



DYNAMIC PURCHASING SYSTEM AGREEMENT

For The Provision Of Work Focused Activities - Central England Group

[Note: Potential Contractor to complete sections 5, 6-9 and 10]

DPS PARTICULARS

1. Date	<input type="checkbox"/> [TextReq] [Date to be inserted by the Authority on signature].	2. DPS Agreement Number	<input type="checkbox"/> [TextReq] To be quoted on all correspondence relating to this DPS Agreement [To be inserted by the Authority on acceptance to the DPS].
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BETWEEN

3. Authority	The Department for Work and Pensions acting as part of the Crown ("Authority")
4. Authority's Address	Caxton House, Tothill Street, Greater London, SW1H 9NA
5. Authority's Account Manager	Name: Maxine Palmer Address: Room 214, 2 nd Floor, Five Ways House, Islington Row Middleway, Birmingham, B15 1SL e-mail: Via BravoSolution

AND

6. Potential Contractor	<input type="checkbox"/> [TextReq]	"Potential Contractor"
7. Potential Contractor's Address	<input type="checkbox"/> [TextReq]	
8. Potential Contractor's Account Manager	Name: <input type="checkbox"/> [TextReq] Address: <input type="checkbox"/> [TextReq] Phone: <input type="checkbox"/> [TextReq] e-mail: <input type="checkbox"/> [TextReq] Fax: <input type="checkbox"/> [TextReq]	

9. Expiry Date	<input type="checkbox"/> [TextReq] [Note: This Expiry Date will be set as 4 years from the Commencement Date of the first DPS Agreement concluded by the Authority. All DPS Agreements in this set will have a common Expiry Date accordingly any DPS Agreements signed after the initial DPS Agreement will have a term which is less than 4 years]
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IN WITNESS of which this agreement has been duly executed by the parties.

10. Signed by the Potential Contractor	<p>By signing this agreement I, on behalf of the Potential Contractor, am agreeing that the Potential Contractor will be bound by the terms of the DPS Agreement, including the Call Off Terms and Conditions to the exclusion of any other terms and conditions which may otherwise apply. Further, where the Potential Contractor is successful in any call off competition under the DPS Agreement then the Potential Contractor agrees to provide the Ordered Services in accordance with the terms of the Call-Off Contract.</p>	
	<p>[TextReq Name of Potential Contractor.]</p>	<p>Note: Include a full electronic signature</p> <p>Signed by: Name: Position Date:</p>

11. Signed by the Authority	<p>The Authority appoints the Potential Contractor as a potential supplier of the Services referred to in the Categories described above and the Potential Contractor shall be eligible to be considered for the award of orders for such Services by the Authority and Other Contracting Bodies during the Term.</p>	
	<p>The Secretary of State for Work and Pensions (the Authority), acting as part of the Crown.</p>	<p>Signed by: Name: Position Date:</p>

CONTENTS

1.	INTERPRETATION	5
2.	TERM OF DPS AGREEMENT	5
3.	SCOPE OF DPS AGREEMENT	5
4.	WARRANTIES AND REPRESENTATIONS	5
5.	PROVISION OF MANAGEMENT INFORMATION	6
6.	RECORDS AND AUDIT ACCESS	6
7.	TERMINATION	7
8.	SUSPENSION OF POTENTIAL CONTRACTOR'S APPOINTMENT	7
9.	CONSEQUENCES OF TERMINATION AND EXPIRY	7
10.	LIABILITY	8
11.	DATA PROTECTION	9
12.	OFFICIAL SECRETS ACTS	10
13.	CONFIDENTIALITY	11
14.	FREEDOM OF INFORMATION	12
15.	PREVENTION OF FRAUD	13
16.	PREVENTION OF CORRUPTION	14
17.	CONFLICTS OF INTEREST	16
18.	RIGHTS OF THIRD PARTIES	16
19.	PUBLICITY	16
20.	WAIVER	16
21.	TRANSFER AND SUB-CONTRACTING	17
22.	VARIATIONS TO THE DPS AGREEMENT	17
23.	CUMULATIVE REMEDIES	17
24.	ENTIRE AGREEMENT	17
25.	CONSIDERATION	17
26.	RELATIONSHIP OF THE PARTIES	18
27.	NOTICES	18
28.	COMPLAINTS HANDLING AND RESOLUTION	18

29.	DISPUTE RESOLUTION	19
30.	LAW AND JURISDICTION	19
	Schedule 1 - POTENTIAL SERVICES	20
	Schedule 2 - CALL-OFF ORDERING PROCEDURE INCLUDING AWARD CRITERIA	21
	Schedule 3 - CALL-OFF TERMS AND CONDITIONS	26
	Schedule 4 – MONITORING REQUIREMENTS	98
	Schedule 5 - SECURITY REQUIREMENTS AND PLAN	99
	Schedule 6 - DEFINITIONS AND INTERPRETATION	108

IT IS AGREED as follows:

1. INTERPRETATION

This DPS Agreement shall be interpreted in accordance with the provisions of Schedule 6 (Definitions and Interpretation).

2. TERM OF DPS AGREEMENT

The DPS Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this DPS Agreement or it is otherwise lawfully terminated) shall expire on the Expiry Date.

3. SCOPE OF DPS AGREEMENT

3.1 This DPS Agreement governs the relationship between the Authority and the Potential Contractor in respect of the provision of the Services by the Potential Contractor to the Authority and to Other Contracting Bodies.

3.2 The Authority and Other Contracting Bodies may at their absolute discretion and from time to time during the Term order Services from the Potential Contractor in accordance with the Ordering Procedures.

3.3 The Potential Contractor acknowledges that there is no obligation for the Authority and for any Other Contracting Body to purchase any Services from the Potential Contractor during the Term.

3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority and/or any Other Contracting Body in respect of the total quantities or values of the Services to be ordered by them pursuant to this DPS Agreement and the Potential Contractor acknowledges and agrees that it has not entered into this DPS Agreement on the basis of any such undertaking, statement, promise or representation.

3.5 The Potential Contractor acknowledges that the number of Participants to this dynamic purchasing system may fluctuate during the Term.

4. WARRANTIES AND REPRESENTATIONS

4.1 The Potential Contractor warrants and represents to the Authority and each Contracting Body that:

4.1.1 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 to perform its obligations under this DPS Agreement;

4.1.2 this DPS Agreement is executed by a duly authorised representative of the Potential Contractor;

4.1.3 it shall perform its obligations under this DPS Agreement in accordance with all applicable Law and Good Industry Practice;

4.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this DPS Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 4.1.5 in entering into this DPS Agreement or any Call-Off Contract it has not committed any Fraud;
 - 4.1.6 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the DPS Agreement;
 - 4.1.7 it has not caused or induced any person to enter into such agreement referred to in Clause 4.1.6;
 - 4.1.8 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the DPS Agreement;
 - 4.1.9 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 affect its ability to perform its obligations under this DPS Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies;
 - 4.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this DPS Agreement and any Call-Off Contract which may be entered into with the Authority or Other Contracting Bodies; and
 - 4.1.11 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 Potential 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 Potential Contractor's assets or revenue.
- 4.2 Each time a Call-Off Contract is entered into the warranties, representations and undertakings in Clause 4.1 shall be deemed to be repeated by the Potential Contractor with reference to the circumstances existing at the time that they are deemed to be repeated.
- 4.3 The Potential Contractor acknowledges and agrees that the warranties, representations and undertakings contained in this DPS Agreement are material and are designed to induce the Authority into entering into this DPS Agreement and to induce the Authority and each and every Other Contracting Body to enter into Call-Off Contracts and that in entering into this DPS Agreement and Call-Off Contracts (as the case may be) each of them is induced by the same.

5. **PROVISION OF MANAGEMENT INFORMATION**

- 5.1 The Potential Contractor shall, at no charge to the Authority, submit Management Information to the Authority in the form set out in DPS Schedule 4 throughout the Term. The Authority may make changes to the Management Information which the Potential Contractor is required to supply and shall give the Potential Contractor at least one (1) Month's written notice of any changes.
- 5.2 The Authority may share the Management Information supplied by the Potential Contractor with any Contracting Body.

6. **RECORDS AND AUDIT ACCESS**

- 6.1 The Potential Contractor shall keep and maintain until six (6) Years after the date of termination or expiry (whichever is the earlier) of this DPS Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this DPS Agreement including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.
- 6.2 The Potential Contractor shall allow the Authority (and/or relevant Contracting Body) and/or the Auditor to access such records and accounts as required from time to time.
- 6.3 The Potential Contractor shall provide such records and accounts (together with copies of the Potential Contractor's published accounts) during the Term and for a period of six (6) Years after expiry of the Term to the Authority (and/or relevant Contracting Body) and the Auditor.
- 6.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Potential Contractor or delay the provision of the Services pursuant to the Call-Off Contracts, and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.
- 6.5 Subject to the Authority's rights of confidentiality, the Potential Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- 6.5.1 all information requested by the Auditor within the scope of the Audit;
 - 6.5.2 reasonable access to sites controlled by the Potential Contractor and to equipment used in the provision of the Services; and
 - 6.5.3 access to the Staff.
- 6.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 6, unless the Audit reveals a Material Default by the Potential Contractor in which case the Potential Contractor shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.

7. TERMINATION

- 7.1 Any Material Default and/or any Potential Contractor failure to comply with the obligations of this DPS Agreement, may lead to this DPS Agreement being terminated or suspended.
- 7.2 The Authority may terminate or suspend this DPS Agreement at will by serving notice on the Potential Contractor in writing with effect from the date specified in such notice.

8. SUSPENSION OF POTENTIAL CONTRACTOR'S APPOINTMENT

Without prejudice to the Authority's rights to terminate the DPS Agreement in Clause 7 above, if a right to terminate this DPS Agreement arises, the Authority may suspend the Potential Contractor's appointment to supply Services to Contracting Bodies in any or all Potential Contractor's Categories by giving notice in writing to the Potential Contractor. If the Authority provides notice to the Potential Contractor in accordance with this Clause 8, the Potential Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Potential Contractor by the Authority in writing from time to time.

9. CONSEQUENCES OF TERMINATION AND EXPIRY

- 9.1 Suspension from Termination or expiry of the DPS Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 9.2 Within thirty (30) Working Days of the date of termination or expiry of the DPS Agreement, the Potential Contractor shall return to the Authority any data and Confidential Information belonging to the Authority in the Potential Contractor's possession, power or control. Unless otherwise agreed by the Parties, nothing in this Clause 9.2 shall require the Potential Contractor to return any information or data it reasonably requires in order to continue to provide Services under a Call-Off Contract until the expiry or earlier Termination of Call-Off Contract
- 9.3 The Authority shall be entitled to require access to data or information arising from the provision of the Services from the Potential Contractor until the latest of:
- 9.3.1 the expiry of a period of twelve (12) Months following termination or expiry of the DPS Agreement; or
- 9.3.2 the expiry of a period of three (3) Months following the date on which the Potential Contractor ceases to provide Services under any Call-Off Contract.
- 9.4 Termination or expiry of this DPS Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this DPS Agreement prior to termination or expiry.
- 9.5 The provisions of Clauses 3 (Scope of DPS Agreement), 4 (Warranties and Representations), 5 (Provision of Management Information), 6 (Records and Audit Access), 9 (Consequences of Termination and Expiry), 10 (Liability), 11 (Data Protection), 12 (Official Secrets Act), 13 (Confidentiality), 14 (Freedom of Information), 15 (Prevention of Fraud), 16 (Prevention of Corruption), 17 (Conflicts of Interest), 20 (Waiver), 23 (Cumulative Remedies) and 28 (Law and Jurisdiction) shall survive the termination or expiry of the DPS Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

10. LIABILITY

- 10.1 Neither Party excludes or limits its liability for:
- 10.1.1 death or personal injury caused by its negligence, or that of its Staff;
- 10.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
- 10.1.3 any liability to the extent it cannot be limited or excluded by Law.
- 10.2 Subject to Clause 10.1 the Potential Contractor's total aggregate liability in connection with this DPS Agreement in each Agreement Year (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to the greater of:
- 10.2.1 a sum equivalent to twenty percent (20%) of the total fees paid and payable under all Call-Off Contracts concluded with the Potential Contractor in such Agreement Year;
- 10.2.2 one million pounds (£1,000,000); and
- 10.2.3 the amount which the Potential Contractor is entitled to receive for a claim under an insurance policy covering such risks provided that

nothing in this Condition shall oblige the Company to obtain any insurance or claim upon any insurance which it holds.

- 10.3 Subject to Clause 10.1 the Authorities total aggregate liability in connection with this DPS Agreement in each Agreement Year (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to one million pounds (£1,000,000).
- 10.4 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 10 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.
- 10.5 Subject to Clauses 10.1 and 10.6, in no event shall either Party be liable to the other for any:
 - 10.5.1 loss of profits;
 - 10.5.2 loss of business;
 - 10.5.3 loss of revenue;
 - 10.5.4 loss of or damage to goodwill;
 - 10.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 10.5.6 Indirect, special or consequential loss or damage.
- 10.6 Subject to Clause 10.1 the Potential Contractor shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority) be recoverable by the Authority:
 - 10.6.1 any additional operational and/or administrative costs and expenses arising from any Default; and
 - 10.6.2 any regulatory losses, fines, expenses or other losses arising from a breach by the Potential Contractor of any Laws.

11. DATA PROTECTION

- 11.1 For the purposes of this Clause 10.6.1 the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the Data Protection Legislation.
- 11.2 The Potential Contractor shall (and shall procure that all of its Staff) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all of their obligations under the Data Protection Legislation which arise in connection with this DPS Agreement.
- 11.3 The Potential Contractor shall:
 - (a) process the Personal Data only in accordance with instructions from the Authority;
 - (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;
- (d) 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;
- (e) 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;
- (f) 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 Data Protection Legislation;
- (g) 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 Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- (h) not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents such processing, storing, accessing or transfer outside the European Economic Area:
 - (i) comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) comply with any reasonable instructions notified to it by the Authority.

11.4 The Potential Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this DPS Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Act 1998.

12. OFFICIAL SECRETS ACTS

- 12.1 The Potential Contractor shall comply with, and shall ensure that its Staff shall comply with the provisions of:
- 12.1.1 the Official Secrets Acts 1911 to 1989; and
 - 12.1.2 section 182 of the Finance Act 1989.
- 12.2 In the event that the Potential Contractor or its Staff fail to comply with this Clause 12, the Authority reserves the right to terminate this DPS Agreement with immediate effect by giving notice in writing to the Potential Contractor.

13. **CONFIDENTIALITY**

- 13.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this DPS Agreement, each Party shall:
- 13.1.1 treat the other Party's Confidential Information as confidential; and
 - 13.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 13.2 Clause 13.1 shall not apply to the extent that:
- 13.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure;
 - 13.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 13.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this DPS Agreement; or
 - 13.2.5 it is independently developed without access to the other party's Confidential Information.
- 13.3 The Potential Contractor may only disclose the Authority's Confidential Information to its 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.
- 13.4 The Potential Contractor shall not, and shall procure that its Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this DPS Agreement.
- 13.5 At the written request of the Authority, the Potential Contractor shall procure that those members of the Staff identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this DPS Agreement.
- 13.6 Nothing in this Agreement shall prevent the Authority from disclosing the Potential Contractor's Confidential Information:
- (a) to any government department, any part of the Crown, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be

entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body;

- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
- (e) on a confidential basis for the purpose of the exercise of its rights under the Agreement, including (but not limited to) for auditing purposes(Clause 6) 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.

13.7 The Authority shall use all reasonable endeavours to ensure that any employee or third party to whom the Potential Contractor's Confidential Information is disclosed pursuant to clause 13.6 is made aware of the Authority's obligations of confidentiality.

13.8 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 DPS Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the DPS Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

13.9 Notwithstanding any other term of this DPS Agreement, the Potential Contractor hereby gives his consent for the Authority to publish the DPS Agreement 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 Agreement, to the general public.

14. **FREEDOM OF INFORMATION**

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

14.2 The Potential Contractor shall and shall procure that its Sub-Contractors shall:

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

(or such other period as the Authority may specify) of the Authority's request; and

- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

14.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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.

14.4 In no event shall the Potential Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

14.5 The Potential Contractor acknowledges that (notwithstanding the provisions of Clause 14.2) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Potential Contractor or the Services:

- (a) in certain circumstances without consulting the Potential Contractor; or
- (b) following consultation with the Potential Contractor and having taken their views into account;
- (c) provided always that where 14.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Potential Contractor advanced notice, or failing that, to draw the disclosure to the Potential Contractor's attention after any such disclosure.

15. PREVENTION OF FRAUD

15.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this DPS Agreement. The Potential Contractor shall and shall ensure that its Sub-Contractors shall:

- 15.1.1 have an established system that enables Staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
- 15.1.2 ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
- 15.1.3 ensure a segregation of duties within the Potential Contractor 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; and
- 15.1.4 ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

- 15.2 The Potential Contractor shall use its best endeavours to safeguard the Authority's funding of the DPS Agreement and any Call-Off Contract against fraud generally and, in particular, fraud on the part of the Potential Contractor's directors, employees or Sub-Contractors. The Potential 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.
- 15.3 If the Potential 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:
- 15.3.1 terminate the DPS Agreement and recover from the Potential 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 Term; or
- 15.3.2 recover in full from the Potential Contractor any other loss sustained by the Authority in consequence of any Default of this clause.
- 15.4 Any act of fraud committed by the Potential Contractor or its Sub-Contractors (whether under this DPS Agreement or any other contract with any Other Contracting Body) shall entitle the Authority to terminate this DPS Agreement, and any other contract the Authority has with the Potential Contractor, by serving written notice on the Potential Contractor.
- 15.5 If the Authority finds that the Potential Contractor has deliberately submitted false claims for payments with the knowledge of its senior officers the Authority will be entitled to terminate this DPS Agreement, or any other contract the Authority has with the Potential Contractor, with immediate effect.
- 15.6 The Potential 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 Potential 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.

16. PREVENTION OF CORRUPTION

- 16.1 The Potential Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this Clause 16.1. For the purposes of this Clause 16.1, a prohibited act is committed when the Potential Contractor or any Staff:
- (a) directly or indirectly offers, promises or give any person working for or engaged by the Authority, or any Other Contracting Body, 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 DPS Agreement;

- (c) commits any offence:
 - (i) under the Bribery Act; or
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the DPS Agreement or any other contract with the Authority or any Other Contracting Body; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority or any Other Contracting Body.

- 16.2 The Potential 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 DPS Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the DPS Agreement.
- 16.3 The Potential 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.
- 16.4 The Potential Contractor shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as in Clause 16.1 and a copy of this shall be provided to the Authority upon request.
- 16.5 The Potential Contractor shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of Clauses 16.1 or 16.2, or has reason to believe that it has or any Staff has:
 - 16.5.1 been subject to an investigation or prosecution which relates to an alleged prohibited act in Clauses 16.1 or 16.2;
 - 16.5.2 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
 - 16.5.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this DPS Agreement or otherwise suspects that any person or party directly or indirectly connected with this DPS Agreement has committed or attempted to commit a prohibited act in Clauses 16.1 or 16.2.
- 16.6 If the Potential Contractor notifies the Authority that it suspects or knows that there may be a Default of Clauses 16.1 or 16.2, the Potential 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.
- 16.7 If the Potential Contractor, its Staff or anyone acting on the Potential Contractor's behalf engages in conduct prohibited by Clauses 16.1 or 16.2, the Authority may;

- (a) terminate the DPS Agreement and recover from the Potential 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 DPS Agreement; or
- (b) recover in full from the Potential Contractor any other Loss sustained by the Authority in consequence of any Default of those Clauses.

17. **CONFLICTS OF INTEREST**

- 17.1 The Potential Contractor shall take appropriate steps to ensure that neither the Potential Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Potential Contractor or Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this DPS Agreement or any Call-Off Contract.
- 17.2 The Potential Contractor shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict referred to in Clause 17.1 above arises or is reasonably foreseeable to arise.
- 17.3 The Authority reserves the right to terminate this DPS Agreement immediately by giving notice in writing to the Potential Contractor 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 pecuniary or personal interests of the Potential Contractor and the duties owed to the Authority under the provisions of this DPS Agreement or any Call-Off Contract. The action 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.

18. **RIGHTS OF THIRD PARTIES**

Save as provided in Clauses 3, 4, 6, 16, 17 and Schedule 3 and the rights specified in the DPS Agreement for the benefit of Contracting Bodies, a person who is not party to this DPS Agreement ("**Third Party**") has no right to enforce any term of this DPS Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this DPS Agreement or vary any of its terms in accordance with the relevant provisions of this DPS Agreement or terminate this DPS Agreement, such rescission, variation or termination will not require the consent of any Third Party.

19. **PUBLICITY**

- 19.1 Unless otherwise directed by the Authority, the Potential Contractor shall not make any press announcements or publicise this DPS Agreement in any way without the Authority's prior written consent.
- 19.2 The Authority shall be entitled to publicise this DPS Agreement in accordance with any legal obligation upon the Authority, including any examination of this DPS Agreement by the Auditor or otherwise.
- 19.3 The Potential Contractor shall not do anything which may damage the reputation of the Authority or bring the Authority into disrepute.

20. **WAIVER**

- 20.1 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

21. TRANSFER AND SUB-CONTRACTING

- 21.1 The DPS Agreement is personal to the Potential Contractor and the Potential Contractor shall not assign, novate or otherwise dispose of the DPS Agreement or any part thereof without the previous consent in writing of the Authority. The Potential Contractor shall not be entitled to sub-contract any of its rights or obligations under this DPS Agreement.

- 21.2 The Authority shall be entitled to:

21.2.1 assign, novate or otherwise dispose of its rights and obligations under the DPS Agreement or any part thereof to any Other Contracting Body; or

21.2.2 novate the DPS Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

provided that where such assignment, novation or other disposal increases the burden of the Potential Contractor's obligations pursuant to this DPS Agreement, the Potential Contractor shall be entitled to such reasonable charges as may be agreed between the Authority and the Potential Contractor to compensate for such additional burdens.

22. VARIATIONS TO THE DPS AGREEMENT

- 22.1 Any variations to the DPS Agreement must be made in writing signed by both Parties.

- 22.2 The Parties acknowledge and agree that the Potential Contractor shall be entitled to submit a revised Potential Contractor Fact Sheet to the Authority during the period of three months following the Commencement Date and during each three month period thereafter during the Term. After the end of each such three month period (and not before) the Authority will update its records as soon as reasonably practicable to reflect the changes proposed by the Potential Contractor.

23. CUMULATIVE REMEDIES

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

24. ENTIRE AGREEMENT

This DPS Agreement contains the whole agreement between the Parties in respect of the matters dealt with in it and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this DPS Agreement on the basis of any representation that is not expressly incorporated into this DPS Agreement. Nothing in this Clause shall exclude liability for fraud or fraudulent misrepresentation.

25. CONSIDERATION

As consideration for each of the promises made by each Party in this DPS Agreement, each Party agrees to pay one pound (£1) to the other Party and each Party acknowledges and agrees that:

- 25.1 it has received such payment; and
- 25.2 it is adequate consideration for the promises made in this DPS Agreement.

26. RELATIONSHIP OF THE PARTIES

At all times during the Term the Potential Contractor shall be an independent contractor and nothing in this DPS Agreement 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 DPS Agreement.

27. NOTICES

- 27.1 Except as otherwise expressly provided within this DPS Agreement, no notice or other communication from one Party to the other shall have any validity under the DPS Agreement unless made in writing by or on behalf of the Party sending the communication.
- 27.2 Any notice or other communication which is to be given by either Party to the other shall be given 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). Such letters shall be addressed to the other Party in the manner referred to in Clause 27.3. 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.
- 27.3 For the purposes of Clause 27.1, the address of each Party shall be:
 - 27.3.1 For the Authority: the address set out in paragraph 5 of the DPS Particulars.
 - 27.3.2 For the Potential Contractor: the address set out in paragraph 8 of the DPS Particulars.
- 27.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

28. COMPLAINTS HANDLING AND RESOLUTION

- 28.1 The Potential Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Potential Contractor's plans to resolve such Complaint.
- 28.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the DPS Agreement or a Call-Off Contract, and without prejudice to any obligation of the Potential Contractor to take remedial action under the provisions of the DPS Agreement or a Call-Off Contract, the Potential Contractor shall use all reasonable endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

28.3 Within two (2) Working Days of a request by the Authority, the Potential Contractor shall provide full details of a Complaint to the Authority, including details of steps taken to its resolution.

29. **DISPUTE RESOLUTION**

29.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this DPS Agreement within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

29.2 If the dispute cannot be resolved by the Parties within one Month of being escalated as referred to in Clause 29.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

29.3 If the Parties fail to appoint a Mediator within one Month, or fail to enter into a written agreement resolving the dispute within one Month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

30. **LAW AND JURISDICTION**

Subject to the provisions of Clause 28 and Clause 29, the DPS Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

This document is executed as a deed and is delivered and takes effect at the date written at the beginning of it.

SCHEDULE 1 - POTENTIAL SERVICES

The Potential Services shall be as described in:

1. the specification which was included in the ITT (which shall be deemed to be included in this DPS Agreement); and
2. the Potential Contractor Fact Sheet (which shall be deemed to be included in this DPS Agreement)

SCHEDULE 2 - CALL-OFF ORDERING PROCEDURE INCLUDING AWARD CRITERIA

1. Awards under the DPS Agreement

If the Authority or any Other Contracting Body decides to source Services through the DPS Agreement then it may order Services in accordance with the terms laid down in this DPS Agreement.

2. Ordering Services

Any Contracting Body ordering Services under the DPS Agreement shall:

- 2.1 identify the relevant Potential Services which it requires;
- 2.2 review the fact sheets provided by each Participant to determine which of them are capable of providing the required Potential Services via the dynamic purchasing system;
- 2.3 apply the Award Criteria to the fact sheets for each Participant which is capable of providing the required Potential Services via the dynamic purchasing system;
- 2.4 award its Services requirement to the Participant who provides the Most Economical Advantageous Tender which best meets the Authority's individual call-off requirements using the Award Criteria;
- 2.5 place an Order with the successful Potential Contractor and such Order shall:
 - 2.5.1 state the Services requirements;
 - 2.5.2 state the price payable for the Services requirements in accordance with the Supplier Service Proposal applicable for the relevant Potential Services Category; and
 - 2.5.3 incorporate the Call-Off Terms and Conditions.
- 2.6 keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.

3. Responsibility for Awards

- 3.1 The Potential Contractor acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under the DPS Agreement and that the Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
 - 3.1.1 the conduct of Other Contracting Bodies in relation to the DPS Agreement; or
 - 3.1.2 the performance or non-performance of any Call-Off Contracts between the Potential Contractor and Other Contracting Bodies entered into pursuant to the DPS Agreement.

4. Form of Order

Each Contracting Body may place an Order with the Potential Contractor by serving an electronic order (where DWP is the Contracting Body then such order shall be via [DWP e-Procurement Solution \(ePS\)](#)). The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in

the form prescribed by this Paragraph 4 shall not constitute an Order under this DPS Agreement unless the Authority agrees otherwise in writing.

5. Accepting and Declining Orders

5.1 Following receipt of an Order, the Potential Contractor shall promptly and in any event within a reasonable period (taking into account all relevant circumstances in relation to the subject matter and nature of an Order) determined by the relevant Contracting Body and notified to the Potential Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days) acknowledge receipt of the Order and either:

5.1.1 notify the Contracting Body that it declines to accept the Order; or

5.1.2 notify the relevant Contracting Body that it accepts the Order by signing and returning the Order Form.

5.2 If the Potential Contractor:

5.2.1 notifies the Contracting Body that it declines to accept an Order; or

5.2.2 the time-limit referred to in Paragraph 5.1 has expired;

then the offer from the Contracting Body to the Potential Contractor shall lapse and the relevant Contracting Body may offer that Order to the Participant that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria.

5.3 The Potential Contractor in agreeing to accept such an Order pursuant to Paragraph 5.1 above shall enter a Call-Off Contract with the relevant Contracting Body for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Contracting Body's receipt of the signed Order Form provided by the Potential Contractor (or such similar or analogous form agreed with the Potential Contractor) pursuant to this Framework Schedule 2.

ANNEX 1

AWARD CRITERIA

1. Filters/Qualifiers

- 1.1 Following identification of a specific requirement, the DPS Directory of Services will be accessed and the following filters applied to identify Participants who are able to deliver the requirements of the Call-Off in the required location, category and to the required claimant group:

Criterion Number	Criterion
1	Delivery location (s) – Has the Participant indicated that they can deliver in the required locations?
2	Delivery Category – Has the Participant indicated that they wish to deliver provision in the required Category?
3	Claimant Group – Has the Participant indicated that they will deliver to the required claimant group?
4	Deliverable volumes – Does the Participant have the capacity to deliver the indicative volumes (claimants and/or courses)?
5	Speed of availability/implementation – Can the Participant commence delivery within the required timeframe?
6	Available budget - is the proposed provision affordable taking into account the maximum budget available for the specific requirement? By way of example, if a Contracting Body independently determines that it has an available budget £30,000 for set of Services supporting 50 claimants then the maximum unit price will be £600 per claimant. This criterion will then filter suppliers offering a unit price for the required provision of £600 or less.

2. Evaluation Criteria

- 2.1 The application of the above filters will produce a shortlist of Participants. For each of the shortlisted Participants the following questions will be considered using the information provided within the detailed description section of the Factsheet.
- 2.1.1 Is there evidence that the provision will move claimants closer to work/into work or help them remain in work;
 - 2.1.2 Performance expectations and robustness of supporting rationale;
 - 2.1.3 Overall fit of provision content and delivery with call off requirements;
 - 2.1.4 Evidence that adequate (proportionate) performance management systems will be in place.

- 2.2 After consideration of the delivery proposal (contained in the Factsheet) against the above questions a score will be awarded for each of the above questions according to the following table. Any Participants who score a 0 for any of the above questions will be removed from the shortlist:

Score	Criteria
8	Thorough and detailed evidence provided which fully satisfies the requirements
6	Evidence provided satisfies most of the requirements with minor gaps in coverage or detail
4	Evidence provided satisfies most of the requirements with moderate gaps in coverage or detail
2	Evidence provided does not satisfy significant parts of the requirement
0	Evidence provided fails to satisfy the requirement

- 2.3 Following the initial assessment a weighting will be applied – please see table below:

Criteria	Weighting	Maximum Score Available
1. Is there evidence that the provision will move claimants closer to work/into work or help them remain in work.	X3	24
2. Performance expectations and robustness of supporting rationale;	X2	16
3. Overall fit of provision content and delivery with call off requirements;	X1	8
4. Evidence that adequate (proportionate) performance management systems will be in place.	X1	8

Please note the questions are listed in order of importance (as reflected in their corresponding weighting) – see paragraph below on tie break operation.

- 2.4 Once quality scores have been awarded, all Participants scoring 80% or more of the score achieved by the top scoring supplier, will be assessed on price (e.g. Top score achieved is 40, all the suppliers scoring 32 or more will be considered).
- 2.5 The Participant who, in the opinion of the Contracting Body, best meets the requirements of the individual call-off and is offering the lowest price, will be awarded the call-off contract and will be issued with an Order Form which will set out the requirement. The Call-Off Terms and Conditions are not negotiable and will apply to each contract called off under the DPS.

Comment [A1]: It is not clear to me how price and scoring is combined. all Participants in the 80% range treated equally at this stage such that the lowest price wins or is some kind of weighting still given to the higher scoring Participants?

Tie Breaker

- 2.6 This will only be applied where two or more Participants have achieved the same score in the delivery evaluation and are offering the same price.

2.7 The application of the tie breaker will be as follows.

Step 1

2.8 The Participants identified after the quality assessment and the pricing consideration will be contacted to establish if they are still able to deliver their delivery proposal and that their price remains valid (Participants will not be asked to revive their price, the check is merely to ensure that they wish to remain being considered). Any Participant who advise that they no longer wish to deliver the programme or are unable to for the price they originally quoted will be excluded from the competition.

Step 2

2.9 If a clear winner has not been established the next step will be to look at the individual scores for the 4 questions with the Contract being awarded to the supplier who scores highest taking each question in turn.

e.g. Two suppliers left in competition – both score 6 for questions one and two but supplier A scores 6 for question 3 while supplier B scores 4. The Contract will be awarded to supplier A.

SCHEDULE 3 - CALL-OFF TERMS AND CONDITIONS

SCHEDULE 3

ORDER FORM AND CALL-OFF TERMS

ORDER FORM AND CALL-OFF TERMS

Part 1 - Order Form

This Order Form is issued subject to the provisions of the DPS Agreement entered into between the Authority and the Contractor on [] [TextReq] ("**DPS Agreement**") following a call off process concluded by the Contracting Body. The Contractor agrees to supply the services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and its annexures and the Call-off Terms, together with the schedules thereto.

Date	[] [TextReq]	Order Number	[] [TextReq] To be quoted on all correspondence relating to this Order
-------------	---------------	---------------------	--

FROM

Contracting Body	[] [TextReq] "Contracting Body"
Contracting Body's Address	[] [TextReq]
Invoice Address	[] [TextReq]
Contact Ref:	Name: [] [TextReq] Address: [] [TextReq] Phone: [] [TextReq] e-mail: [] [TextReq] Fax: [] [TextReq]

TO

Contractor	[] [TextReq] "Contractor"
Contractor's Address	[] [TextReq]
Account Manager	Name: [] [TextReq] Address: [] [TextReq] Phone: [] [TextReq] e-mail: [] [TextReq] Fax: [] [TextReq]

1. TERM	
(1.1)	Commencement Date
[]	[TextReq]
<i>[Guidance: Insert the date on which the Contract is to take effect.]</i>	
(1.2)	Expiry Date
Subject to earlier termination of the Contract in accordance with Clause 6 (Default and Termination), the Contract shall expire on [] [TextReq]	

2. SERVICES REQUIREMENTS		
(2.1) Services and Deliverables required		
Services - [<input type="checkbox"/>] [TextReq]		
[Guidance: Include a high level description of the Services including the title]		
(2.2) Specification		
[<input type="checkbox"/>] [TextReq]		
[Guidance: Include a more detailed description of the Services from the Business Case and Contractor Service Offer. In the event that the Services specification or requirements are particularly detailed or complex, consider setting out this information in a separate schedule.]		
(2.3) Categories under which the above Services are being supplied		
[<input type="checkbox"/>] [TextReq]		
(2.4) Delivery Premises		
[Guidance: Include all addresses (including postcodes) of where the Services will be performed.]		[<input type="checkbox"/>] and/or Contracting Body Premises (Y/N)
(2.5) Staff of the Contractor who may attend Contracting Body Premises		
[<input type="checkbox"/>] [TextReq]		
[Guidance: Insert details as required or N/A]		
(2.6) Contractor's Outline Security Plan		
[Note: to be appended – dependent upon security requirement/process]		
3. PERFORMANCE OF THE SERVICES AND DELIVERABLES		
(3.1) Performance Requirements		
[Guidance note: Insert the appropriate performance requirements that the Services will be required to comply with including any applicable Standards.]		
When providing the Services, the Contractor shall as a minimum ensure that it achieves the following service levels:		
Category	Respective Performance Requirement Description	Critical Failure where failure to achieve (Y/N)
If the level of performance of the Contractor of any element of the Services during the Term is a Service Failure which if it occurs would be identified as a critical failure in the table above, the Contracting Body shall be entitled to terminate this Contract pursuant to such clause 6.2.		
(3.2) Performance Monitoring Regime/Management Information		
[Guidance: Details to be included of the same]		

CONTENTS

1.	INTERPRETATION AND TERM	32
2.	SUPPLY OF SERVICES	32
3.	PAYMENT AND FEES	37
4.	INTELLECTUAL PROPERTY RIGHTS	39
5.	RECORDS AND AUDIT ACCESS	40
6.	DEFAULT AND TERMINATION	41
7.	LIABILITIES	44
8.	EUROPEAN SOCIAL FUND AND OTHER FUNDING	45
9.	INSURANCE	45
10.	PROTECTION OF INFORMATION	46
11.	CONFIDENTIALITY	47
12.	FREEDOM OF INFORMATION	49
13.	TRANSFER AND SUB-CONTRACTING	49
14.	PREVENTION OF FRAUD	50
15.	CONTRACTOR'S STATUS	51
16.	PREVENTION OF CORRUPTION	51
17.	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	52
18.	PUBLICITY	53
19.	WAIVER	53
20.	VARIATION	53
21.	ENTIRE CONTRACT	53
22.	RELATIONSHIP OF THE PARTIES	53
23.	NOTICES	53
24.	CLAIMANT COMPLAINTS	54
25.	GOVERNING LAW AND DISPUTES	54
	SCHEDULE 1 - DEFINITIONS AND INTERPRETATION	55
	SCHEDULE 2 – ADMINISTRATION REQUIREMENTS	64
	SCHEDULE 3 - MONITORING REQUIREMENTS	65
	SCHEDULE 4 - CONTRACT PERFORMANCE TARGETS	68

SCHEDULE 4 WELSH LANGUAGE SCHEME

69

SCHEDULE 5- SECURITY REQUIREMENTS AND PLAN

71

Part 2: Call Off Terms

1. INTERPRETATION AND TERM

1.1 Interpretation

This Contract shall be interpreted in accordance with the provisions of Schedule 1.

1.2 Term

This Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated.

2. SUPPLY OF SERVICES

2.1 The Services

- 2.1.1 The Order Form constitutes an offer by the Contracting Body to purchase the Services subject to and in accordance with the terms and conditions of this Contract.
- 2.1.2 The offer comprised in the Order Form shall be accepted or declined in accordance with the process set out in paragraph 5 of Schedule 2 (Call-Off Ordering Procedure Including Aware Criteria) in the DPS Agreement.
- 2.1.3 In consideration of the Contracting Body's agreement to pay the Fees, the Contractor shall supply the Services to the Contracting Body for the Term subject to and in accordance with the terms and conditions of the Contract.
- 2.1.4 In supplying the Services, the Contractor shall:
 - (a) co-operate with the Contracting Body in all matters relating to the Services and comply with all the Contracting Body's instructions;
 - (b) perform the Services with all reasonable care, skill and diligence in accordance with:
 - (i) Good Industry Practice in the Contractor's industry, profession or trade;
 - (ii) the Merlin Standard;
 - (iii) the Standards; and
 - (iv) the DWP Code of Conduct;
 - (c) ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - (d) comply with Law;
 - (e) take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Contracting Body, its employees or any other contractor employed by the Contracting Body; and
 - (f) immediately inform the Contracting Body of any actual or potential industrial action, whether such action be by their own employees or others, which

affects or might affect its ability at any time to perform its obligations under the Contract.

2.2 Security, Equipment and Premises

- 2.2.1 Unless otherwise stated in the Order Form, the Contractor shall provide any Equipment necessary for the supply of the Services.
- 2.2.2 The Contractor shall not deliver any Equipment nor begin any work on the Contracting Body Premises without obtaining Approval (such Approval not to be unreasonably withheld).
- 2.2.3 All Equipment brought onto the Contracting Body Premises shall be at the Contractor's own risk and the Contracting Body shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Contracting Body's Default. The Contractor shall provide for the haulage or carriage thereof to the Contracting Body Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Contracting Body Premises will remain the property of the Contractor.
- 2.2.4 The Contractor shall maintain all items of Equipment within the Contracting Body Premises in a safe, serviceable and clean condition.
- 2.2.5 The Contractor shall, at the Contracting Body's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Contracting Body Premises any Equipment which in the reasonable opinion of the Contracting Body is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 2.2.6 Where the Contracting Body Premises are being used in connection with provision of the Services, on completion of the Services, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Contracting Body Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Contracting Body Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- 2.2.7 The Contractor shall be responsible for maintaining the security of the Contracting Body Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Contracting Body while on the Contracting Body Premises and shall ensure that all Staff comply with such requirements.
- 2.2.8 The Contractor shall provide the Contracting Body, upon request, copies of its written security procedures and shall afford the Contracting Body upon request an opportunity to inspect its physical security arrangements.
- 2.2.9 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Contractor in the performance of the Services.

2.3 Compliance

- 2.3.1 The Contractor shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Contracting Body shall promptly notify the

Contractor of any health and safety hazards which may exist or arise at the Contracting Body's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

2.3.2 The Contractor shall:

- (a) comply with such rules and regulations as may be in force at any time relating to the use of the Contracting Body Premises including the Contracting Body's health and safety measures; and
- (b) notify the Contracting Body immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Contracting Body's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

2.4 Contractor's Staff

2.4.1 The Contracting Body may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Contracting Body Premises:

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

whose admission or continued presence would, in the reasonable opinion of the Contracting Body, be undesirable. The decision of the Contracting Body as to whether any person is to be refused access to the Contracting Body Premises shall be final and conclusive.

2.4.2 At the Contracting Body's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Contracting Body Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Contracting Body may reasonably request.

2.4.3 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the provision of the Services and accessing the Contracting Body Premises.

2.4.4 The Contracting Body may require the Contractor to ensure that any relevant staff employed in the provision of the Services has undertaken a Criminal Records Bureau check. The Contractor shall ensure that no member of relevant staff who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services.

2.4.5 The 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 Protecting Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

2.5 Licence to occupy Contracting Body Premises

2.5.1 Any land or Contracting Body Premises made available from time to time to the Contractor by the Contracting Body in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis and shall be used by

the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Contracting Body Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

2.5.2 The Contractor shall limit access to such land or Contracting Body Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Contracting Body Premises as the Contracting Body may reasonably request.

2.5.3 The Parties agree that there is no intention on the part of the Contracting Body to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Contracting Body retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

2.6 Monitoring of Contractor Performance

2.6.1 The Contracting Body (or third parties on its behalf) shall be entitled to monitor the Contractor's performance of the Services in accordance with the provisions of Schedule 3 (Monitoring Requirements) and as reasonably necessary and determined by the Contracting Body from time to time. The Contracting Body may organise regular monitoring and spot checks of the Premises at any time to ensure that the Contractor is complying with its obligations under the Contract and the Contractor shall co-operate fully, at its own cost, with the Contracting Body. The Contracting Body shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the delivery of the Services by the Contractor.

2.6.2 The Performance Managers shall have regular meetings to monitor and review the performance of the Contract, the achievement of the Minimum Service Levels and the provision of the Services.

2.6.3 The Contracting Body will conduct a review of the performance of this Contract once the Services have been completed unless otherwise notified by the Contracting Body that interim reviews will take place. During this review, a performance report will be agreed.

2.6.4 The Contractor shall ensure that the Contracting Body (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 2.6 including putting in place arrangements to permit legal access to information as may be required.

2.6.5 Where (in the reasonable opinion of the Contracting Body), any sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Competition Law, the Contracting Body may require the Contractor to terminate the sub-contract with immediate effect. For the avoidance of doubt, the Contracting Body shall not be liable for any costs incurred by the Contractor (or the sub-contractor) in connection with the termination of such sub-contract.

2.7 Minimum Service Levels

2.7.1 The Contractor shall ensure that the Services meet or exceed the Minimum Service Levels at all times from the Commencement Date.

- 2.7.2 Without prejudice to any other rights or remedies of the Contracting Body, if there is a Service Failure, the Contractor shall:
- (a) take all reasonable steps to notify the Contracting Body immediately of the Service Failure (and in any event as soon as the Contractor becomes aware that the Service Failure has occurred);
 - (b) provide the Contracting Body with a Performance Improvement Plan in accordance with Clause 2.8 (Performance Improvement Process) and carry out the actions identified in such plan in accordance with its terms; and
 - (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring.
- 2.8 Performance Improvement Process and Remedial Action
- 2.8.1 The Contracting Body shall be under no obligation to initiate the Performance Improvement Process.
- 2.8.2 Within such timescales as notified by the Contracting Body to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the default) but in any event no less than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall, following receipt of a Performance Improvement Notice submit a draft Performance Improvement Plan.
- 2.8.3 The Contracting Body shall either approve the draft Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of its receipt pursuant to Clause 2.8.2 or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Contracting Body within a minimum period of ten (10) Working Days (or such greater period as notified by the Contracting Body to the Contractor) of its receipt of the Contracting Body's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.
- 2.8.4 Once agreed, the Contractor shall immediately start work on the actions set out in the Performance Improvement Plan.
- 2.8.5 If, despite the measures taken under Clause 2.8.3 a Performance Improvement Plan cannot be agreed within the minimum period of ten (10) Working Days (or such greater period as notified by the Contracting Body to the Contractor) then the Contracting Body may elect to end the Performance Improvement Process and refer the matter for resolution by the dispute resolution procedure set out in Clause 25.1 (Dispute Resolution) or terminate the Contract by giving written notice to the Contractor with immediate effect and without liability.
- 2.8.6 Without prejudice to any other rights or remedies of the Contracting Body, if a Performance Improvement Plan is agreed between the Parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the required remedial plan completion date, the Contracting Body may:
- (a) terminate the Contract by giving written notice to the Contractor with immediate effect and without liability;
 - (b) give the Contractor a further opportunity to resume full implementation of the Performance Improvement Plan; or

- (c) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in Clause 25.1 (Dispute Resolution),

and the rights exercisable under this Clause shall be available to the Contracting Body on any repeat failure by the Contractor of a Performance Improvement Plan.

2.8.7 In the event that the Contracting Body is of the reasonable opinion that there has been a Material Breach of the Contract by the Contractor, then the Contracting Body may, without prejudice to its rights under Clause 6.2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the 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 Fees shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) charge the Contractor for and the Contractor shall pay any costs reasonably incurred by the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Body or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

2.8.8 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Body shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within twenty (20) Working Days of the Contracting Body's instructions or such other period of time as the Contracting Body may direct.

2.8.9 In the event that the Contractor:

- (a) fails to comply with Clause 2.8.8 above and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 2.8.8 above;

the Contracting Body may terminate the Contract with immediate effect and without liability by giving the Contractor notice in writing.

2.9 Administration Requirements

2.9.1 The Parties agree to comply with Schedule 2 (Administration Requirements).

3. PAYMENT AND FEES

3.1 Fees and Payment

- 3.1.1 Where the Contractor submits a valid VAT Invoice to the Contracting body in accordance with clause 3.1.8, the Contracting Body will consider and verify that invoice in a timely fashion.
- 3.1.2 The Contracting Body shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Contracting body has determined that the invoice is valid and undisputed.
- 3.1.3 Where the Contracting Body fails to comply with clause 3.1.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 3.1.2 after a reasonable time has passed.
- 3.1.4 Where the Contractor enters into a Sub-Contract, the Sub-Contractor shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 3.1.1 to 3.1.3 of this Contract; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 3.1.1 to 3.1.3 of this Contract.
- 3.1.5 In clause 3.1.4, "Sub-Contract" means a contract between two or more contractors, at any stage of remoteness from the Contracting Body in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
- 3.1.6 In consideration of the Contractor's performance of its obligations under the Contract, the Contracting Body shall pay the Fees in accordance with this Clause 3.1 (Fees and Payment).
- 3.1.7 The Contracting Body shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- 3.1.8 The Contractor shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Contracting Body to substantiate the invoice.
- 3.1.9 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause 6.2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Contracting Body on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (amended 2013).
- 3.1.10 Without prejudice to clause 3.1.3, where payment by the Contracting Body of all or any part of any payment submitted or other claim for payment by the Contractor is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Clause 10.2. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any breach of the Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Contracting Body or the Crown.

3.2 VAT

- 3.2.1 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”).
- 3.2.2 The Contracting Body shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Contracting Body) in relation to VAT, including without limit:
- (a) where the Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
 - (b) where the Contractor has assumed that it can reclaim input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or
 - (c) where the Contractor’s treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;
 - (d) where the Contractor has specified a rate of VAT, or a VAT classification, to the Contracting Body (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Contractor subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in this scenario set out in this clause 3.2.2(d), the Contractor shall be obliged to repay any overpayment by the Contracting body on demand.
- 3.2.3 Where the Contractor does not include VAT on an invoice, the Contracting body will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.
- 3.2.4 The Contractor acknowledges that the Contracting body has advised the Contractor that the Contractor should seek specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract’s VAT status with HMRC.

4. **INTELLECTUAL PROPERTY RIGHTS**

- 4.1 All intellectual property rights in any materials provided by the Contracting Body to the Contractor for the purposes of this Contract shall remain the property of the Contracting Body but the Contracting Body hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.
- 4.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Contracting Body by operation of law, the Contracting Body hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 4.3 The Contractor hereby grants the Contracting Body:

- 4.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Contract and any intellectual property rights arising as a result of the provision of the Services; and
- 4.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - (a) any intellectual property rights vested in or licensed to the Contractor on the date of the Contract; and
 - (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such intellectual property rights, which the Contracting Body reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.

- 4.4 The Contractor shall indemnify, and keep indemnified, the Contracting Body in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Contracting Body as a result of or in connection with any claim made against the Contracting Body for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.
- 4.5 The Contractor warrants to the Contracting Body that the Services (and the Contracting Body's permitted use thereof) shall not infringe any third party's Intellectual Property Rights.

Malicious Software

- 4.6 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 4.7 Notwithstanding Clause 4.6, 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 Contracting Body Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 4.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 4.6 shall be borne by the Parties as follows:
 - 4.8.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Contracting Body when provided to the Contractor; and
 - 4.8.2 by the Contracting Body if the Malicious Software originates from the Contracting Body Software or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contracting Body).

5. RECORDS AND AUDIT ACCESS

- 5.1 The Contracting Body may exercise audit rights as set out in clause 6 of the DPS Agreement and in such event the Contractor shall treat the Contracting Body as though it were the

Authority under the DPS Agreement and the terms of clause 6 of the DPS Agreement shall apply *mutatis mutandis*.

6. **DEFAULT AND TERMINATION**

6.1 Termination on insolvency and change of control

6.1.1 The Contracting Body may terminate the Contract with immediate effect and without liability by giving notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 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 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 Clause 6.1.1(a) – 6.1.1(g) occurs under the law of any other jurisdiction.

6.1.2 The Contracting Body may terminate the Contract with immediate effect and without liability by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

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

6.1.3 The Contractor shall notify the Contracting Body immediately if the Contractor undergoes a change of Control ("**Change of Control**"). The Contracting Body may terminate the Contract by notice in writing with immediate effect and without liability 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 Contracting Body becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval (such Approval not be unreasonably withheld or delayed, subject always to the Contracting Body's right to conduct reasonable and proportionate due diligence in respect of the new entity and the Contracting Body being fully satisfied of the financial standing of such entity) was granted prior to the Change of Control.

6.2 Termination on Default

6.2.1 The Contracting Body may terminate the Contract by giving written notice to the Contractor with immediate effect and without liability if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Contracting Body within twenty (20) Working Days, or such other longer period as may be specified by the Contracting Body, after issue of a written notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the reasonable opinion of the Contracting Body, capable of remedy; or
- (c) the Default is a Material Breach of the Contract.

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

6.2.3 If the Contracting Body fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Contracting Body in writing of such failure to pay. If the Contracting Body fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect.

6.2.4 **Cancellation**

6.2.5 A Party shall notify the other Party immediately in writing if it wishes to cancel the Services in whole or in part (“**notice of cancellation**”).

Cancellation by the Contractor

6.2.6 If a notice of cancellation is sent by the Contractor to the Contracting Body a minimum of twenty one (21) days before the Services are due to be provided:

- (a) the Fees shall not be payable by the Contracting Body unless the provision of the Service by the Contractor is re-arranged to the satisfaction of the Contracting Body and in such circumstances the Fees shall be paid in accordance with Clause 2.9 (Payment and Fees); and
- (b) it shall be the responsibility of the Contractor to rearrange the provision of the Services.

6.2.7 If notice of cancellation is sent to the Contracting Body less than twenty one (21) days before the provision of the Goods and/or services:

- (a) the Fees shall not be payable by the Contracting Body; and
- (b) the Contracting Body shall have the right to claim from the Contractor any additional expense reasonably incurred in dealing with the cancellation of the provision of the Services.

Cancellation by the Contracting Body

6.2.8 If notice of cancellation is sent by the Contracting Body to the Contractor the following fees will apply, except where the standard cancellation terms and conditions offered by the Contractor are more advantageous:

- (a) where notice of cancellation is sent on the date the Services are to be provided, the Contracting Body shall pay the Contractor the full Fees;
- (b) where notice of cancellation is sent less than 7 days before the date of the event, the Contracting Body shall be liable to the Contractor for 70% of the Fees;
- (c) where notice of cancellation is sent between seven (7) and thirteen (13) days before the event the Contracting Body shall be liable to the Contractor for 50% of the Fees;
- (d) where notice of cancellation is sent between fourteen (14) and twenty seven (27) days before the event the Contracting Body shall be liable to the Contractor for 20% of the Fees;
- (e) where notice of cancellation is sent more than 28 days before the date the event the Customer shall not be liable to the Contractor for the Fees.

6.3 Consequences of Expiry or Termination

6.3.1 Termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations of either the Contracting Body or the Contractor accrued under this Contract prior to its termination or expiry.

6.3.2 Following termination or expiry of this Contract, the Contractor shall provide the Contracting Body with such reasonable assistance as the Contracting Body may

require to transfer the services to a replacement provider and/or allow the Contracting Body to perform the services which replace the Services.

6.3.3 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract, the Contractor shall return (or make available) to the Contracting Body:

- (a) any data (including (if any) Contracting Body Data), Contracting Body Personal Data and Contracting Body Confidential Information in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Contracting Body (in which event the Contracting Body will reimburse the Contractor's pre-agreed and reasonable data conversion expenses), together with all training manuals, access keys and other related documentation, and any other information and all copies thereof owned by the Contracting Body, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with Law, or such period as is necessary for such compliance (after which time the data must be deleted); and
- (b) any sums prepaid in respect of Services not provided by the date of expiry or termination (howsoever arising) of this Contract.

7. LIABILITIES

7.1 Neither Party excludes or limits its liability for:

- 7.1.1 death or personal injury caused by its negligence, or that of its Staff;
- 7.1.2 fraud or fraudulent misrepresentation by it or its Staff;
- 7.1.3 any liability to the extent it cannot be limited or excluded by Law..
- 7.1.4 the indemnities under clauses:
 - (a) 4.4; and
 - (b) 8.2.

7.2 Subject to Clause 7.1, the Contracting Body's total aggregate liability in connection with this Contract in each twelve (12) Month period during the Term (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to a sum equivalent to one hundred and twenty five percent (125%) of the charges paid and payable in the Year of this Contract during which the default occurred.

7.3 Subject to Clauses 7.1 and 7.4, in no event shall either Party be liable to the other for any:

- 7.3.1 loss of profits;
- 7.3.2 loss of business;
- 7.3.3 loss of revenue;
- 7.3.4 loss of or damage to goodwill;
- 7.3.5 loss of savings (whether anticipated or otherwise); and/or
- 7.3.6 any indirect, special or consequential loss or damage.

7.4 Subject to Clause 7.1, the Contractor shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Contracting Body) be recoverable by the Contracting Body:

7.4.1 additional operational and/or administrative costs and expenses arising from any Default; and

7.4.2 any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Laws.

8. **EUROPEAN SOCIAL FUND AND OTHER FUNDING**

8.1 Where the Contracting Body is funding (in whole or in part) the delivery of the Contract using European Social Fund ("ESF") monies (or, in its role as a co-financing organisation, is using the Contract as a match for ESF provision), the Contractor shall observe the European Commission's (and the Contracting Body's) requirements and the regulations regarding ESF projects as notified by the Contracting Body to the Contractor prior to the Commencement Date and as notified by the Contracting Body to the Contractor from time to time during the Term. The Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Contracting Bodies and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF monies and provision used as a match for ESF purposes. Upon request by the Contracting Body, the Contractor shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Contractor and its Sub-contractors. Whether or not a copy of the Contractor's formal publicity policy is requested by the Contracting Body pursuant to this Clause 8.1, the Contractor shall retain copies of such policy (as revised from time to time) as part of the Contractor's record keeping obligations under Clause 5 (Records and Audit Access).

8.2 The Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor (or any Sub-contractor) of this Clause 8.

8.3 Without prejudice to any provisions under the DPS Agreement, where the Contracting Body is funding the delivery of the Contract using ESF monies (or in its role as a co-financing organisation is using the Contract as a match for ESF provision), the Contractor and any sub-contractors engaged by it shall maintain the records and accounts referred to in this Clause 8 until at least 31 December 2022.

9. **INSURANCE**

9.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in the paragraph 4.3 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the Term and for the minimum insurance period as set out in paragraph 4.3 of the Order Form.

9.2 Any excess or deductibles under such insurance (referred to in this clause 9) shall be the sole and exclusive responsibility of the Contractor.

9.3 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Contract.

- 9.4 The Contractor shall produce to the Contracting Body, 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.
- 9.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract then the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 9.6 The Contractor shall maintain the insurances referred to in paragraph 4.3 of the Order Form for a minimum of six (6) years following the expiration or earlier termination of the DPS Agreement.

10. PROTECTION OF INFORMATION

- 10.1 For the purposes of this Clause 10 the terms "Data Controller", "Data Subject", "Data Processor", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the Data Protection Legislation.
- 10.2 Without prejudice to any other provision of the Contract, in delivering the Services, the Contractor shall at all times during the Term comply with the Contracting Body Offshoring Policy.
- 10.3 The Contractor shall (and shall procure that all of its Staff) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all of their obligations under the Data Protection Legislation which arise in connection with this Contract.
- 10.4 The Contractor shall:
- 10.4.1 process the Personal Data only in accordance with instructions from the Contracting Body;
 - 10.4.2 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;
 - 10.4.3 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;
 - 10.4.4 obtain prior written consent from the Contracting Body in order to transfer the Personal Data to any sub-contractors or agents for the provision of the Services;
 - 10.4.5 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;
 - 10.4.6 notify the Contracting Body within five (5) Working Days if it receives;
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Contracting Body's obligations under the Data Protection Legislation;
 - 10.4.7 provide the Contracting Body with full cooperation and assistance in relation to any complaint or request made, including by;

- (a) providing the Contracting Body with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Contracting Body's instructions;
 - (c) providing the Contracting Body with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Contracting Body); and
 - (d) providing the Contracting Body with any information requested by the Contracting Body;
- 10.4.8 not process Personal Data outside the European Economic Area without the prior written consent of the Contracting Body and, where the Contracting Body consents to a transfer, and, where the Contracting Body consents to such processing, storing, accessing or transfer outside the European Economic Area:
- (a) comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) comply with any reasonable instructions notified to it by the Contracting Body.

The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Contracting Body to breach any of its applicable obligations under the Data Protection Act 1998.

10.5 Official Secrets

10.5.1 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

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

10.5.2 In the event that the Contractor or its Staff fail to comply with this Clause 10.5, the Contracting Body reserves the right to terminate this Contract with immediate effect by giving notice in writing to the Contractor.

11. **CONFIDENTIALITY**

11.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- 11.1.1 treat the other Party's Confidential Information as confidential; and
- 11.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

11.2 Clause 11.1 shall not apply to the extent that:

- 11.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure;
- 11.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

- 11.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 11.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 11.2.5 it is independently developed without access to the other party's Confidential Information.
- 11.3 The Contractor may only disclose the Contracting Body's Confidential Information to its 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.
- 11.4 The Contractor shall not, and shall procure that its Staff do not, use any of the Contracting Body's Confidential Information received otherwise than for the purposes of this Contract.
- 11.5 At the written request of the Contracting Body, the Contractor shall procure that those members of the Staff identified in the Contracting Body's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 11.6 Nothing in this Contract shall prevent the Contracting Body from disclosing the Contractor's Confidential Information:
- 11.6.1 to any government department, any part of the Crown, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body;
 - 11.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 11.6.3 to the extent that the Contracting Body (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 11.6.4 to any consultant, professional adviser, contractor, Contractor or other person engaged by the Contracting Body or any person conducting a Cabinet Office gateway review;
 - 11.6.5 on a confidential basis for the purpose of the exercise of its rights under the Contract, including (but not limited to) for auditing purposes (Clause 5) and for the purpose of the examination and certification of the Contracting Body's accounts; or
 - 11.6.6 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Body has used its resources.
- 11.7 The Contracting Body shall use all reasonable endeavours to ensure that any employee or third party to whom the Contractor's Confidential Information is disclosed pursuant to Clause 11.6 is made aware of the Contracting Body's obligations of confidentiality.
- 11.8 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 Contracting Body 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.

11.9 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Contracting Body 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.

12. FREEDOM OF INFORMATION

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

12.2 The Contractor shall and shall procure that its Sub-Contractors shall:

12.2.1 transfer to the Contracting Body all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

12.2.2 provide the Contracting Body with a copy of all Information in its possession, or power in the form that the Contracting Body requires within five (5) Working Days (or such other period as the Contracting Body may specify) of the Contracting Body's request; and

12.2.3 provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body 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.

12.3 The Contracting Body 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.

12.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.

12.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 12.2) the Contracting Body may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

12.5.1 in certain circumstances without consulting the Contractor; or

12.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 11.1 applies the Contracting Body shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

13. TRANSFER AND SUB-CONTRACTING

13.1 The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

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

- 13.3 Where the Contracting Body has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Contracting Body, be sent by the Contractor to the Contracting Body if requested within ten (10) Working Days.
- 13.4 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, 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.
14. PREVENTION OF FRAUD
- 14.1 The Contracting Body places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. The Contractor shall and ensure that its Sub-contractors shall:
- 14.1.1 have an established system that enables Staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
 - 14.1.2 ensure that their performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
 - 14.1.3 ensure a segregation of duties within the 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 Contracting Body;
 - 14.1.4 ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) monthly intervals, to ensure effective and accurate recording and reporting of contract performance.
- 14.2 The Contractor shall use its best endeavours to safeguard the Contracting Body's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or Sub-contractors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Contracting Body immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.
- 14.3 If the Contractor, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Contracting Body) the Contracting Body may:
- 14.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Contracting Body resulting from the termination, including the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the Services and any additional expenditure incurred by the Contracting Body throughout the remainder of the Term; or
 - 14.3.2 recover in full from the Contractor any other loss sustained by the Contracting Body in consequence of any Default of this clause.
- 14.4 Any act of fraud committed by the Contractor or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Body) shall entitle the Contracting Body to terminate this Contract, and any other contract the Contracting Body has with the Contractor, by serving written notice on the Contractor.
- 14.5 If the Contracting Body finds that the Contractor has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Contracting Body will be entitled to terminate this Contract, or any other contract the Contracting Body has with the Contractor, with immediate effect.

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

15. **CONTRACTOR'S STATUS**

At all times during the Term the Contractor shall be an independent contractor and nothing in the 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 the Contract.

16. **PREVENTION OF CORRUPTION**

16.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this Clause 16.1. For the purposes of this Clause 16.1, a prohibited act is committed when the Contractor or any Staff:

16.1.1 directly or indirectly offers, promises or gives any person working for or engaged by the Contracting Body a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or
- (b) reward that person for improper performance of a relevant function or activity;

16.1.2 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;

16.1.3 commits any offence:

- (a) under the Bribery Act 2010;
- (b) under legislation creating offences concerning fraudulent acts;
- (c) at common law concerning fraudulent acts relating to the Contract or any other contract with the Contracting Body; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Contracting Body

16.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Contracting Body, 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 Contracting Body before execution of the Contract.

16.3 The Contractor shall if requested, provide the Contracting Body with any reasonable assistance, at the Contracting Body's reasonable cost, to enable the Contracting Body 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.

16.4 The Contractor shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as set out in Clause 16.1.1 and a copy of this shall be provided to the Contracting Body upon request.

- 16.5 The Contractor shall immediately notify the Contracting Body in writing if it becomes aware of or suspects any Default of Clauses 16.1.1 or 16.1.2, or has reason to believe that it has or any Staff has:
- 16.5.1 been subject to an investigation or prosecution which relates to an alleged prohibited act in Clauses 16.1.1 or 16.1.2;
 - 16.5.2 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
 - 16.5.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a prohibited act in Clauses 16.1.1 or 16.1.2.
- 16.6 If the Contractor notifies the Contracting Body that it suspects or knows that there may be a Default of Clauses 16.1.1 or 16.1.2, the Contractor must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documentation.
- 16.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by Clauses 16.1.1 or 16.1.2, the Contracting Body may;
- 16.7.1 terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Contracting Body resulting from the termination, including the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the Services and any additional expenditure incurred by the Contracting Body throughout the remainder of the Term; and
 - 16.7.2 recover in full from the Contractor any other Loss sustained by the Contracting Body in consequence of any Default of those clauses.
- 16.8 Conflicts of Interest
- 16.8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Body) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Contracting Body under the provisions of this Contract.
 - 16.8.2 The Contractor shall promptly notify and provide full particulars to the Contracting Body if such conflict referred to in Clause 17.1 above arises or is reasonably foreseeable to arise.
 - 16.8.3 The Contracting Body reserves the right to terminate this Contract immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Contracting Body under the provisions of this Contract. The action of the Contracting Body 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 Contracting Body.

17. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to the Contract ("**Third Party**") has no right to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Contracting Body and the Contractor

rescind this Contract or vary any of its terms in accordance with the relevant provisions of this Contract or terminate this Contract, such rescission, variation or termination will not require the consent of any third party.

18. **PUBLICITY**

18.1 Unless otherwise directed by the Contracting Body, the Contractor shall not make any press announcements or publicise this Contract in any way without the Contracting Body's prior written consent.

18.2 The Contracting Body shall be entitled to publicise this Contract in accordance with any legal obligation upon the Contracting Body, including any examination of this Contract by the Auditor or otherwise.

18.3 The Contractor shall not do anything which may damage the reputation of the Contracting Body or bring the Contracting Body into disrepute.

19. **WAIVER**

Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

20. **VARIATION**

Any variation to the contract must be made in writing signed by both Parties.

21. **ENTIRE CONTRACT**

The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this Clause shall exclude liability for fraud or fraudulent misrepresentation.

22. **RELATIONSHIP OF THE PARTIES**

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

23. **NOTICES**

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

23.2 Any notice or other communication which is to be given by either Party to the other shall be given 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). Such letters shall be addressed to the other Party in the manner referred to in Clause 23.3. 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.

- 23.3 For the purposes of Clause 23.2, the address of each Party shall be:
- 23.3.1 for the Contracting Body: the address set out in the Order Form.
 - 23.3.2 for the Contractor: the address set out in the Order Form.
- 23.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

24. CLAIMANT COMPLAINTS

- 24.1 The Contractor shall have an internal dispute resolution procedure for dealing with complaints from claimants about the Contractor (and/or and of its sub-contractors)
- 24.2 If the dispute between the claimant and the Contractor (and/or the sub-contractor) cannot be resolved the dispute shall be referred to the Independent Case Examiner ("ICE") for mediation.
- 24.3 Where the Fees paid and payable are equal to or over £50,000, 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 Contractor or the sub-contractor who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Contractor or sub-contractor is dismissed, no costs shall be payable. Any costs in respect of complaints that have been upheld against the Contractor or the sub-contractor and any financial redress due to the claimant shall be paid within four (4) weeks of the date of the ICE final investigation report.
- 24.4 Where the Fees paid and payable are less than £50,000, 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 Contractor or the Sub-contractor will be liable for any financial redress recommended by ICE. Any financial redress due to the claimant shall be paid within four (4) weeks of the date of the ICE final investigation report.

25. GOVERNING LAW AND DISPUTES

- 25.1 Dispute Resolution
- 25.1.1 The Contracting Body and the Contractor shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Contracting Body Representative and the Contractor Representative.
 - 25.1.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in Clause 25.1.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
 - 25.1.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
- 25.2 Governing Law and Jurisdiction
- Subject to clauses 24 and 25.1, the Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

SCHEDULE 1 - DEFINITIONS AND INTERPRETATION – CALL OFF TERMS

1. Definitions

1.1 In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Approval" and "Approved"	means the prior written consent of the Contracting Body
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or any internal auditor or any other body appointed by the Contracting Body from time to time
"Authority"	means Department for Work and Pensions
"Breach of Security"	means the occurrence of unauthorised access to or use of the Contracting Body Premises, the Premises, the Services, the Contractor System or any information and communications technology or data (including the Contracting Body Data) used by the Contracting Body or the Contractor in connection with the Contract
"Commencement Date"	means the date set out in paragraph 1.1 of the Order Form
"Commercially Sensitive Information"	means the information notified to the Contracting Body in writing (prior to the commencement of the Contract) which has been clearly marked as Commercially Sensitive Information comprised of information: (a) which is provided in writing by the Contractor to the Contracting Body in confidence; and/or (b) that 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, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and Contractors of the Contractor, including IPRs, 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) all personal data and sensitive personal data within the meaning of the Data Protection Legislation;

and does not include any information:

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 13 (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

and does not include the Contract in accordance with Clause 13

"Contract"

means the written agreement between the Contracting Body and the Contractor consisting of:

- (a) the Order Form;
- (b) the Specification;
- (c) the Proposal;
- (d) the Contractor Guidance; and
- (e) these Clauses and the Schedules

"Contracting Body"

means the customer(s) identified in the Order Form

"Contracting Body Data"	<p>(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:</p> <p>(i) supplied to the Contractor by or on behalf of the Contracting Body; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or</p> <p>(b) any Personal Data for which the Contracting Body is the Data Controller</p>
"Contracting Body Offshoring Policy"	means the Contracting Body's policies and procedures in respect of the offshoring of data, as advised to the Contractor by the Contracting Body from time to time, and which shall apply, without limitation, to Landed Resources
"Contracting Body Premises"	means premises owned, controlled or occupied by the Contracting Body which are made available for use by the Contractor or its Sub-contractors for provision of the Services (or any of them) on the terms set out in the Contract or any separate agreement or licence
"Contracting Body Software"	means software which is owned by or licensed to the Contracting Body, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software
"Contracting Body System"	means the Contracting Body's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Contracting Body or the Contractor in connection with the Contract which is owned by or licensed to the Contracting Body by a third party and which interfaces with the Contractor System or which is necessary for the Contracting Body to receive the Services
"Contractor"	means the person, firm or company with whom the Contracting Body enters into the Contract as identified in the Order Form
"Contractor Software"	means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services
"Contractor System"	means any such electronic or hard copy system/process utilised in the delivery of the Services and that is used to transfer, disclose, receive or store Contracting Body Data including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly

"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "Crown Body" shall be construed accordingly
"Data Protection Legislation"	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC (including any amendment thereto as a result of the on-going Article 29 Working Party), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, issued by the Information Commissioner including where applicable the guidance and codes of practice. This would include any similar laws and regulations in other countries that may be applicable to the Services and guidance and codes of practice issued by a regulatory body in such countries
"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 negligent statement of the relevant Party or (in the case of the Contractor) the Staff or (in the case of the Contracting Body) the Contracting Body's employees 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
"Deliverables"	means an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Contractor at any stage during the performance of the Contract
"DPS Agreement"	means the dynamic purchasing system framework agreement and all Schedules to such agreement and all documents referred to in such agreement as referenced in the Order Form
"DWP Code of Conduct"	means the Department for Work and Pensions Commissioning Strategy published in February 2008
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 (as amended) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations

"Equipment"	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract
"Fees"	means the price (exclusive of any applicable VAT), payable to the Contractor by the Contracting Body under the Contract, as set out in the Order Form, for the full and proper performance by the Contractor of its obligations under the Contract
"FOIA"	means the Freedom of Information Act 2000 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
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
"ICT Environment"	means the Contracting Body System and the Contractor System
"Information"	has the meaning given under Section 84 of the FOIA
"Intellectual Property Rights" and "IPRs"	means patents, inventions, Know How, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights 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
"IT System"	means the Contracting Body's electronic system in respect of Contracting Body referrals and payment, as updated and modified from time to time
"Know How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how

"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
"Management Information"	means the information provided by the Contractor to the Contracting Body pursuant to the requirements set out in the Order Form
"Material Breach"	means: <ul style="list-style-type: none"> (a) a Default which constitutes a material breach of this Contract; or (b) a material breach of any of the following Clauses: Clause 14 (Prevention of Fraud); Clause 2.6 (Monitoring of Contractor Performance); Clause 2.8 (Performance Improvement Process); Clause 10 (Protection of Information); Clause 14 (Freedom of Information); Clause 2.2 (Security, Equipment and Premises); Clause 5 (Records and Audit Access); Clause Error! Reference source not found. (Transfer and Sub-Contracting); (c) for failure to achieve those service levels set out in the Order Form
"Merlin Standard"	means the standard and accreditation process in respect of supply chain management as detailed in the Specification
"Minimum Service Levels"	means the set of service levels to which the Services must be provided, as set out in the Order Form
"Month"	means a calendar month and monthly shall be interpreted accordingly
"Order Form"	means the order submitted to the Contractor by the Contracting Body in accordance with the DPS Agreement which sets out the description of the Services to be supplied

"Parent Company"	means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed by Section 1159 and schedule 6 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Contractor or the Contracting Body as the context so admits
"Performance Improvement Notice"	means a written notice given by the Contracting Body to the Contractor pursuant to Clause 2.8 to initiate the Performance Improvement Process
"Performance Improvement Plan"	means the plan agreed in accordance with Clause 2.8 for the resolution of a Contractor's Default
"Performance Improvement Process"	means the process for resolving certain of the Contractor's Defaults as set out in Clause 2.8
"Performance Manager"	means the Contracting Body's representative who will work with the Contractor to support delivery of the Minimum Service Levels
"Premises"	means the location where the Services are to be supplied, as set out in the Order Form other than for Contracting Body Premises
"Proposal"	means the proposal submitted by the Contractor in respect of the Services which are the subject of this Contract
"Provider Assurance Rating"	means the assurance rating of "weak", "limited", "reasonable" or "strong" attributed to a Contractor or a Competing Contractor by the Provider Assurance Team following a Provider Assurance Review
"Provider Assurance Review"	means a review of the Contractor and each Competing Contractor which is carried out by the Provider Assurance Team on an annual basis
"Provider Assurance Team"	means the team appointed by the Contracting Body to provide assurance over risk relating to the Contractor's and Competing Contractors' systems and processes
"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 Contracting Body

"Relevant Conviction"	means a conviction that is relevant to the nature of the Services (or as listed by the Contracting Body) and/or relevant to the work of the Contracting Body
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)
"Security Plan"	means the Contractor's security plan prepared pursuant to paragraph 3 of Schedule 6 (Security Requirements and Plan)
"Security Policy"	means the Contracting Body's Security Policy annexed to Schedule 6 (Security Requirements and Plan) as updated from time to time together with any other security requirements set out in the Order Form
"Service Failure"	means a failure by the Contractor to deliver any part of the Services in accordance with any of the Minimum Service Levels
"Services"	means the employment related support services to be supplied as specified in the Order Form and the Specification
"Specification"	means the services description set out or referred to in the Order Form
"Staff"	means all persons employed or engaged by the Contractor to perform its obligations under the Contract together with the Contractor's servants, consultants, agents, volunteers, Contractors and sub-contractors used in the performance of its obligations under the Contract
"Staff Vetting Procedures"	means the Contracting Body's procedures and policies for the vetting of Staff as notified by the Contracting Body to the Contractor from time to time
"Standards"	means the standards set out or referred to within the Order Form
"Term"	has the meaning set out in Clause 1.2 of the Contract
"Third Party Software"	means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales

2. Interpretation

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

- 2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 2.2 words importing the masculine include the feminine and the neuter;
- 2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 2.4 references 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;
- 2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 2.6 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 2.7 references in this Contract to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or schedule to this Contract so numbered;
- 2.8 references in this Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Contract so numbered;
- 2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS – CALL OFF TERMS

1 Payment Information

- 1.1 The Authority and the Contractor shall exchange all orders, invoices, claims and payments via electronic methods.
- 1.2 The Authority shall issue a purchase order to the Contractor prior to commencement of the Service.
- 1.3 All invoices payable must include the appropriate purchase order number sent to the address as notified by the Contracting Body from time to time and for the DWP this shall be deemed to be the following address:
 - Central England Buying Team
 - Central England Group Directors Office
 - Work Services Directorate
 - Five Ways House
 - Islington Row
 - Birmingham
 - B15 1SL
- 1.4 Information that is required independently from the Contractor before a claim is submitted for payment by the Authority is included in the Order Form.

2 Disputed Claims

- 2.1 Notwithstanding paragraph 2.5 of this Schedule, payment by the Authority of all or any part of any Fees rendered or other claim for payment by the Contractor shall not signify approval. The Authority reserves the right to verify Fees after the date of payment and subsequently to recover any sums which have been overpaid.
- 2.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Authority.
- 2.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.
- 2.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.
- 2.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

3 Final Claims

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

SCHEDULE 3 - MONITORING REQUIREMENTS – CALL OFF TERMS

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

1 Reviewing Contract Performance

- 1.1 The Contractor shall work with the Contracting Body to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified.
- 1.2 The Contractor shall work with the Contracting Body to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor's management and delivery of it.
- 1.3 The Contractor shall supply information requested relevant to the delivery of the Services to the Contracting Body, using formats and to timescales specified by the Contracting Body in this Schedule.
- 1.4 The Contracting Body intends, wherever it can, to capture and collate information through its IT system(s). However, the Contracting Body does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 1.5 Any additional requests for information shall be considered in consultation with the Contractor as shall the process of defining the methods of collection.
- 1.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule.
- 1.7 Review meetings between the Contracting Body and the Contractor shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.8 The Contracting Body may undertake spot checks at any time to ensure that the Contractor is complying with its obligations under this Contract and the Contractor shall co-operate fully, at its own cost, with the Contracting Body.
- 1.9 The Contractor will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, including feedback to and from customers, stakeholders and employers. The Contracting Body will agree with the Contractor day-to-day relationship management, contact points, communication flows and escalation procedures.
- 1.10 The Contractor will be expected to continuously improve the quality of the provision including that delivered by Sub-contractors. Where quality falls below acceptable levels the Contractor will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the contract.
- 1.11 The Contracting Body will regularly monitor Contractor performance. The initial contract review will be informed by the award of contract process and reviewed thereafter.
- 1.12 The Contractor will be required to appoint a named Contractor Manager who will cooperate with the Contracting Body Performance Manager to ensure that the Contract is delivered as specified in the Contract and that required standards and performance levels are met.
- 1.13 The purpose of the 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 Contracting Body and the Contractor will follow the dispute resolution process detailed in Clause 25.1 (Dispute Resolution).

- 1.14 Contractor performance reviews may be undertaken formally or informally. The Contractor will be expected to provide any additional management information required by the Contracting Body to facilitate the reviews and arrange where necessary access to any of its delivery locations, including those operated by Sub-contractors.
- 1.15 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 Contractor's responsibility to develop the performance improvement plan which will be discussed and agreed with the Performance Manager.
- 1.16 The Contractor will be expected to carry out self-assessment and develop improvement action plans to continuously improve the quality of the Services including that delivered by Sub-contractors. Where quality falls below acceptable levels the Contractor will be expected to have suitable escalation procedures in place and, in respect of sub-contracted Services, take action where necessary to terminate the sub-contract.

2 Assuring Contractors' Systems

- 2.1 The Contractor shall put in place such assurance processes as the Contracting Body notifies to the Contractor from time to time. The remaining sections in this Paragraph 2 are DWP's requirement in relation to the process for assuring the Contractor's Systems.
- 2.2 The primary purpose of the DWP Provider Assurance Team (PAT) is to provide DWP 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.
- 2.3 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) conduct's 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 CAT 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.
- 2.4 Contractors shall have suitable systems in place to:
 - a) detect and prevent duplicate claims;
 - b)
 - c) prepare and submit accurate, valid, supported, timely claims;
 - d)
 - e) monitor, record and manage lateness and all absences;
 - f)
 - 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.

3 Access

- 3.1 In all instances, the Contractor shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring. Failure to provide such reasonable assistance shall be deemed a "Default" for the purposes of Clause 6.2 (Termination on Default).

4 Health and Safety Responsibilities of the Contracting Body Visiting Officers

- 4.1 The Contracting Body representatives visit Contractors and its Sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Contracting Body shall adopt an 'eyes and ears' approach to monitoring health and safety. In doing this the Contracting Body 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 Contracting Body representative does notice something on which they require assurance or clarification, they shall raise this with the Contractor or the Contractor's Sub-contractor's representative at the location where they are visiting. In no event are the Contracting Body representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Contractor or its Sub-contractors or any omission to give such advice, comments or otherwise.

5 Contractor Information (MI) Requirements

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

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

SCHEDULE 4 - CONTRACT PERFORMANCE TARGETS

1. The Contractor shall comply with such requirements relating to Contract performance targets as Contracting Bodies notify to the Contractor from time to time.

Provided that it is agreed that the remaining sections in this Schedule 4 are DWP's requirements in relation to Contract Performance Targets.

2. In delivering the Services the Contractor acknowledges that it is under an obligation to meet the following performance targets and furthermore that failure to meet all or any of the defined such targets, shall entitle the Authority to serve notice to terminate on the Contractor in accordance with Clause 6.2 (Termination on Default).
3. The following performance targets have been agreed between the parties.

Performance Targets	
Category 1 (Engagement) Category 2 (Establishing Need/Identifying Barriers) Category 3 (Moving Towards Work)	-Output target of an agreed Work Plan, Action Plan or alternative measurable output which can be evidenced and which, based on the intervention demonstrates activities which indicate actual engagement and progress towards work. - In most cases this will be an Action Plan and the Contractor will be required to provide the Contracting Body with supporting evidence of engagement and an agreed Action Plan and where applicable details of claimants completing the agreed Action Plan. The Contracting Body expects at least 90% of participants to complete an Action Plan for the agreed programme.
Category 4 (Addressing Barriers) Category 5 (Skills for Work) Category 6 (Getting a Job)	-100% of starters will receive and actively participate in an Initial Assessment where they will agree a detailed Individual Action Plan. All starters will receive support in actioning the agreed Action Plan. -The Contractor will be given a target of 45% of claimants commencing provision to move into employment (though Potential Contractors may propose a higher performance offer should they wish to do so). Successful performance of any provision within these categories will be indicated by a minimum of 45% of claimants entering and remaining in employment within 4 weeks of their early exit or completion of the provision.
Category 7 (Keeping a Job)	-This provision will entail a long term relationship with a claimant in order to keep them in a job. -100% of starters will have a signed Mentoring Agreement detailing the agreed level support that they will receive. -75% of individuals who have a signed Mentoring Agreement will be in employment 13 weeks from the date that the mentoring agreement was signed and evidence will be provided of the activities carried out.

"Performance Requirements" means the service levels to which the Services are to be provided, as set out in the Specification.

SCHEDULE 5 WELSH LANGUAGE SCHEME – CALL OFF TERMS

The Contractor shall comply with such requirements relating to use of the Welsh Language as Contracting Bodies notify to the Contractor from time to time.

Provided that it is agreed that the remaining sections in this Schedule 6 are DWP's requirements in relation to the implementation and operation of a Welsh language scheme. This Schedule sets out the Contractor's obligations which are applicable to the provision of the Services in Wales.

1 General

- 1.1 The Contractor acknowledges that in relation to the operation of its Services which are delivered in Wales, the Contracting Body 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 Contractor shall ensure that it cooperates with the Contracting Body 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 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 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 Potential Contractor will ensure that:
 - a) those who want, or are required, to correspond with the 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 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 6- SECURITY REQUIREMENTS AND PLAN – CALL OFF TERMS

1 Introduction

1.1 This Schedule covers;

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

2 Principles of Security

1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Contracting Body Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of the Authority's Data.

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

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

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

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

3 Security Plan

Introduction

1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.

3.2 At award of call off stage the Contractor may be required to submit further detail regarding the information security measures they propose to use in delivery of a specific contract. DWP will assess the data risk for each call off and if the risk is deemed 'low' then the original questions answered as part of selection onto the DPS will be proportionate. If the data risk is assessed as higher, then the Contractor will be required to submit a security plan detailing, more specifically, the information security measures they propose to use in delivery of a specific contract.

Development

3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Contractor will prepare and deliver to the Authority for approval the full and final Security Plan as requested in the Order Form

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

Content

3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

- a) the provisions of this contract; this Schedule (including the principles set out in paragraph 2);
- b) those parts of the Specification relating to security;
- c) ISO/IEC27002 and ISO/IEC27001;
- d) the data protection compliance guidance produced by the Authority.

3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.

3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule.

Amendment and Revision

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

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

3.11 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

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

4 Audit and Testing

4.1 The Contractor shall conduct tests of the processes and 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 Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.

4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.12, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance with ISO/IEC 27001

5.1 The Contractor shall 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.

5.2 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Contractor, then the Authority shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the

Contractor does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

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

6 Breach of Security

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

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

a) immediately take all reasonable steps necessary to;

(i) remedy such breach or protect the Contractor ICT System against any such potential or attempted breach or threat; and

(ii) prevent an equivalent breach in the future.

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

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.

ANNEX A

Note to Contractor: At the selection onto DPS stage, Contractors will have been required to answer a number of basic information security questions. This will provide the Authority with a basic view of the Contractor information security measures; which will form the security plan as required here. See attached question set to be completed at PQQ stage. [if the risk is determined as low then either insert the question set as the security plan here or refer to the original framework].

However, at award of call off stage Contractors may be required to submit further detail regarding the information security measures they propose to use in delivery of a specific contract. DWP will assess the data risk for each call off and if the risk is deemed 'low' then the original questions answered as part of selection onto the DPS will be sufficient.

If the data risk is assessed as higher then Contractors will be required to submit a security plan detailing, more specifically, the information security measures they propose to use in delivery of a specific contract.

Equally, if Contractors are successful in further tendering processes and Authority Data accumulates within the Contractors infrastructure, the Authority may require more detailed security assurances.

Please see attached example security plan templates that may be required by the Authority in these higher risk instances:

MEDIUM RISK SECURITY PLAN

SECURITY PLAN

Personnel Security

Please provide full contact details (name, e-mail, telephone number) of a named responsible officer within your organisation.
Please detail how you will comply with Baseline Personnel Security Standard (BPSS) – Pre-employment checks covering: identity, employment history (at least 3 years), nationality/immigration status and criminal record check. Who is responsible for managing these checks? http://www.dwp.gov.uk/docs/aquidefordwpcntractors.pdf
Please confirm that you obtain individual confidentiality statements from your personnel (including subcontractors) and will provide to the authority upon a written request.
Describe the measures you will operate to ensure your personnel understand their obligations when handling Authority Data including: Data Protection Act, Computer Misuse Act, Freedom of Information
Please state what training is in place for your personnel prior to them accessing Authority Data, and how often is this refreshed.

Secure Information Handling and Transfers

Describe the User Access Controls and Procedures in place to monitor access to Authority Data, limiting access to those directly involved in the provision of the services and who need to know the information.
Describe the policies and guidelines you and your subcontractors have in place with regard to the use of office systems such as: electronic media, telephone, fax, e-mail and hard-copy post. This may include policies such as: Electronic Media Policy, Clear Desk Policy and Handling Official Information Policy.
Please confirm that the encryption products used by your organisation (and subcontractors) are certified to FIPS 140-2 standard and also provide details of the policies and guidelines in place to manage the use of encryption.
Describe the procedures and policies in place to provide secure retention/storage/archiving and destruction of Authority Data – including redundant media including hard disks, CD, USB or any other storage used to process personal data.
Please detail how all actions performed in delivering the contract will be traceable to users who process Authority Data.
Please describe how you ensure that any system on which you or any subcontractor holds any Authority Data is secure – including back-up data

Portable Media

Do you or your subcontractors intend to use any portable media in the delivery of this contract?
Will any remote access take place during delivery of the contract?
Please describe the policies you and your subcontractors have in place for the secure use of laptops and encrypted storage devices (DWP needs to be assured that all laptops or any removable devices or media will be protected by encryption to at least FIPS140-2 standard).

Offshoring

Do you intend to offshore any Authority data?, if so you will need to complete the template below and describe how you will comply with the requirements of Offshoring (including Landed Resources)
 Offshoring Template.docx

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Premises Security

Please detail the security measures you and your subcontractors will operate for your premises to ensure that Authority Data is protected from unauthorised access theft or damage, these should cover:

- Controls and procedures to secure the perimeter of site building or office;
- Controls and procedures to allow only authorised personnel to enter site; and
- Controls and procedures to allow only authorised personnel into secure areas

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Please provide details of Business Continuity plans.

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Security Incidents

Describe the specific processes and policies in place to ensure action is instigated when suspected incidents of misuse or breaches of security occur.

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Please include details of your disciplinary policy in relation to data security.

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Please can you confirm that you will inform DWP immediately of any incidents that could compromise Authority Data

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ANNEX B

MEDIUM/HIGH RISK SECURITY PLAN

ORGANISATION SECURITY PLAN

Potential or existing Organisations must provide the information requested below which will form the basis of the Contract Security Plan. This plan is not exhaustive and where relevant confirmation of additional measures should be obtained or specified.

The Security Plan will set out the proportionate security measures to be implemented and maintained by the Organisation in relation to the Services. All processes associated with the delivery of the Services shall at all times comply with and include security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule. Where relevant this will include international standards such as ISO/IEC27002; ISO/IEC27001; Cyber Essentials or comparable measures.

The Organisation shall comply at all times with Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under Data Protection Legislation.

The Plan shall contain the specific technical and organisational measures the Organisation will operate to protect "Authority Data", which in this context means 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 (including voice), and which are supplied to the Organisation by or on behalf of the Authority; or which the Organisation is required to generate, process, store or transmit pursuant to this Agreement; or any Personal Data for which the Authority is the Data Controller.

Also included here must be any specific Organisational measures to ensure physical environment or personnel security relevant to the Contract whether performed on the DWP estate or Organisations environments.

If any statements in the plan do not fully accord with the terms and conditions of the contract, the terms and conditions of the contract will be the contracted position.

Cyber Essentials

Government is taking steps to further reduce the levels of cyber security risk in its supply chain. In consultation with industry Government has developed the Cyber Essentials Scheme (referred to throughout this document as Cyber Essentials). Cyber Essentials is for all organisations, of all sizes, and in all sectors. DWP has included reference to Cyber Essentials within invitation to tender and contract documents (including this security plan document).

Cyber Essentials defines a set of controls which, when properly implemented, will provide organisations with basic protection from the most prevalent forms of threat coming from the internet. Government believes that implementing these measures can significantly reduce an organisation's vulnerability. However, it does not remove all cyber security risk; for example, it is not designed to address more advanced, targeted attacks and hence organisations facing these threats will need to implement additional measures as part of their security strategy.

Further information can be found at: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

Organisations must indicate within this security plan at section 3 'Accreditation' if they have achieved certification to Cyber Essentials, to what level and provide a copy of the certificate.

This security plan template includes detail on cyber controls (indicated with the following quoted within the relevant sections of this plan: 'This is a Cyber Essentials control'). If your organisation has achieved Cyber Essentials, DWP will consider this as assurance against the relevant Cyber controls.

Useful information:

By implementing Cyber Essentials, organisations are mitigating against the following common types of cyber attack:

1. Phishing: malware infection through users clicking on malicious e-mail attachments or website links.
2. Hacking: exploitation of known vulnerabilities in Internet connected servers and devices using widely available tools and techniques.

Of the basic but successful cyber attacks against UK businesses and citizens of which Government has detailed knowledge, the large majority would have been mitigated by full implementation of the controls under the following, selected categories:

1. Boundary firewalls and internet gateways
2. Secure configuration
3. Access control
4. Malware protection
5. Patch management

Governance		
Question	Guidance	Contractor Response
Please provide full contact details of your appointed Senior responsible named officer, associated personnel and resources who will act as a first point of contact and conduct ongoing management of security incidents including identification, managing and agreed reporting procedures for actual or suspected security breaches.	If at any time you suspect or have reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, you must notify the Authority immediately and inform the Authority of the remedial action you will take	
Please confirm if your appointed responsible named officer also has the responsibility for risk management within your organisation. If not please supply full contact details of the person responsible for risk management		
Provide details of the name, contract function and details of any proposed subcontractors you will use	It will be your responsibility to monitor compliance of any Sub-Contractors and provide assurance to DWP with regard to the security of Authority Data. This should set out your organisations overall approach to protecting data assets	
If you have a contract reference number please supply.		
Please provide you overarching policy covering information security/data protection policy.		
Are your policies reviewed at regular intervals and if so how often?		
In order to assure all security holding and sharing of data we require a clear "warranty" from the Contractor (in accordance with the contract terms) that all data provided, stored and accessed at any proposed subcontractor (including Data Centre's) will be treated with rigour as required by the contract		
Please outline how you will monitor and gain assurance that subcontractors are compliant with the security requirements in accordance with the contract terms		

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Personnel Security		
Question	Guidance	Contractor Response
How many of your personnel access, handle & process Authority Data?		
How many of your subcontractor personnel access, handle & process Authority Data?		
BPSS		
<p>Please state what measures are in place to manage the BPSS requirement - including how the 4 mandatory checks are conducted, or will be implemented, within your organisation.</p>	<p>You shall comply with Baseline Personnel Security Standard/ Government Staff Vetting Procedures in respect of all persons who are employed or engaged by him in provision of the contract. This should be achieved before the Contractor's personnel access or handle Authority Data.</p> <p>This is not a security check as such but a package of pre-employment checks covering:</p> <ul style="list-style-type: none"> • Identity • employment history (at least 3 years minimum) • nationality/immigration status • criminal records <p>designed to provide a level of assurance.</p> <p>A guidance document 'HMG Baseline Security Standard – A Guide for DWP Contractors' is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251271/guide-for-dwp-contractors-bpss.pdf</p>	

Confidentiality		
Please confirm how this is provided and managed and/or your agreement to implementing this requirement.		
Do you require your staff and subcontractors to confirm confidentiality as part of their conditions of employment?		
Provide agreement here that, where at the written request of the Authority, the Contractor shall obtain individual confidentiality statements from Contractor's personnel including subcontractors.		
Legal and Contractual Obligations		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies	You must comply with all the relevant statutory regulatory and contractual requirements for the delivery of the contract including the Data Protection Act, Freedom of Information Act etc.	
Describe organisational and individual responsibilities for information security and explain how they are clearly defined. How are all staff aware of the security breach policy and potential sanctions available for inappropriate behaviour?	and / or You are aware of the Data Protection Act when processing generating data as it should only be used for the purpose that it was gathered for.	
Is a process in place to ensure your organisation is kept up to date with relevant current and emerging best practice?	You are aware that you are the data processors on behalf of DWP.	
	All of the Contractor's personnel must understand their obligations when handling Authority Data, being aware of their legal and contractual responsibilities including at the start and termination of employment including Data Protection Act, Computer Misuse Act, Freedom of Information Act etc.	

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Access Controls		
Please describe your processes on termination of employment including how you manage retrieval of data and revoking access to data.		
Describe the specific access control measures you will operate and how you will implement them in relation to hard copy data – also attach the relevant policies	You must ensure: User Access Controls and Procedures are in place to monitor access to Authority Data limiting access to those directly involved in the provision of the Services and who need to know the information i.e. accessing only the minimum amount of data to fulfil their role.	
This is a Cyber Essentials control Describe the specific access control measures you will operate and how you will implement them in relation to use of systems – also attach the relevant policies	You must ensure: User Access Controls and Procedures are in place to monitor access to Authority Data, including: <ul style="list-style-type: none"> • limiting access to those directly involved in the provision of the Services and • who need to know the information i.e. accessing only the minimum amount of data and • the levels of access to applications, computers and networks to fulfil their role. • Special access privileges should be documented and given to a limited number of individuals. • Administrative accounts should only be used to perform legitimate administrative activities, and should not be granted access to email or the internet. All systems and services handling Authority Data must have a clearly defined set of password rules to include: <ul style="list-style-type: none"> • Secure distribution of passwords. 	

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	<ul style="list-style-type: none"> • Enforcement of strong passwords or two factor authentication. • Enforcement of automatic policy change. • Guidance on staff for the use of passwords. • Administrative accounts configured to require a password change on a regular basis. <p>Where a physical security token is used as part of the logon process there must be clearly defined and documented procedures for the use of that token.</p> <p>The mechanisms provided for enabling, disabling, modifying or deleting user registration details must only be accessible to authorised individuals. System administrators must not logon with full supervisor privileges unless it is essential to do so.</p>	
Staff Training and Awareness		
<p>State what training is in place for employees prior to accessing Authority Data, how training is carried out as well as on an ongoing basis , and also describe how understanding is ensured</p> <p>Please cover if there are different levels of training depending on the job function within the organisation.</p>	<p>You shall have in place Information Security training and awareness for employees who are accessing Authority Data, Please provide details as to how often refresher training take place.</p> <p>For further information and guidance see the following link to the Authority Data Protection and Information Security web page: https://www.gov.uk/government/organisations/departments/about/procurement#data-protection-and-information-security</p>	

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3. Communication Management		
Question	Guidance	Contractor Response
How do you transfer Authority data to and from your subcontractors?		
Use of Office Systems		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies How do staff confirm understanding of the use of office systems?	You shall have policies and guidelines in place with regard to the use of office systems such as electronic media, telephone, fax, video conferencing, e-mail and hard copy post. This could include policies such as Electronic Media Policy, Handling Official Information Policy.	
Social Media		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies Is your organisation proposing to use any form of social media in the delivery of this service? If yes, please provide detail? Please confirm that you will not use any form of social media, without prior approval/consent by DWP.		
Handling/transfer/Retention/storage/archiving and destruction		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies	You shall have procedures and policies in place to provide secure handling/transfer/retention/storage/archiving and destruction of Authority Data, including any back up data. You shall have procedures in place for the destruction or sanitisation for re-use of redundant media including hard disks, CD or any other storage used to process personal data.	
Please include information regarding any voice/call recording that may be involved in the proposed service delivery.		
Describe how your organisation classifies data. Also describe how assets are managed.	You shall have policies in place for handling, storing, copying or transferring assets; such as asset registers etc.	

Accreditation		
If you have any level of Accreditation/Assurance in place such as ISO 27001/2 or Cyber Essentials please provide details		
Data Protection		
Is your organisation registered with the Information Commissioner Office, as a Data Controller, and thus comply with all requirements of the Data Protection Act 1998?- If applicable, please provide your data registration number.		
System Security		
<p>This is a Cyber Essentials control</p> <p>Boundary firewalls and internet gateways: Describe the specific measures you will operate and how you will implement them - please attach the relevant policies</p>	<p>Information, applications and computers within the organisation's internal networks should be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.</p> <p>One or more firewalls (or equivalent network device) should be installed on the boundary of the organisation's internal network(s). As a minimum:</p> <ol style="list-style-type: none"> 1. The default administrative password for any firewall (or equivalent network device) should be changed to an alternative, strong password. 2. Each rule that allows network traffic to pass through the firewall (e.g. each service on a computer that is accessible through the boundary firewall) should be subject to approval by an authorised individual and documented (including an explanation of business need). 3. Unapproved services, or services that are 	

	<p>typically vulnerable to attack (such as Server Message Block (SMB), NetBIOS, tftp, RPC, rlogin, rsh or rexec), should be disabled (blocked) at the boundary firewall by default.</p> <p>4. Firewall rules that are no longer required (e.g. because a service is no longer required) should be removed or disabled in a timely manner.</p> <p>5. The administrative interface used to manage boundary firewall configuration should not be accessible from the internet.</p>	
<p>This is a Cyber Essentials control Secure configuration: Describe the specific measures you will operate and how you will implement them - please attach the relevant policies</p>	<p>Computers and network devices should be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.</p> <p>Computers and network devices cannot be considered secure upon default installation. A standard, 'out-of-the-box' configuration can often include an administrative account with a predetermined, publicly known default password, one or more unnecessary user accounts enabled (sometimes with special access privileges) and pre-installed but unnecessary applications (or services).</p> <p>Default installations of computers and network devices can provide cyber attackers with a variety of opportunities to gain unauthorised access to an organisation's sensitive information, often with ease. By applying some simple security controls when installing computers and network devices (a technique typically referred to as system hardening), inherent weaknesses can be minimised, providing increased protection against commodity cyber attacks.</p>	

	<p>Computers and network devices (including wireless access points) should be securely configured. As a minimum:</p> <ol style="list-style-type: none"> 1. Unnecessary user accounts (e.g. Guest accounts and unnecessary administrative accounts) should be removed or disabled. 2. Any default password for a user account should be changed to an alternative, strong password. 3. Unnecessary software (including application, system utilities and network services) should be removed or disabled. 4. The auto-run feature should be disabled (to prevent software programs running automatically when removable storage media is connected to a computer or when network folders are accessed). 5. A personal firewall (or equivalent) should be enabled on desktop PCs and laptops, and configured to disable (block) unapproved connections by default. 	
<p>This is a Cyber Essentials control Malware protection: Describe the specific measures you will operate and how you will implement them - please attach the relevant policies</p>	<p>Systems and services handling Authority Data must be protected against malware infection (such as computer viruses, worms and spyware) through the use of malware protection software. The need to ensure systems are protected from malicious and mobile code and prevent infection of that system or service is key.</p> <p>The organisation should implement robust malware protection on exposed computers. As a minimum:</p>	

	<ol style="list-style-type: none"> 1. Malware protection software should be installed on all computers that are connected to or capable of connecting to the internet. 2. Malware protection software (including program code and malware signature files) should be kept up-to-date (e.g. at least daily, either by configuring it to update automatically or through the use of centrally managed deployment). 3. Malware protection software should be configured to scan files automatically upon access (including when downloading and opening files, accessing files on removable storage media or a network folder) and scan web pages when being accessed (via a web browser). 4. Malware protection software should be configured to perform regular scans of all files (e.g. daily). 5. Malware protection software should prevent connections to malicious websites on the internet (e.g. by using website blacklisting). 	
<p>This is a Cyber Essentials control Patching: Describe the specific measures you will operate and how you will implement them - please attach the relevant policies</p>	<p>Systems and services handling Authority Data must be protected against malware infection (such as computer viruses, worms and spyware) through the use of malware protection software. This should specifically include timely patching in accordance with the manufacturer's recommendations.</p> <p>Software running on computers and network devices should be kept up-to-date and have the</p>	

	<p>latest security patches installed.</p> <p>Any computer and network device that runs software can contain weaknesses or flaws, typically referred to as technical vulnerabilities. Vulnerabilities are common in many types of popular software, are frequently being discovered (e.g. daily), and once known can quickly be deliberately misused (exploited) by malicious individuals or groups to attack an organisation's computers and networks.</p> <p>Vendors of software will typically try to provide fixes for identified vulnerabilities as soon as possible, in the form of software updates known as patches, and release them to their customers (sometimes using a formal release schedule such as weekly). To help avoid becoming a victim of cyber attacks that exploit software vulnerabilities, an organisation needs to manage patches and the update of software effectively.</p> <p>Software should be kept up-to-date. As a minimum:</p> <ol style="list-style-type: none"> 1. Software running on computers and network devices that are connected to or capable of connecting to the internet should be licensed and supported (by the software vendor or Contractor of the software) to ensure security patches for known vulnerabilities are made available. 2. Updates to software (including operating system software and firmware) running on computers and network devices that are connected to or capable of connecting to the internet should be installed in a timely manner (e.g. within 30 days of release or 	
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	<p>automatically when they become available from vendors).</p> <p>3. Out-of-date software (i.e. software that is no longer supported) should be removed from computer and network devices that are connected to or capable of connecting to the internet.</p> <p>4. All security patches for software running on computers and network devices that are connected to or capable of connecting to the internet should be installed in a timely manner (e.g. within 14 days of release or automatically when they become available from vendors).</p>	
Do you ensure that hardware handling Authority Data is maintained in accordance with the manufacturer's specifications?		
Business Continuity		
Please confirm that the measures outlined in your Business Continuity or Contingency / Disaster Recovery plan, comply with the security requirements in accordance with the contract terms - If not, please provide detail?	All Business Continuity or Contingency / Disaster Recovery plans to manage the effects of unforeseen events such as human error, network failure, computer virus or natural disaster must comply with the DWP security requirements in accordance with the contract terms	

Portable Media		
Question	Guidance	Contractor Response
Do you intend to use any form of portable media in the delivery of this contract? If yes, please provide detail.		
Handling Authority Data when using portable media		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies	<p>These policies and procedures should control, protect, secure the use of and management of portable media. You should confirm:</p> <ul style="list-style-type: none"> • Equipment is stored in a secure area. • Physical assets which handle Authority Data 	
Please describe the policies and process for managing		

<p>the use of laptops, tablets, smartphones etc. encrypted storage devices, including backup tapes (DWP needs to be assured that all laptops or any removable devices or media will be protected by encryption which is certified and configured to at least FIPS 140-2 standard) and other removable media when handling Authority Data</p>	<p>must have a nominated owner, be identifiable and traceable and have their details recorded sufficiently to allow them to be tracked and traced.</p> <ul style="list-style-type: none"> • A level of protection must be given to the Authority Data if it is to be removed from the Contractor's premises. • Information stored on portable media is kept to an absolute minimum, and meets the business' needs. 	
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Remote working i.e. Outreach, home working and home PC use

<p>Describe the specific measures you will operate, when not in a secure office environment, within your organisation, and how you will implement them (you must attach the policies for your organisation as part of this security plan)</p>	<p>This should include, for example, policies and controls in place to manage the risks of working in a non secure environment.</p>	
<p>Will remote working take place during the delivery of this contract? If yes, please provide further detail.</p>		

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Premises Security

Question	Guidance	Contractor Response
<p>How many sites will be used in the delivery of the contract?</p>		
<p>If multiple sites are involved in the delivery of the contract then please describe your premises set up. e.g. whether it involves being sole occupier of buildings owned by your organisation or within a multiple occupancy site that your organisation does not own, or another configuration.</p>		

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Building Security		
Describe the specific measures you will operate for your premises to ensure that Authority Data is protected from unauthorised access, theft or damage – please attach the relevant policies	<p>These should cover:</p> <ul style="list-style-type: none"> • Controls and procedures in place to secure the perimeter of site building or office • Controls and procedures in place to allow only authorised personnel to enter site, building or office • Controls and procedures in place to allow only authorised personnel into secure areas • Controls to ensure visitors are accompanied at all times in areas where Authority Data is accessed • Controls to ensure Authority Data is safeguarded from unauthorised access, theft or damage 	

Data “Off shoring”		
Question	Guidance	Contractor Response
DPA and storage of Data		
Please confirm if your organisation is considering offshoring in relation to the proposed solution to this contract and that DWP approval will be sought and gained before off shoring processes or storage of Authority Data.	<p>Authority Data must not be processed outside the UK without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.</p> <p>The DWP Offshoring Policy controls apply when a contractor or sub-contractor wishes to:</p> <ul style="list-style-type: none"> • host DWP systems, services or official information outside the UK; • allow staff based outside the UK to have access to DWP systems, services or official information; • bring foreign nationals (“Landed Resources”) to the UK to provide services including, but not limited to, applications 	

	development and support, testing and other similar activities.	
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Audit and Testing		
Question	Guidance	Contractor Response
Security Tests		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies	You shall conduct tests on the processes and countermeasures contained within the security plan.	
Include results of penetration testing in this section and what backups are carried out.	All networks hosting Authority Data, including back-ups, must be protected to prevent unauthorised external access.	
Audit Trail		
Describe the specific measures you will operate and how you will implement them - please attach the relevant policies	<p>All actions performed by Contractors must be traceable to users who process Authority Data. Users should be aware that their actions are recorded and ALL incidents will be investigated and actions taken.</p> <p>You shall have an audit trail which can be interrogated by authorised individuals and will identify who has:</p> <ul style="list-style-type: none"> • Performed an action, which means, <ul style="list-style-type: none"> ○ Browsing information. ○ Creating information. ○ Updating information. ○ Deleting information. • What they did. • When they did it • Where they did it from 	
Test environments		
Describe the specific measures you will operate and how you will implement them – please attach the relevant policies	<p>The environment for any system or service handling Authority Data, including pilots, must be separate from test and development environments.</p> <p>Controls must be in place to ensure that test or</p>	

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Please confirm that you will not use any Authority Data for testing purposes, without prior consent.	development systems and data are not improperly migrated to the live environment	
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Risk Management		
Question	Guidance	Contractor Response
Is a corporate approach to risk management in place which enables the escalation of project risks to programme and/or organisational level risk registers?		
Are risk registers, owned, mitigated and reviewed on an ongoing basis?		

Incident Management		
Question	Guidance	Contractor Response
Describe the specific measures you will operate within your organisation, and how you will implement them - please attach the relevant policies	You shall have in place: <ul style="list-style-type: none"> Processes and policies to ensure action is instigated when suspected incidents of misuse or breaches of security occur and a disciplinary process in place. Processes for detecting unauthorised accesses (or attempted accesses), which must be treated as a security incident. 	
Please confirm that you will notify DWP immediately should any incident occur which could compromise Authority Data		

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Other policies or procedures		
Question	Guidance	Contractor Response
Please detail any other relevant policies or procedures you have in place.		

SCHEDULE 4 – MONITORING REQUIREMENTS

During the Term the Potential Contractor shall provide the Authority with such information that the Authority may request from time to time to monitor and evaluate the success of the Services and the Potential Contractor's management and delivery of them. The Potential Contractor shall supply information relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority.

SCHEDULE 5 - SECURITY REQUIREMENTS AND PLAN

1. Introduction

- 1.1 This schedule covers;
- a) Principles of security for the Potential Contractor 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 Potential 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 Potential Contractor System. The Potential Contractor also acknowledges the confidentiality of the Authority's Data.
- 2.2 The Potential Contractor shall be responsible for the security of the Potential 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 Potential Contractor System; and
 - d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Appendix.
- 2.3 Without limiting paragraph 2.2, the Potential 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 Potential 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 At the selection onto DPS stage, the Potential Contractor will be required to answer a number of basic information security questions. This will provide the Authority with a basic view of the supplier information security measures.
- 3.2 At award of call off stage, a supplier may be required to submit further detail regarding the information security measures they propose to use in delivery of a specific contract. The Authority will assess the data risk for each call off and if the risk is deemed 'low' then the original questions answered as part of selection onto the DPS will be proportionate. If the data risk is assessed as higher than the Potential Contractor will be required to submit a security plan detailing, more specifically, the information security measures they propose to use in delivery of a specific contract.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date of the Call-Off Contract and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Potential Contractor will prepare and deliver to the Authority for Approval the full and final Security Plan.
- 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 Potential Contractor shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not Approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 1.2 Dispute Resolution. No approval to be given by the Authority pursuant to this paragraph 3.4 of this appendix 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 Potential 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 appendix (including the principles set out in paragraph 2);
 - b) the provisions of the Appendix (The Services) relating to security;
 - c) ISO/IEC27002 and ISO/IEC27001;
 - d) the data protection compliance guidance produced by the Authority.
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Potential Contractor which provision the Potential 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 Potential 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 appendix.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Potential Contractor annually, or from time to time to reflect:
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Potential Contractor System, the Services and/or associated processes; and
 - c) any new perceived or changed threats to the Potential Contractor System;
 - d) a reasonable request by the Authority.
- 3.11 The Potential 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 Potential Contractor proposes to make to the Security Plan as a result of an Authority request or change to the Appendix (The Services) or otherwise shall be subject to the change control procedure and shall not be implemented until Approved by the Authority.

4. Audit and Testing

- 4.1 The Potential 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 Potential 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 DPS Agreement, the Authority shall be entitled at any time and without giving notice to the Potential Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Potential Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Potential 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 Potential 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 Potential Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Potential 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 Potential 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 Not Used

5.2 Not Used

5.3 The Potential 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 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 Potential Contractor, then the Authority shall notify the Potential Contractor of the same and give the Potential 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 Potential 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 Potential Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Potential 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 Potential Contractor shall;

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

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this DPS Agreement, then the Potential Contractor shall be entitled to refer the matter to the change control procedure in clause F3 (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.

Annex A – Security Policy for 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.
1. In order to protect Departmental information appropriately, our contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All contractors of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
2. The Chief Executive or other suitable senior official of each contractor must agree in writing to comply with these policies and standards. Each contractor must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Potential 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.
3. All contractors must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
4. The following are key requirements and all contractors must comply with relevant DWP policies concerning:
 1. **Personnel Security**
 - 1.1 Staff recruitment in accordance with government requirements for pre-employment checks;
 - 1.2 Staff training and awareness of Departmental security and any specific contract requirements.
 2. **Secure Information Handling and Transfers**
 - 2.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
 3. **Portable Media**
 - 3.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
 4. **Offshoring**
 - 4.1 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.

5. **Premises Security**

5.1 Security of premises and control of access.

6. **Security Incidents**

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

6.2 11.2 All 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.

6.3 It is the Potential Contractor's responsibility to monitor compliance of any Sub-Contractors and provide assurance to the Authority.

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

APPENDIX 1 DRAFT DYNAMIC PURCHASING SYSTEM SECURITY REQUIREMENTS AND PLAN

Question	Information	Response
Please confirm that you agree to act in accordance with the DWP Security Policy	DWP Security Policy for Contractors	
Do you have a named data security contact and is there a clear chain of responsibility/accountability within the supply chain for security/incident management?		
Will you comply with the Baseline Personnel Security Standard (BPSS) pre-employment checks when recruiting staff who will have access to DWP data (checks to include identity, employment history, nationality/immigration status and criminal record check)?	HMG Baseline Security Standard - A Guide for DWP Contractors	
Do you agree to obtain confidentiality statements from your staff (including subcontractors) and provide to the authority upon a written request?		
Are your staff made aware of the importance of confidential handling of information?		
Will your staff receive relevant training (e.g. Data Protection Act, Computer Misuse Act, Freedom of Information) prior to accessing DWP data?		
Do you have a data protection policy in place?		
Do you have User Access controls in place		
Will access to DWP data be traceable to individual users?		
Do you have clear processes for the storage, archiving & destruction of data?		
Will data be located in an office, room or environment that is secure and able to be locked?		

Please confirm that the processes you have in place for transfer of data are secure		
Please confirm that any data accessed remotely will be secure		
Where you use laptops, storage devices and/or other removable media, are these certified & configured to FIPS 140-2 encryption standard?		
Can you confirm that you have read and understood the DWP Offshoring policy and will comply	DWP Contractor Offshoring Guidance	
Do you have clear procedures to be followed in the event of the misuse or loss of data, including an incident management process?		

SCHEDULE 6 - DEFINITIONS AND INTERPRETATION

In this DPS Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Agreement Year"	means each period of 12 Months commencing on the Commencement Date and each yearly anniversary thereafter provided that the final such period may be shorter than 12 Months and will end on expiry or termination of this DPS Agreement
"Approval" and "Approved"	means the prior written consent of the Authority
"Audit"	means an audit carried out pursuant to Clause 6
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or any other body appointed by the Authority from time to time
"Authority Data"	means <ul style="list-style-type: none">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:<ul style="list-style-type: none">i) supplied to the Potential Contractor by or on behalf of the Authority; orii) which the Potential Contractor is required to generate, process, store or transmit pursuant to this DPS Agreement; orb) any Personal Data for which the Authority is the Data Controller
"Award Criteria"	means the award criteria to be applied to for the award of Call-Off Contracts for Services as provided for in DPS Schedule 2
"Breach of Security"	means the occurrence of unauthorised access to or use of the Premises, the Services, the Potential Contractor System or any information and communications technology or data (including the Authority Data) used by the Authority or the Potential Contractor in connection with the DPS Agreement
"Bribery Act"	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
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of Services made between a Contracting Body and the Potential Contractor comprising an Order Form and the Call-Off Terms and Conditions
"Call-Off Terms and Conditions"	means the terms and conditions in DPS Schedule 3

"Category"	means the sub divisions of Services under which the Contractor has been appointed as identified in paragraph 9 of the DPS Particulars
"Commencement Date"	means the date from when this DPS Agreement becomes legally binding
"Commercially Sensitive Information"	<p>means the information notified to the Authority in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:</p> <ul style="list-style-type: none"> (a) which is provided in writing by the Potential Contractor to the Authority in confidence for the period set out in that notification; and/or (b) that constitutes a trade secret
"Complaint"	means any formal complaint raised by any Contracting Body in relation to the performance of the DPS Agreement or any Call-Off Contract in accordance with Clause 39
"Confidential Information"	<p>means:</p> <ul style="list-style-type: none"> (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, including information that relates to the business, affairs, developments, trade secrets, Know-How, personnel and contractors of the Potential Contractor, including IPRs, 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) all personal data and sensitive personal data within the meaning of the Data Protection Legislation; <p>and does not include any information:</p> <ul style="list-style-type: none"> (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 13 (Confidentiality)); (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 <p>and does not include the DPS Agreement in accordance with Clause 13.8</p>
"Contracting Bodies"	means the Authority and any other contracting bodies described in the OJEU Notice

"Crown/Crown Body"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "Crown Body" shall be construed accordingly
"Data Protection Legislation"	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC (including any amendment thereto as a result of the on-going Article 29 Working Party), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, issued by the Information Commissioner including where applicable the guidance and codes of practice. This would include any similar laws and regulations in other countries that may be applicable to the Services and guidance and codes of practice issued by a regulatory body in such countries
"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 negligent statement of the relevant Party or (in the case of the Potential Contractor) the Staff or (in the case of the Authority) the Authority's employees in connection with or in relation to the subject-matter of the DPS Agreement and in respect of which such Party is liable to the other
"DPS Agreement"	means this dynamic purchasing system framework agreement and all Schedules to this agreement
"DPS Particulars"	means the specific information relating to the Potential Contractor and Authority which is set out at the front of this DPS Agreement
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 (as amended) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
"Expiry Date"	means the date set out in paragraph 10 of the DPS Particulars
"FOIA"	means the Freedom of Information Act 2000 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
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the DPS Agreement or any Call-Off Contracts under it or defrauding or attempting to defraud or conspiring to defraud any Contracting Body

"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
"Information"	has the meaning given under Section 84 of FOIA
"Intellectual Property Rights" and "IPRs"	means patents, inventions, Know-How, 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 and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"ITT"	means the invitation to tender issued by the Authority on 13 th May 2015.
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
"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
"Management Information"	means the management information specified in DPS Schedule 4
"Material Default"	means a Default which constitutes a material breach of this DPS Agreement and/or breach by the Potential Contractor of any of the following: Clause 11 (Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 16 (Provision of Management Information), Clause 6 (Records and Audit Access), Clause 23 (Data Protection), Clause 24 (Freedom of Information) Clause 31 (Transfer and Sub-contracting) and Schedule 3
"Month"	means a calendar month and monthly shall be interpreted accordingly
"OJEU Notice"	means the voluntary contract notice published in the Official Journal of the European Union
"Order"	means an order for Services served by any Contracting Body on the Potential Contractor in accordance with the Ordering Procedures
"Order Form"	means a document setting out details of an Order in the form set out in DPS Schedule 3
"Ordering Procedures"	means the ordering and award procedures specified in Framework Schedule 2

"Other Contracting Bodies"	means all Contracting Bodies except the Authority
"Parent Company"	means any company which is the ultimate Holding Company of the Potential Contractor and which is either responsible directly or indirectly for the business activities of the Potential Contractor or which is engaged in the same or similar business to the Potential Contractor. The term "Holding Company" shall have the meaning ascribed by Section 1159 and schedule 6 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Participant"	means any other potential supplier of the Services who has been accepted onto the dynamic purchasing system by the Authority
"Party"	means the Authority and/or the Potential Contractor and "Parties" shall be interpreted accordingly
"Potential Services"	means work focused activities which may be provided by the Potential Contractor as described in DPS Schedule 1
"Potential Contractor Fact Sheet"	means the fact sheet which the Potential Contractor submitted as part of its Tender as may be updated from time to time pursuant to Clause 22.2
"Potential Contractor System"	means the information and communications technology (ICT) system used by the Potential Contractor in performing the Services
"Premises"	means the location where the Services are to be supplied as set out in the Order Form and/or the Call-off Terms and Conditions
"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 this DPS Agreement or any other affairs of the Authority
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
"Security Plan"	means the Potential Contractor's DPS security plan prepared pursuant to DPS Schedule 5 (Security Requirement and Plan)
"Security Policy"	means the Authority's security policy annexed to DPS Schedule 5
"Services"	means the Potential Services selected by a Contracting Body to be provided under a Call Off Contract
"Staff"	means all persons employed or engaged by the Potential Contractor to perform its obligations under this DPS Agreement together with the Potential Contractor's servants, consultants, agents, volunteers, contractors and sub-contractors used in the performance of its obligations under this DPS Agreement or Call-Off Contracts

"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Potential Contractor and any third party whereby that third party agrees to provide to the Potential Contractor the Services or any part thereof necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof and "Sub-Contractor" shall be construed accordingly
"Tender"	means the tender submitted by the Potential Contractor to the Authority in response to the ITT
"Term"	means the term of this DPS Agreement as specified in Clause 2 (Term of DPS Agreement)
"Working Day"	means any day (other than a Saturday or Sunday) on which banks in the United Kingdom are open for business
"Year"	means a calendar year

The interpretation and construction of this DPS Agreement shall all be subject to the following provisions:

1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
2. words importing the masculine include the feminine and the neuter;
3. the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
4. references 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;
5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. headings are included in this DPS Agreement for ease of reference only and shall not affect the interpretation or construction of this DPS Agreement;
7. references in this DPS Agreement to any Clause or Sub-Clause or DPS Schedule without further designation shall be construed as a reference to the clause or sub-clause or schedule to this DPS Agreement so numbered;
8. references in this DPS Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this DPS Agreement so numbered;
9. reference to a Clause is a reference to the whole of that clause unless stated otherwise; and.
10. in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.