 The Prime Contractor shall permit the Authority and/or its appointed representative's access to conduct an audit (an "Exceptional Audit") of the Prime Contractor in any of the following circumstances:

- a) actual or suspected impropriety or Fraud;
- b) there are reasonable grounds to suspect that:
 - (i) the Prime Contractor is in Default under the Contract;
 - (ii) the Guarantor may be in default of the Guarantee;
 - (iii) the Prime 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 Prime Contractor financial distress and result in a risk of the Prime Contractor becoming insolvent or bankrupt has occurred; or

- (iv) a breach of the Security Policy or the Security Plan has occurred under the Contract,

(each an "Exceptional Circumstance")

E12.2 If the Authority notifies the **Prime Contractor** of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Prime 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.

E13 Audit Costs

E13.1 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 E11.2, unless an audit identifies a material Default by the Prime Contractor in which case the Prime 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 Crown body to conduct an audit under this Clause, the Authority shall be able to recover on demand from the Prime Contractor the identifiable, reasonable and properly incurred costs and expenses of the relevant Crown body.

E14 Malicious Software

E14.1 The Prime 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.

E14.2 Notwithstanding clause E13.1, 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.

E14.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E13.2 shall be borne by the Parties as follows:

- a) by the Prime Contractor where the Malicious Software originates from the Prime Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Prime 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 F1.4 and F1.5 applies, the Prime Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval (in the case of sub-contracting only such Approval not to be unreasonably withheld). Sub-contracting any part of the Contract shall not relieve the Prime Contractor of any of its obligations or duties under the Contract.
- F1.2 The Prime 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 Prime Contractor to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.
- F1.4 Notwithstanding clause F1.1, the Prime 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 Prime 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 C4 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 Prime Contractor assigns the right to receive the Contract Price under clause F1.4, the Prime 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 Prime 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 5 Working Days prior to submission of the relevant invoice.

F1.7 The provisions of clause C2 (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 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
- b) 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 Prime Contractor's obligations under the Contract.

F1.9 Any change in the legal status of the Authority such that it ceases to be a Crown 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 and 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 Crown body or if there is a change in the legal status of the Authority such that it ceases to be a Crown 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 Prime 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 Prime Contractor.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Prime Contractor which relates to the performance of

the Prime 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 Prime 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.

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 Without prejudice to clauses B4.1-B4.3, the Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding:

- a) the standard of Services;
- b) the manner in which any of the Services have been supplied,
- c) the manner in which work has been performed,

- d) the materials or procedures the Prime Contractor uses; or
- e) any other matter connected with the performance of the Prime 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 as appropriate in accordance with clause F5.3, F5.4 or clause H2 (Termination on Default) of the Contract.

F5.3 Subject to clause F5.7 in the event of the Prime Contractor, through its own Default, failing to perform the Services in accordance with all applicable standards and requirements of this Contract or otherwise failing to comply with any of its obligations under this Contract, the Authority shall (without prejudice to its other rights and remedies under or arising out of this Contract) be entitled to exercise one or more of the following remedies: –

- (a) require the Prime Contractor, at the Prime Contractor's own expense, to remedy the Default and/or re-schedule and re-perform the Services affected by the Prime Contractor's failure (the "Affected Services") within such timescale as the Authority may reasonably require; and/or
- (b) require the Prime Contractor to submit a performance improvement plan detailing why the failure has occurred and how it will be remedied within 10 Working Days following the date of such request or such other period as the Authority may direct; and/or
- (c) withhold from payment to the Prime Contractor, or recover as a sum due from the Prime Contractor, the portion of the Contract Price allocable to the Default or the Affected Services; and/or
- (d) Without prejudice to clause F5.6, if the Prime Contractor fails to remedy the Default or re-schedule and re-perform the Affected Services in accordance with the timescale stipulated by the Authority under clause F5.3.(a) the Authority may itself, or through a third party acting on its behalf, remedy the Default or re-perform the Affected Services and the Prime Contractor shall pay the reasonable costs incurred by the Authority in so doing

F5.4 Notwithstanding clause F5.3, in the event of the Authority reasonably believes that there has been a Default which is a material breach (including without limitation an anticipatory breach) of the Contract by the Prime Contractor, then the Authority may, without prejudice to its other rights and remedies under or arising out of this Contract including

(without limitation) under clause H2 (Termination on Default), do any of the following:

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

F5.5 Without prejudice to its rights under clause C4 Recovery of Sums Due where the Authority exercises its rights under clause F5.4(a) or clause F5.4(b) the Authority may charge the Prime 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 Prime 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.

F5.6 Without prejudice to the Authority's other rights and remedies under or arising out of the Contract, in the event that:

- a) the Prime Contractor fails to comply with clause F5.3(a) 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 Prime Contractor persistently fails to comply with clause F5.3(a),

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

F5.7 Notwithstanding the provisions of clauses F5.3-F5.6, where the Default of the Prime Contractor is a Minor Breach or Serious Breach for the purposes of Clause B11, the matter shall be dealt with in accordance with the terms of Clause B11.

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

F8 Financial Assurance

F8.1 The Prime Contractor is required to disclose immediately to the Authority any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F8.2 The Prime 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 Prime Contractor's financial viability.

F8.3 Only where requested by the Authority, the Prime 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 Prime 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 Extension of Initial Contract Period

F9.1 The Authority may, by giving written notice to the Prime Contractor not less than six (6) Months prior to 6th April 2017, the end of the second anniversary of the Commencement Date, extend the period during which the Prime Contractor shall receive new Referrals by up to six (6) months and each of the dates referred to in clauses A2.2(b)(iii) inclusive shall be extended accordingly. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C5 Price adjustment on extension of the Initial Contract Period) throughout any such extended period.

F10 Entire Agreement

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

F10.2 Except as to any representations and warranties contained in the Sale and Purchase Agreement, 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; and
- 3) any other document(s) referred to in the clauses of the Contract.

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.

F12 Change Control

F12.1 The Authority has the right to propose variations to the Contract (including a request by the Authority for the Prime Contractor to cease any part of the Services) in accordance with this Clause F12. Where the Authority proposes to vary any part of the Contract the Authority shall serve a Change Control Notice on the Prime Contractor, and the Prime Contractor shall promptly comply with such Change Control procedure as detailed in this Clause F12.

F12.2 Without prejudice to the generality of Authority's right to vary the Contract, such variations may include the following:-

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

F12.3 Without prejudice to the generality of the Authority's rights under Clause F12.1, following:-

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

the Authority may determine that it is necessary to change any of the Performance Parameters that underpin the Contract and may propose a variation to the Contract. The Authority shall propose such variation by serving a Change Control Notice on the Prime Contractor, and the Prime Contractor shall promptly comply with such Change Control procedure as detailed in this Clause F12. Any changes in the Performance Parameters may apply at a national level or at Contract Package Area level, and will be applied consistently to all Welfare to Work contracts within the impacted Contract Package Area(s).

F12.4 The Change Control Notice shall:-

- (a) set out the change to the Contract required by the Authority in sufficient detail to enable the Prime Contractor to provide an estimate; and
- (b) require the Prime Contractor to provide the Authority with an estimate ("the Estimate") in accordance with Clause F12.5 below.

F12.5 The Prime Contractor shall provide the Authority with the Estimate within ten (10) Working Days of the receipt of the Change Control Notice or such longer period as is appropriate as determined by the Authority acting reasonably. The Estimate shall be consistent with all changes (including changes to Performance Parameters) specified by the Authority in its Change Control Notice, and shall include:-

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

F12.6 In developing the Estimate, the Prime Contractor shall comply with paragraph 3 of Schedule 4 and provide the Authority with financial information on a transparent basis.

F12.7 As soon as practicable after the Prime Contractor provides the Authority with the Estimate, the Authority and the Prime Contractor shall meet to discuss any issues arising from the Change Control Notice or from the Estimate provided by the Prime Contractor. For the avoidance of doubt, any discussions held between the Authority and the Prime Contractor pursuant to this Clause F12.7 shall be without prejudice and subject to contract.

F12.8 As soon as practicable after any part of the contents of the Estimate have been discussed in accordance with Clause F12 the Authority shall confirm in writing that it wishes:-

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

F12.9 If the Authority confirms that it wishes to proceed with the Change Control Notice, the Contract shall be deemed to have been amended accordingly and an updated financial model, reflecting changes to all revenues, input costs and savings from the scheduled date of implementation of the variation shall be appended to the Contract.

F12.10 The Prime Contractor shall comply with any proposed variation to the Contract. If the Prime Contractor fails to implement or successfully comply with the variation by the required date, the Authority may:-

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

F12.11 If, despite the measures taken under Clause F12.10 (a), the Prime Contractor fails to implement or comply with the variation, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause I2 (Dispute Resolution).

F12.12 If the Authority has not confirmed that it wishes to proceed with the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause F12.7 above or has not withdrawn the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause F12.7 above then the Change Control Notice (or the relevant part) shall be deemed to have been withdrawn.

F12.13 The Authority shall not be liable for any costs incurred by the Prime Contractor in implementing the procedures pursuant to this clause 12.13, save that the Authority shall be liable for any reasonable, proportionate and proven costs incurred by the Prime Contractor in implementing the procedures pursuant to this clause F12 where the Authority withdraws the Change Control Notice in accordance with Clause F12.8. The Authority reserves the right to access all records to validate a claim under this Clause F12.13.

F12.14 Variations of a minor or temporary nature may be required to the Contract from time to time and, where such variations are requested, they shall be evidenced in writing. Without prejudice to the foregoing, the Prime Contractor shall accommodate such minor or temporary variations at no extra cost to the Authority, provided they do not involve additional cost to the Prime Contractor.

F12.15 Notwithstanding the service of a Change Control Notice in accordance with the Change Control procedure as detailed in this Clause F12, the Prime Contractor shall continue to fulfil its obligations under the Contract until such time as the Authority confirms to the Prime Contractor that the Authority wishes to proceed with the Change Control Notice.

F12.16 Without prejudice to any of the other rights of the Prime Contractor, the Prime Contractor may propose variations to the Contract which shall be referred to the Authority for consideration. Such variations shall be detailed in a Change Control Notice between the Authority and the Prime Contractor and the Contract may be varied in accordance with the Change Control procedure as detailed in this Clause F12.

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits its liability for:

- a) death or personal injury caused by its negligence;
- b) Fraud or fraudulent misrepresentation; or
- c) any Default of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
- d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 The Prime Contractor's liability in respect of any breach of its obligations under clauses B10.7 (Employee Provisions on Expiry or Termination), E2 (Protection of Personal Data) and in respect of the indemnities in clause C8.2 (VAT), clause E8.6 (Intellectual Property Rights) and clause J5 (ESF) shall be unlimited.

G1.3 The Authority's liability in respect of its indemnities in Schedule 12 and its Annexes (Staff Transfer) shall be unlimited.

G1.4 Subject to clause G1.5, the Prime Contractor shall indemnify the Authority and keep the Authority indemnified fully:

- a) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) in respect of any personal injury or loss of or damage to property real or personal incurred by the Authority or its employees and agents to the extent that such personal injury or loss or damage is directly caused by any Default of the Prime Contractor, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of

any personal injury or any loss or damage arising from or incurred by reason of the use of the Services by any Participant.

G1.5 The Prime 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.

G1.6 Subject to clause G1.5, responsibility for the control, management and supervision of all Participants shall rest entirely with the Prime Contractor subject to the Participant complying with all reasonable instructions and directions which the Prime Contractor may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever or however caused, by any act or omission of a Participant.

G1.7 Subject always to clauses G1.1 – G1.3, 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 one hundred per cent (100%) of the Contract Price paid or payable by the Authority to the Prime Contractor in the Contract year in which the liability arises.

G1.8 Subject to clause G1.1 - G1.3 and G1.9, 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.

G1.9 Notwithstanding clause G1.8, and without prejudice to clause H2, the Prime Contractor acknowledges that the Authority may, amongst other things, recover from the Prime Contractor the following losses, damages, costs and/or expenses incurred by the Authority to the extent that they arise as a result of a Default by the Prime Contractor:

- a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- b) the additional cost of procuring replacement services, which shall include any incremental costs associated with such replacement services above those which would have been payable under this Agreement;

- c) any compensation or interest paid to a third party by the Authority;
- d) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.10 The Prime 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 Prime Contractor, arising out of the Prime 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 Prime 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.

G1.11 The Prime Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.12 The Prime 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.

G1.13 If, for whatever reason, the Prime 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 Prime Contractor.

G1.14 The provisions of any insurance or the amount of cover shall not relieve the Prime Contractor of any liabilities under the Contract. It shall be the responsibility of the Prime Contractor to determine the amount of insurance cover that will be adequate to enable the Prime Contractor to satisfy any liability referred to in this clause G1.

G2 Professional Indemnity

G2.1 The Prime 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 Prime Contractor shall ensure professional indemnity insurance held by the Prime 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 **[Redacted]** (ten million pounds) 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 Prime Contractor or the Prime Contractor's agents, professional consultants or sub-Prime Contractors, as applicable.
- G2.3 The terms of any insurance or the amount of insurance cover shall not relieve the Prime Contractor of any liabilities arising under the Contract.
- G2.4 The Prime 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 Prime 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 Prime Contractor.

G3 Warranties and Representations

- G3.1 The Prime 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 Prime Contractor;
 - b) in entering the Contract it has not committed any Fraud;
 - c) Not Used
 - 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 Prime 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 Prime 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) within 90 days of the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

G4 Deed of Guarantee

- G4.1 This Contract is conditional upon the Prime Contractor procuring that the Guarantor shall:
- a) execute and deliver to the Authority the Guarantee; and
 - b) deliver to the Authority a certified copy of the Certificate of Corporate Secretary approving the execution of the Guarantee.
- G4.2 On satisfaction of clause G4.1, the Authority shall promptly notify the Prime Contractor that those conditions have been satisfied.
- G4.3 The conditions specified in this clause G4 are inserted solely for the Authority's benefit. The Authority may waive them, in whole or in part and with or without conditions, without prejudicing the Authority's right to require subsequent fulfilment of such conditions.
- G4.4 For the avoidance of doubt, if clause G4.1 has not been satisfied , on or before 7th April 2015 this Contract shall not take effect.

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 **Prime Contractor is a company** and in respect of the Prime 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 H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Prime Contractor shall notify the Authority immediately if the Prime Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). Save in the case of any Change of Control that is to a company whose ultimate parent is the same as the Prime Contractor's ultimate parent, 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.

H2 Termination on Default

H2.1 Without prejudice to any other express rights of termination under this Contract or at common law the Authority may terminate the Contract by written notice to the Prime Contractor with immediate effect if the Prime Contractor commits a Default (other than, for the avoidance of doubt, a Serious Breach which shall be dealt with in accordance with the provisions of Clause B11) which is a material breach (including without limitation an anticipatory breach) of the Contract and if:

- a) the Default is capable of remedy and the Prime 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 reasonably specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- b) the Default is not, in the opinion of the Authority, capable of remedy.

H2.2 Without prejudice to any other rights or remedies that the Authority has under or arising out of the Contract (including without limitation Clause B11(KPIs and Pls)) and the provisions of clause H1 or H2.1, where the Authority considers that the Prime 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 Prime 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 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 Prime Contractor has failed to demonstrate to the Authority's satisfaction that the Persistent Breach specified has not continued and that the Prime 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 Prime Contractor has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred two or more times within such **six (6)** Month period and that the Prime Contractor has put in place measures to ensure that such Persistent Breach does not recur;

then the Authority may deem such failure shall be a Default which is a material breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

H2.4 In the event that through any Default of the Prime Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Prime Contractor shall be liable for the cost of reconstitution of that data. The Prime 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 Prime Contractor undisputed sums of money when due, the Prime 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 Prime 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 C4 Recovery of Sums Due.

H3 Break

H3.1 The Authority shall have the right to terminate the Contract at any time by giving twelve (12) Months' written notice to the Prime 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 Prime Contractor during the period of extension.

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 Prime 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 Prime 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 Prime Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Prime Contractor by reason of the termination of the Contract, provided that the Prime Contractor takes all reasonable steps to mitigate such loss. Where the Prime Contractor holds insurance, the Prime Contractor shall reduce its unavoidable costs by any insurance sums available. The Prime Contractor shall submit a fully itemised and costed list of such Loss, with supporting evidence, of losses reasonably and actually incurred by the Prime 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 Prime Contractor in relation to any termination by the Authority pursuant to clause H3. The Prime 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 Prime Contractor, and the Prime 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 Prime Contractor under the Contract, exceeds the total sum that would have been payable to the Prime Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- b) is a claim by the Prime Contractor for loss of profit, due to early termination of the Contract.

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

- a) the Prime Contractor shall 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; and

- b) the Prime Contractor shall cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.
- c) The Prime Contractor shall at its own cost implement and comply with the Exit Plan and otherwise comply with the requirements of Schedule (12) (Exit and Service Transfer Arrangements)

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 Prime Contractor under clauses C2 (Payment and Contract Price), C4 Recovery of Sums Due, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), 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 Prime 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 Prime 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 Prime Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Prime 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 Prime 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 Prime Contractor as a direct result of such disruption.
- H5.6 Not later than one Month following the Commencement Date, the Prime Contractor shall supply for the Authority's Approval a draft Business Continuity and Disaster Recovery ("BCDR") Plan to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to ICT systems) to the Prime Contractor's and any Sub-contractor's operations, however caused.
- H5.7 Following receipt of the draft BCDR Plan from the Prime Contractor, the Authority shall:
- (a) review and comment on the draft BCDR Plan as soon as reasonably practicable; and
 - (b) notify the Prime Contractor in writing that it approves or rejects the draft BCDR Plan no later than two Months after the date on which the draft BCDR Plan is first delivered to the Authority.
- H5.8 If the Authority rejects the draft BCDR Plan:
- (a) the Authority shall inform the Prime Contractor in writing of its reasons for its rejection; and
 - (b) the Prime Contractor shall then revise the draft BCDR Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDR Plan to the Authority for the Authority's Approval within 15 Working Days of the date of the Authority's notice of rejection. The provisions of clause H5.7 and this clause H5.8 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- H5.9 Once approved by the Authority, the Prime Contractor shall keep the BCDR Plan available for the Authority to inspect and to practically test at any reasonable time, and shall keep it updated.

H6 Recovery upon Termination

- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Prime Contractor shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors. In the event the Prime Contractor fails to do so, the Authority may recover possession thereof and the Prime Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Prime Contractor or its permitted suppliers or Sub-contractors 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 Prime 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 Prime Contractor's Default, the Prime Contractor shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Prime Contractor's reasonable costs of providing the assistance and the Prime 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 Prime 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 Prime 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

I 2.6 Subject to clause I 2.2, the Parties shall not initiate court proceedings until the procedures set out in clauses I 2.1 and I 2.3 have been completed save that:

- a) the Authority may at any time before court proceedings are commenced, serve a notice on the Prime Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I 2.7
- b) if the Prime Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Prime Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I 2.7
- c) the Prime Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I 2.7, to which the Authority may consent as it sees fit.

I 2.7 In the event that any arbitration proceedings are commenced pursuant to clause I 2.6:

- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- b) the Authority shall give a written notice of arbitration to the Prime Contractor (the “**Arbitration Notice**”) stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- c) the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I 2.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause I 2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- f) the arbitration proceedings shall take place in London and in the English language; and
- g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

J European Social Fund (ESF)

J1 ESF Funding

Where the Authority notifies the Prime Contractor that it will fund the delivery of this Contract using ESF funds or in its role as a Co-financing Organisation uses this Contract as a match for ESF provision, either at the outset of the Contract or at any point during the life of the Contract, the Prime Contractor and any Sub-contractors appointed by it shall be bound by the corresponding additional requirements detailed within relevant Provider Guidance, including maintain records until at least 31 December 2023.

J2 Publicity

The Prime Contractor shall observe the European Commission's and the Secretary of State for Work and Pensions' publicity requirements and regulations regarding ESF projects, as amended from time to time. The Prime Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Prime Contractor shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Prime Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Prime Contractor shall retain copies of its policy (as revised from time to time) as part of the Prime Contractor's record keeping obligations under clause E9.1.

J3 Evaluation Requirements

- J3.1 Where the Authority funds this Contract using ESF funds the Prime Contractor shall within four (4) weeks of expiry or termination of this Contract provide evaluation information to the Authority which:
- a) summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification;
 - b) is concise, being no more than one A4 page in length; and

- c) indicates whether the objectives have been fully achieved or only partly achieved and sets out any other relevant issues in this context.

J3.2 The Prime Contractor acknowledges the obligation the Authority has to evaluate all ESF projects by ESF priorities and to submit, within strict timescales, a final claim to Government Office including an assessment of performance in each of the priorities. Accordingly, the Prime Contractor agrees that time shall be of the essence in relation to its obligation under clause J3.1.

J3.3 The Prime Contractor understands and shall comply with the regular ESF MI reporting obligations set out in Schedule 3 (Monitoring Requirements). The Prime Contractor acknowledges that the Authority depends on timely provision of this information in order to claim and receive ESF funds from the Government Office.

J4 Records

The Prime Contractor and any Sub-contractors appointed by it shall maintain the records referred to in clause E9.1 and such other documents as the Authority may reasonably require throughout the period of this Contract; and the Prime Contractor and any Sub-contractors appointed by it shall maintain such records and documents until at least 31 December 2023.

J5 Indemnity

The Prime Contractor shall indemnify and keep indemnified the Authority against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any Default by the Prime Contractor of this clause J. The Prime Contractor's liability under this indemnity is not limited under clauses G1.5 and G1.6.

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FORM OF AGREEMENT

This agreement has been entered into on the commencement date stated at A2 – Initial Contract Period.

SIGNED for and on behalf of

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

SIGNED for and on behalf of

Remploy Ltd

Name [Redacted]

Position [Redacted]

Signature [Redacted]

Date 07/04/15

Name [Redacted]

Position [Redacted]

Signature [Redacted]

Date 07/04/15

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SCHEDULE 1 – THE SERVICES

1 General

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

Document	Dated
Specification	
Tender (BAFO)	
Bid Clarification	
Provider Guidance	
Delivery Plan	

2 Working Hours

2.1 The Services shall be carried out at the following times;

09:00 – 17:00

2.2 The Prime Contractor shall not provide the Services on the following bank /public holidays or the stipulated ad-hoc Government holiday;

New Year's Day	Spring Bank Holiday
Good Friday	August Bank Holiday
Easter Monday	Christmas Day
May Day	Boxing Day
The Friday or the Tuesday immediately preceding or succeeding the Spring Bank Holiday.	A day other than a Saturday or Sunday which falls within the Christmas holiday period.

3 Recruitment Through Jobcentre Plus

3.1 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 Prime Contractor is therefore required to notify Jobcentre Plus when recruiting staff for any entry-level job vacancies located within Great Britain, which may arise from the delivery of their contract to the Authority.

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

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS

The following clause relates to Administration Requirements in respect of Welfare to Employment Contracts.

1 Authority's Authorisation

- 1.1 The following person, or any such person as notified in writing by the authority from time to time, 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. Contact details are shown in clause A5.3.

Name: **[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 Prime Contractor's Authorisation

- 2.1 The following person is the Prime Contractor's Representative, or any such person as notified in writing by the Prime Contractor from time to time and is authorised to act on behalf of the Prime Contractor on all matters relating to the Contract. Contact details are shown in clause A5.3.

Name: **[REDACTED]**

Title: Prime Contractor's Representative

3 CHARGES ON PARTICIPANTS

- 3.1 The Prime Contractor, or its agents and Sub-contractors, shall not levy any charge on Participants in respect of goods or services provided under this Contract except as expressly permitted in advance and in writing by the Authority.

4 ADDITIONAL COSTS

- 4.1 Subject to the provisions of this Contract (including without limitation Schedule 4, the price for the delivery of the Provision is fixed and unless otherwise agreed in accordance with Clause x any additional or unforeseen costs incurred by the Prime Contractor in delivering the Provision shall be borne solely by the Prime Contractor.

5 VOLUMES

- 5.1 The Authority gives no guarantees of volumes. Any volumes mentioned in this Contract are indicative only and shall not be binding on the Authority.

6 RECOVERY OF SUMS

- 6.1 Either Party to this Contract can recover any monies paid by them to the other Party, which are found not to be due by deducting sums from any subsequent payment due to the other. Where there remain payments outstanding to the Authority, the Authority shall invoice the Prime Contractor detailing payment due. The right of deduction extends to any agreement between any part of Her Majesty's Government and the Prime Contractor. Where either Party intends to make such a deduction, they shall inform the other Party before making any deductions.

7 PRIME CONTRACTOR'S RECORDS

- 7.1 In accordance with Clause E9, the Prime Contractor and any Sub-contractors appointed by it shall retain comprehensive records to verify the services provided. Such records shall include (without limitation) the information specified in Schedule 3, copy invoices with all supporting information and any such other information as the Authority may reasonably require from time to time.

8 INTERRUPTION OF SERVICE

- 8.1 If there is at any time an interruption in the delivery of the Programme as a result of a Default on the part of the Prime Contractor the Authority shall not be liable for payment of the amount payable under this Contract to the extent that such payment relates to the interruption caused by Default by the Prime Contractor.

9 WORKING CAPITAL

- 9.1 Prior to the Commencement Date, the Prime Contractor shall provide appropriate guarantees from the providers of its finance and its Executive Board, that confirm the availability of finance throughout the Term of this Contract. If anything changes during the course of the Contract that will change the availability of this funding, the Prime Contractor must inform the Authority immediately.
- 10 The Authority and the Prime Contractor shall exchange payment via electronic methods using Provider Referral and Payment System.

SCHEDULE 3 – MONITORING REQUIREMENTS

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

1 Reviewing Contract Performance

- 1.1 The Prime 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 Prime 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 Prime Contractor's management and delivery of it.
- 1.3 The Prime 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.
- 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 Prime 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 Prime Contractor as shall the process of defining the methods of collection.
- 1.6 Where an on-going, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule.
- 1.7 Review meetings between the Authority and the Prime 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 Prime Contractor is complying with its obligations under this Contract and the Prime Contractor shall co-operate fully, at its own cost, with the Authority.
- 1.9 The Prime 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, stakeholders and employers; change control procedures and the prompt resolution of any problems. The Authority will agree with the Prime Contractor day-to-day relationship management, contact points, communication flows and escalation procedures.

- 1.10 The Prime Contractor will be expected to continuously improve the quality of the provision including that delivered by Sub-contractors, agents and employees. Where quality falls below acceptable levels (see 1.1 - minimum standard) the Prime 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.
- 1.11 The Authority will regularly monitor Prime Contractor performance. The initial Contract review will be informed by the award of Contract process and reviewed thereafter.
- 1.12 Contract performance will be managed by performance teams. These teams are based in, but not limited to, national and regional hubs and are responsible for developing the Overall Contract and Contract Package Areas contained to ensure the required level of performance is achieved. The Authority will be looking to Prime Contractors to signal changes they are experiencing in participant characteristics so that it can factor those changes into policy development.
- 1.13 The Prime Contractor will be required to appoint a named Prime Contractor Manager who will cooperate with the DWP Performance Manager to ensure that the Contract is delivered as specified in the Contract and that required standards and performance levels are met.
- 1.14 The purpose of the Prime Contractor performance reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Services, including the standards and outputs specified, are being delivered appropriately and to drive up the performance and quality of the Services. They will encourage the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Contract. Where issues cannot be immediately addressed, the Authority and the Prime Contractor will follow the dispute resolution process detailed in the Dispute Resolution clause.
- 1.15 Prime Contractor performance reviews must be formally undertaken and documented. The Prime Contractor will be expected to provide any additional management information required by the Authority to facilitate the reviews and arrange where necessary access to any of its delivery locations, including those operated by Sub-contractors.

- 1.16 Any improvements or actions agreed between the Parties will form part of the continuous improvement activity recorded in the performance improvement plan. It will be the Prime Contractor's responsibility to develop the performance improvement plan which will be discussed and agreed with the Performance Manager.

2 Assuring Prime Contractors' Systems

- 2.1 The primary purpose of the Provider Assurance Team (PAT) is to provide the Authority with an assurance that payments to contracted employment provision contractors are in accordance with DWP and Treasury requirements that public funds and DWP data are protected and that value for money has been obtained.

2.2 The Provider Assurance Team

- a) operates at a national level enabling it to present contractors operating across regions with a single view of the effectiveness of their systems. Each contractor will have a nominated Senior Assurance Manager and therefore a single point of contact in DWP for management of assurance related issues and concerns;
- b) conducts its work primarily by visiting contractors to review the systems of internal control in place to manage the risks to DWP in relation to contracted employment programme expenditure and protection of DWP data. This will include the arrangements contractors have in place for sub-contractors;
- c) visits take account of a number of different factors and at the conclusion of their visit the PAT will discuss their findings with contractors and subsequently produce a report which will include an assurance rating for the overall system and an action plan detailing areas where control could be improved if necessary.

2.3 Prime Contractors shall have suitable systems in place to:

- a) detect and prevent duplicate claims;
- b) prepare and submit accurate, valid, supported, timely claims;
- c) monitor, record and manage lateness and all absences;
- d) support claims for payments through an effective participant attendance recording procedure;
- e) ensure that all the required evidence is collected (and submitted, where appropriate) to support the claim;

- f) identify Participants who have left the Services early to prevent over-claiming;
 - g) carry out effective monitoring of Sub-contractors; and
 - h) respond to financial appraisal and monitoring reports with an appropriate action plan.
- 2.4 The Authority shall be entitled to treat a failure on the part of the Prime Contractor to:
- a) Comply with and implement the PAT's reasonable adjustments as set out in an action plan issued under paragraph 2.2 of this Schedule 3 as a Minor Breach for the purposes of clause B11.
 - b) Rectify issues as a result of implementing reasonable adjustments may also result in a Minor Breach for the purposes of clause B11.
 - c) Comply with and implement PATs reasonable adjustments as set out in an action plan issued under paragraph 2.2 of this schedule 3 more than once in relation to one / similar areas as a Serious Breach for the purposes of clause B11.
- 2.5 The Authority will not class a Reasonable or Strong rating as a Breach.

3 Access

- 3.1 In all instances, the Prime 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 material Default for the purposes of clause H2 (Termination on Default).

4 Health and Safety Responsibilities of the Authority Visiting Officers

- 4.1 The Authority representatives visit Prime 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 Prime Contractor or the Prime Contractor's 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 Prime Contractor or its Sub-contractors or any omission to give such advice, comments or otherwise.

5 Prime Contractor Information (MI) Requirements

5.1 The Prime 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;

Prime Contractor Information Required	Frequency or Date Required by
Submit copy of Board Minutes (or extracts of minutes) for Prime Contractor, for meetings that discuss liquidity / solvency of the company, including minutes of any sub-boards which should include (but not be limited to) audit committee.	Within thirty (30) Calendar Days of date of Board meeting.
Submit copy of Board Minutes (or extracts of minutes) for Parent Company where PCG has been signed and for instances where Parent Company financial viability is discussed and/or risks associated with this Agreement or the performance of the Prime Contractor is discussed.	Date as outlined in clause G4
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.
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Schedule 7	Within six (6) Months of the Commencement Date and at least annually thereafter.
Diversity & Equality Delivery Plan in accordance with Schedule 8	Within six (6) Months of the Commencement Date and at least annually thereafter.
Workforce Monitoring Data Template – Appendix 3 of the Diversity and Equality Guidance for Prime Contractors document, in accordance with Schedule 8	Within six (6) Months of the Commencement Date and at least annually thereafter.
Apprenticeships & Skills Report in accordance with Schedule 10	Within six (6) Months of the Commencement Date and written updates on a half yearly basis thereafter.
HMG Baseline Personnel Security Standard - Prime Contractor's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Prime 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 Prime Contractor, and where applicable, its sub-contractors shall identify the volume of expenditure they undertake with SMEs / Voluntary / Third Sector / Not for Profit organisations in the delivery of this Contract, at an individual organisation level, and submit this information to the Authority on a quarterly basis.
European Social Fund Mandatory MI	Any eligible MI as required by the Authority for ESF match funding purposes. (Further information will be provided)
Business Continuity & Disaster Recovery Plan	As outlined in clause H .5.6
Annual Report and Accounts of the Prime Contractor	The Prime Contractor shall submit to the Authority within four (4) weeks of it occurring Annual Reports and Accounts of the Prime Contractor and Parent Company including PCG when approved by the Board validating any published interim accounts and financial statements.
Contract Risk Register	Within six (6) weeks of Commencement and submitted for each Month thereafter, the Prime Contractor shall submit a Risk Register
Annual VAT Statement – The status and treatment of VAT in relation to the Contract	Within one Month of the end of each Calendar Year.

The authority reserves the right to make reasonable requests for information (at no additional charge) from the Prime Contractor including ad hoc requests for information from time to time.

Key Performance Indicators (KPIs) and Performance Indicators (PIs)

[illegible]

Contract Package Area Key Performance Indicators (KPI)

1. The same Key Performance Indicators apply to Contract Package Area Performance.
2. In delivering the Services the Prime Contractor acknowledges that it is under an obligation to meet the following performance targets in relation to the total contract and furthermore that failure to meet all or any of the defined such targets, as defined in B11, shall entitle the Authority to serve notice to terminate the Contract with the Prime Contractor.
3. The Prime Contractor and the Authority will agree Contract and Contract Package Area information for all KPIs and associated underpinning data within one Month of Commencement where that information is not included by Commencement Date.

SCHEDULE 4 – PRICES AND RATES

1. Applicable Pricing Methodology

2.1 General

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

The indicative Contract Price for delivery of the Services will be £94,933,542 over the period of the contract (excluding Interwork Employee fee and Interwork Service Purchase Fee):

There are six elements to the Services payable to the Prime Contractor by the Authority, and these shall consist of:

2.1.1 the Service Fee;

2.1.2 the Service Fee Stock Service Fee

2.1.3 the Short Job Outcome Fee;

2.1.4 the Sustained Job Outcome Fee;

2.1.5 the Interwork Employee Fee

2.1.6 the Interwork Service Purchase Fee

all subject to, and in accordance with, the provisions of this Contract.

2.2 The Service Fee

The monthly Service Fee is payable to the Prime Contractor, at the rate included in Table 1 at Paragraph 6 of this Schedule ("Table 1"). The Service Fee will be paid monthly in arrears and the first instalment of the Service Fee will be payable by the Authority on or around the 18th of each calendar month.

The final instalment of the Service Fee payable under this Contract will be on or around the 18th of the month immediately following the second anniversary of the Contract.

2.3 Stock Service Fee

The one off Stock Service Fee is payable to the Prime Contractor, at the rate included in Table 1 at Paragraph 6 of this Schedule ("Table 1"). The Stock Service Fee will be paid to the Prime Contractor within the first month following Commencement of the Contract by the Authority.

2.4 Short Job Outcome Fees

The Short Job Outcome Fee is payable to the Prime Contractor, at the rate included in Table 1, for each outcome. The Prime Contractor will be eligible to claim the Short Job Outcome Fee on achievement of a Short Job Outcome as defined in Clause A1.1.

The final Short Job Outcome Fee payable under this Contract will be 4 weeks after the last Job outcome can be claimed.

Only one Short Job Outcome fee can be claimed per programme start.

2.5 Sustained Job Outcome Fees

The Sustained Job Outcome Fee is payable to the Prime Contractor, at the rate included in Table 1 for each outcome. The Prime Contractor will be eligible to claim the Sustained Job Outcome Fee on achievement of a Sustained Job Outcome as defined in Clause A1.1.

The final Sustained Job Outcome Fee payable under this Contract will be 4 weeks after the last job outcome can be claimed.

Only one Sustained Job Outcome fee can be claimed per programme start.

2.6 Interwork Employee Fees

The Interwork Employee Fee is payable to the Prime Contractor, at the rate included in Table 1. The Prime Contractor will be eligible to claim the Interwork Employee Fee on achievement of the Interwork Employee Service as defined in Clause A1.1.

The final Interwork Employee Fee payable under this Contract will be 4 weeks after the last job outcome can be claimed.

2.7 Interwork Service Purchase Fee

The one off Interwork Service Purchase Fee is payable to the Prime Contractor, at the rate included in Table 1. The Prime Contractor will be eligible to claim the Interwork Service Purchase Fee following the third anniversary of the Commencement of the Contract based on the calculation as defined in Clause A1.1. For the avoidance of doubt the Authority reserves the right to cap the value of this payment at a lower rate than [Redacted] should alternative funding be sourced by the Authority for the on-going support of Interwork Employees.

2.CHANGE CONTROL

The Prime Contractor shall use the Authority's Finance Template at Appendix 1 (the "**Finance Template for Changes to the Services**") to demonstrate and justify any claim for additional or reduced Services and/or proposed revisions to the Short Job Outcome Payment and/or Sustained Job Outcome Payment on which the Charges are based arising as a result of any proposed Change. The calculation of charges on extension of the Contract Period is defined in Clause C5 and the Prime Contractor shall use the Authority's Finance Template for this purpose.

4. INDEXATION

Indexation shall not apply to the Charges under this Contract.

5. FINAL CLAIMS

Provided all previous valid and accepted claims have been paid, the Authority shall have no further liability to make payment of any kind to the Prime Contractor once the final claims have been received.

6. Table 1

All rates quoted are exclusive of Value Added Taxation (VAT). Service fee tolerances will not apply to this Contract. The following Unit Prices shall apply during the Contract:

Supplier	Remploy Ltd
Contract Package Area	National
Region	All
Indicative Starts on Provision	34608
Sustained Job Outcome Unit Price	[Redacted]
Interwork Service Purchase Fee	[Redacted]
Short Job Outcome Unit Price	[Redacted]
Interwork Employee Fee	[Redacted]
Stock Service Fee	[Redacted]
Service Fee (Ex Stock Service Fee)	[Redacted]
Monthly Service Fee payable in instalments a follows:	
Month 1	[Redacted]
Month 2	[Redacted]
Month 3	[Redacted]
Month 4	[Redacted]
Month 5	[Redacted]
Month 6	[Redacted]
Month 7	[Redacted]

Month 8	[Redacted]
Month 9	[Redacted]
Month 10	[Redacted]
Month 11	[Redacted]
Month 12	[Redacted]
Month 13	[Redacted]
Month 14	[Redacted]
Month 15	[Redacted]
Month 16	[Redacted]
Month 17	[Redacted]
Month 18	[Redacted]
Month 19	[Redacted]
Month 20	[Redacted]
Month 21	[Redacted]
Month 22	[Redacted]
Month 23	[Redacted]
Month 24	[Redacted]
Total	[Redacted]

SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION

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

Document	Page No.	Section	Condition Paragraph Number or	Explanation of harm which may result from disclosure and time period applicable to sensitivity.
Pricing Proposal submitted by MAXIMUS with its BAFO in response to the requirements for the same set out in the Invitation to Negotiate	Entire Pricing Proposal	Entire Pricing Proposal	Entire Pricing Proposal	Financial Information

2. The Authority will consult with the Prime Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
3. 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.
4. The Authority will automatically publish all information provided by the Prime Contractor **not** identified in this Schedule as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
5. The Authority reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

- 1.1 This schedule covers;
- a) Principles of security for the Prime 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 Prime 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 Prime Contractor System. The Prime Contractor also acknowledges the confidentiality of the Authority's Data.
- 2.2 The Prime Contractor shall be responsible for the security of the Prime 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 Prime Contractor System; and
 - d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule.
- 2.3 Without limiting paragraph 2.2, the Prime 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 Prime Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services.

3 Security Plan

Introduction

- 3.1 The Prime 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.
- 3.2 A draft Security Plan provided by the Prime 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 Prime 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 Prime Contractor shall amend it within 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 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 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 Prime 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 (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 Prime 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 Prime Contractor which provision the Prime 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 Prime 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.

Amendment and Revision

3.10 The Security Plan will be fully reviewed and updated by the Prime Contractor annually, or from time to time to reflect:

- a) emerging changes in Good Industry Practice;
- b) any change or proposed change to the Prime Contractor ICT System, the Services and/or associated processes; and
- c) any new perceived or changed threats to the Prime Contractor ICT System.

- d) a reasonable request by the Authority.
- 3.11 The Prime 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 Prime 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 Prime Contractor shall conduct tests of the processes and countermeasures 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 Prime 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 Prime Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Prime Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Prime 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 Prime 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 Prime Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Prime 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 Prime 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 Prime Contractor shall work towards obtaining 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 Prime Contractor reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Prime 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 Prime 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 Prime Contractor, then the Authority shall notify the Prime Contractor of the same and give the Prime 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 Prime 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 Prime Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Prime 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 Prime Contractor shall;

- a) immediately take all reasonable steps necessary to;
 - (i) remedy such breach or protect the Prime 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 Prime Contractor under this Contract, then the Prime Contractor shall be entitled to refer the matter to the change control procedure in clause F3/F12 (Variation).

- 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 Prime Contractors

1. The Department for Work and Pensions 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 Prime Contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All Prime 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 supplier must agree in writing to comply with these policies and standards. Each Prime 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 working for the Prime Contractor and where relevant Sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
4. All Prime Contractors must comply with the relevant DWP Security standards and policies. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
5. The following are key requirements and all Prime 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 All Prime Contractors 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 Prime 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

[Redacted]

SCHEDULE 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This schedule sets out the Sustainable Development Requirements which are applicable to the provision of the Services.

1 General

- 1.1 The Prime Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development through its environmental, social and economic responsibilities.
- 1.2 In delivering the Services, the Prime Contractor shall and shall ensure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Schedule

2 Compliance

- 2.1 The Prime Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Schedule, within 6 (six) Months of the Commencement Date and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Prime Contractor must obtain the required information from Sub-contractors and then collate and submit as stated above.
- 2.2 In delivering the Services, the Prime Contractor shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the Contract an overarching commitment to:
 - a) dispose of contract waste in a legal manner (i.e. waste is disposed of via a registered waste collector, the Waste Electrical and Electronic Equipment (WEEE) regulations are adhered to where relevant);
 - b) reduce energy consumption;
 - c) promote waste management including recycling;
 - d) promote green or public transport;
 - e) promote Corporate Social Responsibility (CSR);
 - f) the Sustainable Development Policy and that of continuous improvement which should be signed and dated by senior management.
- 2.3 In delivering the Services, the Prime Contractor shall prepare and deliver a Sustainable Development Plan which should be used to turn the commitment shown in the Sustainable Development Policy into action and which as a minimum, detail how each organisation involved in delivery of the Contract will:
 - a) reduce their **Environmental** footprint of this Contract through:

- (i) minimising the use of energy, water and materials;
- (ii) minimising waste and increasing recycling levels;
- (iii) utilising recycled goods within operations;
- (iv) providing efficient low carbon delivery methods;
- (v) promoting the use of green or public transport.

b) contribute to **Social** sustainability of this Contract through:

- (i) purchasing goods and services that are produced and delivered in line with International Labour Organisation principles in respect to human rights and conditions of employment;
- (ii) supporting a diverse supply chain by cultivating opportunities for Minority Owned Businesses;
- (iii) providing adequate training opportunities for all employees.

c) drive **Economic** sustainability of this Contract through:

- (i) supporting job creation both locally and nationally;
- (ii) facilitating opportunities for Minority Owned Businesses and Small and Medium-sized Enterprises.

2.4 To aid the department in monitoring the progress of each organisation the following information should also be included in your plan:

- a) a baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations);
- b) annual estimates of the progress of Sustainable Development actions;
- c) details of how Staff awareness of Sustainability will be increased in line with the Sustainable Development Plan.

SCHEDULE 8 – DIVERSITY AND EQUALITY REQUIREMENTS

1 General

- 1.1 The Prime Contractor acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons from the protected characteristic groups covered by the Equality Act: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Prime Contractor must ensure that each of its Sub-contractors involved in delivery of the Contract are aware of, and acknowledge, that the Authority has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Prime Contractor shall, and shall ensure that its Sub-contractors, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Schedule.

2 Compliance

- 2.1 The Prime Contractor acknowledges the provisions of the equality legislation set out in clause D2 (Discrimination).
- 2.2 The Prime Contractor shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Schedule, within six (6) Months of the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract.
- 2.3 The Prime Contractor will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule, within six (6) Months of the Commencement Date and annually thereafter.
- 2.4 The Authority will consider and agree the submissions made by the Prime Contractor when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Schedule. Any issues will be raised with the Prime Contractor by the Contract Manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Prime Contractor must raise and resolve the issue with the Sub-contractor. Once submissions are agreed by the Authority the Prime Contractor will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and Equality aspects will also be discussed jointly by the Authority and the Prime Contractor as an ongoing item at the Contract review meetings.

2.5 In delivering the Services, the Prime Contractor shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:

- a) an overview of Prime Contractor and any Sub-contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - i) age;
 - ii) disability;
 - iii) gender reassignment;
 - iv) marriage and civil partnership;
 - v) pregnancy and maternity;
 - vi) race;
 - vii) religion or belief;
 - viii) sex; and
 - ix) sexual orientation.
- b) an overview of Prime Contractor and any Sub-contractor's policy/policies and procedures covering:
 - i) harassment
 - ii) bullying
 - iii) victimisation
 - iv) recruitment procedures
 - v) staff training and development

Full policy documents must be made available to the Authority on request.

- c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Prime Contractor and any Sub-contractor's organisation; and
- f) Details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Prime Contractor and any Sub-contractors.

2.6 In delivering the Services, the Prime Contractor shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Schedule:

- a) Where a Prime Contractor is delivering Services to customers on behalf of the Authority or Services to the Authority's staff, the Prime Contractor must provide written evidence that:
 - i) Equality Analysis has been carried out in conjunction with the Authority prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with equality legislation;
 - ii) reasonable adjustments are made, as required by equality legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards;
 - iii) all Staff have had appropriate training so that they understand the duties required by equality legislation, and where Services are being delivered on behalf of the Authority, the Prime Contractor shall provide evidence that Staff understand the duties not to discriminate and to promote equality, in accordance with equality legislation.

2.7 The Authority may request further information and assurance relating to Diversity & Equality at any point during the duration of the Contract.

3 Monitoring and Reporting

3.1 The Prime Contractor shall provide workforce monitoring data as detailed in Appendix 3 (Workforce Monitoring Data Template) of the Diversity and Equality Guidance for Prime Contractors document which is a supporting document to this ITT, or can be provided by the Authority on request. Completed templates for the Prime Contractor and each Sub-contractor will be submitted by the Prime Contractor with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date and annually thereafter. Prime Contractors are required to provide workforce monitoring data for the workforce involved in delivery of the Contract. Data relating to the wider Prime Contractor workforce and wider Sub-contractors workforce would however be well received by the Authority. Prime Contractors and any Sub-contractors are required to submit percentage figures only in response to paragraphs (a), (b) and (c) of the template.

3.2 The Prime Contractor and any Sub-contractors will compare their figures, in all categories listed in paragraphs (a) & (b) of the template, and provide (where possible) comparisons against any official national/regional statistics that are publicly available. (In the Diversity & Equality guidance for contractor's document there are links to a number of data collection sources but it must be stressed this is not a full exhaustive list and other sources will be available). The Department acknowledges that there are regional variations in terms of population demographics and some data categories and coverage may not be complete or fully align, however, it should enable high level analysis and identification of trends.

- 3.3 The Prime Contractor and any Sub-contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs (a) & (b) of the template.
- 3.4 The Prime Contractor shall, and shall ensure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

SCHEDULE 9 – WELSH LANGUAGE SCHEME

This Schedule sets out the Prime Contractor's obligations which are applicable to the provision of the Services in Wales.

1 General

- 1.1 The Prime Contractor acknowledges that in relation to the operation of its Services which are delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Contract, the Prime Contractor shall ensure that it cooperates with the Authority in satisfying this duty, by fully complying with the requirements of this Schedule.

2 The DWP Welsh Language Scheme

- 2.1 The DWP Welsh Language Scheme can be found at:

<https://www.gov.uk/government/organisations/department-for-work-pensions/about/welsh-language-scheme>

- 2.2 The Prime Contractor shall, in the delivery of the Services, ensure that it complies with the Department for Work and Pensions Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of Services Through the Medium of Welsh

- 3.1 The Prime Contractor undertakes that those who have dealings with them are able to do so in English or Welsh, whichever is their preference.
- 3.2 The Prime Contractor will ensure that:
 - a) those who want, or are required, to correspond with the Prime Contractor will be able to do so in English or Welsh;
 - b) those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - c) any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - d) staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;

- e) any help lines set up to deliver the service must offer a Welsh or English option and sufficient Welsh language speakers must be available to deal with callers through the medium of Welsh, if they select the Welsh option;
- f) any answer phones in the Prime Contractor's offices in Wales will have a pre-recorded bilingual message;
- g) all people who participate in the Services are able to contribute through the medium of English or Welsh;
- h) all material published and printed for use in Wales shall be available in English and Welsh, and available for use within the same timescales. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
- i) all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and
- j) any complaints or grievance procedure should be provided in both English and Welsh.
- k) any websites, including any interactive pages, set up to support the delivery of the service must be available in both Welsh and English;
- l) where DWP has notified the contractor or the participant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that participant will be in Welsh.

SCHEDULE 10 – APPRENTICESHIPS AND SKILLS REQUIREMENTS

1 General

- 1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.
- 1.2 Supporting apprenticeships, skills and the fight against youth unemployment will support and drive economic growth.
- 1.3 The Prime Contractor acknowledges that the Authority is required to support the apprenticeships and skills aims and targets.
- 1.4 In delivering the Services, the Prime Contractor shall, and shall ensure that its Sub-contractors assist and cooperate with the Authority by fully complying with the requirements of this Schedule.

2 Compliance

During the delivery of the Services:

- 2.1 The Prime Contractor shall and shall ensure that its Sub-contractors take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided.
- 2.2 The Prime Contractor shall and shall ensure that its Sub-contractors shall take all reasonable steps to ensure that five percent (5%) of their employees are on a formal apprenticeship programme. This can include administration and support staff.
- 2.3 The Prime Contractor shall and shall ensure that its Sub-contractors make available to employees information about the Government Apprenticeship Programme and wider skills opportunities.
- 2.4 The Prime Contractor shall and shall ensure that its Sub-contractors provide any appropriate further skills training opportunities for employees.

3 Monitoring and reporting

- 3.1 The Prime Contractor shall provide an Apprenticeships and Skills Report within six (6) Months of the Commencement Date and annually thereafter. The Apprenticeships and Skills Report must be specific to the Contract and include details for all Sub-contractors. The Prime Contractor must obtain the required information from Sub-contractors and collate and submit an Apprenticeships and Skills Report.

In the delivery of the Contract, the Apprenticeships and Skills Report will include:

- a) the number of Staff during the reporting period, including administration and support staff;
- b) the number of existing apprentices involved;
- c) the number of new starts on apprenticeships initiated as a result of delivering the Contract;
- d) if applicable, a robust explanation as to why it is not possible to meet the five percent (5%) target. (It may be that use of apprentices is not possible or appropriate in delivery of the Services);
- e) action being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service; and
- f) other training/skills development being undertaken by staff:
 - i) Work experience placements for 14 to 16 year olds
 - ii) Work experience/work trial placements for other ages
 - iii) Student sandwich/gap year placements
 - iv) Graduate placements
 - v) Vocational training
 - vi) Basic skills training
 - vii) Onsite training provision/facilities.

3.2 The Prime Contractor shall, and shall ensure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

SCHEDULE 11 – PARENT COMPANY GUARANTEE

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

MAXIMUS, Inc.

THIS DEED is dated

7 April 2015

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA (“the **Authority**”); and
- (2) **MAXIMUS, Inc.** incorporated and registered in the Commonwealth of Virginia USA whose registered office is at 1891 Metro Center Drive Reston, Virginia USA (“the **Guarantor**”).

BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee (“the **Contract**”, which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Authority has agreed to engage Remploy (2015) Limited (“the **Prime Contractor**”) to deliver Work Choice.
- (2) It is a condition of the Contract **being awarded to the Prime Contractor** that the Prime Contractor ensures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the Contract by the Prime Contractor.
- (4) It is the intention of the Parties that this document be executed as a deed.

AGREED TERMS

1 Interpretation

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

2 Obligations of the Guarantor

- 2.1 In consideration of the Authority entering into the Contract with the Prime Contractor, the Guarantor agrees:
 - 2.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Prime Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Prime Contractor under and pursuant to the Contract when and if such obligations, representations,

warranties, duties and undertakings shall become due and performable according to the terms of the Contract;

2.1.2 in addition to its obligations set out in clause 2.1.1, to indemnify the Authority against all losses which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, Contract or at common law including without limitation by reason of any default by the Prime Contractor of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Contract save that, subject to the other provisions of this guarantee (including without limitation clause 2.1.3), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Prime Contractor under the Contract; and

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

3 Liability

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

3.1.1 any arrangement made between the Prime Contractor and the Authority;

3.1.2 any alteration in the obligations undertaken by the Prime Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise;

3.1.3 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;

3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Prime Contractor or any other person;

3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Prime Contractor's

obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity (other than where the provision in question would in itself be legally void or legally unenforceable against every other person were any such person acting as the Supplier under the Guaranteed Agreement);

3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Prime Contractor, or any other person; or

3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Prime Contractor or any other person.

4 Addendum Or Variation

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

5 Guarantee

5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Prime Contractor, to make any claim against or any demand of the Prime Contractor, to enforce any other security held by it in respect of the obligations of the Prime Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Prime Contractor. In the event that the Authority brings proceedings against the Prime Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Prime Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Prime Contractor under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6 Outstanding Payments

6.1 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or

claim or prove in competition with the Authority against the Prime Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in default of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.

- 6.2 The Guarantor shall not hold any security from the Prime Contractor in respect of this guarantee and any such security which is held in default of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.
- 6.3 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Prime Contractor or any rights to prove in a liquidation of the Prime Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

7 Change of Control

The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Prime Contractor within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

8 Payment And Expenses

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

9 Settlement

Any settlement or discharge between the Authority and the Prime Contractor and/or the Guarantor shall be conditional upon no

settlement with security or payment to the Authority by the Prime Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or law relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

10 Warranties

10.1 The Guarantor warrants and confirms to the Authority that:

- 10.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 10.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 10.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 10.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

- 10.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.
- 10.1.6 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.
- 10.2 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11 Assignment

- 11.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.
- 11.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee with first obtaining written consent from the Authority.

12 Notices

- 12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this clause 12.
- 12.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

13 Waiver

- 13.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

13.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

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

14 Severability

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

15 Contracts (Rights of Third Parties) Act 1999

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

16 Governing Law

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

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) and the Guarantor hereby irrevocably designates, appoints and empowers Maximus Health and Human Services Limited, Maximus House, Pynes Hill, Exeter, Devon EX2 5AZ as its agent for service of process.

17 Entire Agreement

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

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

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

This deed has been entered into on the date stated at the beginning of it.

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

MAXIMUS, INC. acting by [Redacted]

Chief Executive Officer, a person who in accordance with the laws of the Commonwealth of Virginia is authorised to exercise this Deed of Guarantee on behalf of Maximus, Inc.

SCHEDULE 12 – EXIT AND SERVICE TRANSFER ARRANGEMENTS

To be agreed and included within one month of Commencement date

SCHEDULE 13 – INTERWORK EMPLOYEE SERVICE REQUIREMENTS

1. [Redacted] is available for each Interwork Employee for each year of the first 3 years of the Contract split down into monthly payments paid in arrears. Each monthly payment shall be based on the number of Interworker Employees employed on the first working day of the Month to which the claim relates.
2. In respect of Interwork Employees the performance requirement for the Contract is for the Prime Contractor to facilitate a reduction in Interwork Employee volumes (the “Interwork Employee Service Requirement”). Subject to paragraph 6 below, the rates agreed between all parties are:
 - i. **Year 1** - 15%
 - ii. **Year 2** - 11%
 - iii. **Year 3** – 11%
3. The Authority will monitor and manage performance to the agreed targets and agree variations to these arrangements as may become necessary.
4. An Interwork Service Purchase Fee Payment will be calculated after the second anniversary of the Commencement Date to be paid after the third anniversary of the Commencement Date.
5. A maximum of [Redacted] will be paid to the Prime Contractor for the Interwork Service Purchase Fee Payment, which will be calculated using the greater of 3 years on-going support costs or the cost of redundancy. The Authority reserves the right to reduce the value of the Interwork Service Purchase Fee Payment depending on the impact of future policy decisions in relation to disability provision, and/or not to make the Interwork Service Purchase Fee Payment in whole or in part where the Authority agrees to continue funding support for some or all of the Interworker Employees.

Key Performance Indicators (KPI)

6. Performance under the Interwork Employee Service Requirement will be judged against the following Interworker KPIs. Failure to meet all or any of the defined targets shall not entitle the Authority to serve notice to terminate the Contract with the Prime Contractor but shall require an action plan to be put in place to address the under-performance:
 - a) **KPI1** - Percentage Drop in volume from start year to end year position.

Year 1 (April 15 – March 16)			
Starting Total	End Total	Percentage Reduction	Average No. in Year
176	150	15.00%	163

Year 2 (April 16 – March 17)			
Starting Total	End Total	Percentage Reduction	Average No. in Year
150	133	11.00%	141

Year 3 (April 17 – March 18)			
Starting Total	End Total	Percentage Reduction	Average No. in Year
133	118	11.00%	126

Claims Process

7. The Prime Contractor can claim payments on a monthly basis for each Interworker Employee employed by the Prime Provider on the first working day of the Month. For the avoidance of doubt no new Interwork Employees shall be employed by the Prime Provider. The monthly value that can be claimed per Interworker Employee is **[Redacted]**
8. The claim process is detailed in the Interwork Employee Service Guidance.

Interwork Service Purchase Fee

9. The Prime Contractor will be eligible to claim the Interwork Service Purchase Fee Payment following the third anniversary of the Commencement of the Contract based on the calculation set out in paragraph 1 above.
10. For the avoidance of doubt the Authority reserves the right to cap the value of this payment at a lower rate than **[Redacted]** should alternative funding be sourced by the Authority for the on-going support of Interworker Employees.