

# **Contract for the provisions of Services CQC Staff Survey – Employee Voice Surveys Interim Solution Direct Award**

**Contract Reference: CQC PSO 208**

**October 2019**

# Contents

Contents.....	2
SECTION 1- FORM OF CONTRACT.....	4
SECTION 2- TERMS AND CONDITIONS.....	6
A GENERAL PROVISIONS.....	7
B. THE SERVICES.....	18
C PAYMENT.....	23
D. STATUTORY OBLIGATIONS .....	26
E PROTECTION OF INFORMATION.....	30
F. CONTROL OF THE CONTRACT.....	44
G LIABILITIES .....	50
H DEFAULT, DISRUPTION AND TERMINATION.....	55
I DISPUTES AND LAW .....	64
SCHEDULE 1 - SPECIFICATION .....	68
SCHEDULE 2 – TENDER RESPONSE .....	74
SCHEDULE 3 - PRICING.....	75
SCHEDULE 4 - CHANGE CONTROL.....	76
SCHEDULE 5 - COMMERCIALY SENSITIVE INFORMATION .....	78
SCHEDULE 6 - NON DISCLOSURE AGREEMENT.....	79
SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE.....	84
SCHEDULE 8 - SECURITY REQUIREMENTS AND PLAN.....	86
SCHEDULE 9 - GUARANTEE .....	102
SCHEDULE 10 - EXIT MANAGEMENT STRATEGY.....	103

SCHEDULE 11 – KEY PERFORMANCE INDICATORS.....	104
SCHEDULE 12 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN .....	106
SCHEDULE 13 – MOBILISATION PLAN.....	107
SCHEDULE 14 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS .....	108

# SECTION 1- FORM OF CONTRACT

This Agreement is made on this 22<sup>nd</sup> day of October 2019

## PARTIES:

- (1) **THE CARE QUALITY COMMISSION** of 3<sup>rd</sup> Floor, 151 Buckingham Palace Road, London, SW1W 9SZ ("the **Authority**");

## AND

- (2) SocialOptic Ltd of 2 Park Court Pyrford Road, West Byfleet, Surrey, KT14 6SD (registered in England and Wales under number 6990426 whose registered office is 2 Park Court, Pyrford Road, West Byfleet, Surrey (the "**Contractor**")

(each a "**Party**" and together the "**Parties**").

## WHEREAS

Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services and the Contractor agrees to provide those services in accordance with these terms and conditions.

## NOW IT IS HEREBY AGREED as follows:

### 1. TERMS OF CONTRACT

#### 1.1 The "**Contract**" comprises the following:

Section 1:	Form of Contract
Section 2:	Terms and Conditions
Schedule 1:	Specification
Schedule 2:	Tender Response
Schedule 3:	Pricing
Schedule 4:	Change Control
Schedule 5:	Commercially Sensitive Information
Schedule 6:	Non-Disclosure Agreement
Schedule 7:	Contractor and Third-Party Software
Schedule 8:	Security Requirements and Plan
Schedule 9:	Guarantee
Schedule 10:	Exit Management Strategy
Schedule 11:	Key Performance Indicators
Schedule 12:	Business Continuity and Disaster Recovery Plan
Schedule 13:	Mobilisation Plan
Schedule 14:	Processing, Personal Data and Data Subjects

- 1.2 The Contract starts on 22<sup>nd</sup> October 2019 (the "**Commencement Date**") and ends on 21<sup>st</sup> October 2020 (the "**End Date**") the "Initial Period" unless it is terminated early or extended in accordance with the Contract.
- 1.3 The Authority may extend the term of the Contract until March 2021 ("**Extension**"). The Authority may, by giving written notice to the Contractor not less than the one (1) Months prior to the last day of the Initial Contract Period, extend the Contract for further periods of up to a further 6 Months. Any such period shall not exceed a maximum extension of 6 Months. The terms of the Contract will apply throughout the period of any Extension.

# SECTION 2- TERMS AND CONDITIONS

## CONTENTS

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Contractor's Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Provision and Removal of Equipment
B3	Manner of Carrying Out the Service
B4	Key Personnel
B5	Contractor's Staff
B6	Inspection of Premises
B7	Licence to Occupy Premises
B8	Property
B9	Offers of Employment
B10	Employment Provisions
C1	Price
C2	Payment and VAT
C3	Recovery of Sums Due
C4	Price during Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Environmental Requirements
D5	Business Continuity and Disaster Recovery
D6	Health and Safety
E1	Authority Data
E2	Data Protection and Privacy
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity, Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights
E9	Audit
E10	Tax Compliance
F1	Failure to meet requirements
F2	Monitoring of Contract Performance
F3	Remedies for inadequate performance
F4	Transfer and Sub-Contracting
F5	Waiver
F6	Variation

F7	Severability
F8	Remedies Cumulative
F9	Entire Agreement
F10	Counterparts
G1	Liability, Indemnity and Insurance
G2	Warranties and Representations
G3	Force Majeure
H1	Termination on Insolvency and Change of Control
H2	Termination on Default
H3	Non-Default Termination or Change of Government Policy
H4	Termination under the Regulations
H5	Consequences of Expiry or Termination
H6	Disruption
H7	Recovery upon Termination
H8	Retendering and Handover
H9	Exit Management
H10	Exit Procedures
H11	Knowledge Retention
I1	Governing Law and Jurisdiction
I2	Dispute Resolution

## A GENERAL PROVISIONS

### A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

**“Affected Party”** means the Party seeking to claim relief in respect of a Force Majeure Event;

**“Affiliate”** means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

**“Agreement”** means this Contract;

**“Anti-Slavery and Human Trafficking Laws”** means all applicable anti-slavery and human trafficking laws, statutes, regulations, policies and codes from time to time in force including but not limited to the Modern Slavery Act 2015

**“Approval”** and **“Approved”** means the prior written consent of the Authority;

**“Authorised Representative”** means the Authority representative named in the CCN as authorised to approve agreed Variations;

**“Authority Data”** means:

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

**"Authority Premises"** means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services;

**"Authority Software"** means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services;

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

**"BPSS"** means the HMG Baseline Personnel Security Standard for Government employees.

**"Breach of Security"** means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms;

**"CCN"** means a change control notice in the form set out in Schedule 4;

**"Commencement Date"** means the date set out in paragraph 1.2 of the Form of Contract;

**"Commercially Sensitive Information"** means the information listed in Schedule 5:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in Schedule 5; and/or
- (b) that constitutes a trade secret;

**"Confidential Information"** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;



(c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(d) is independently developed without access to the Confidential Information;

**"Contract"** means this written agreement between the Authority and the Contractor consisting of its clauses and any attached Schedules enumerated in paragraph 1.1 of the Form of Contract;

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

(a) the End Date; or

(b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract;

**"Contracting Authority"** means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations;

**"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 and which is set out in Schedule 7;

**"Contractor System"** means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority 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 Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **"Crown Body"** is an emanation of the foregoing;

**"Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and Data Protection Officer"** shall each have the same meaning given in the GDPR;

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

**"Data Protection Legislation"** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to the processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy;

**"Data Protection Impact Assessment"** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**"Data Subject Request"** means a request made by or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data;

**"Default"** means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other;

**"Disaster"** means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan;

**"DOTAS"** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992;

**"DPA"** means the Data Protection Act 2018 and any subordinate legislation made under that 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;

**"EIR"** means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**"Employment Liabilities"** means any Loss including those incurred by or attributed to the Authority (which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the Authority to a Replacement Contractor or sub-contractor);

**"End Date"** means the date set out in paragraph 1.2 of the Form of Contract;

**"Equipment"** means the Contractor's equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services;

**"Extension"** has the meaning given in paragraph 1.3 of the Form of Contract;

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

**"Force Majeure Event"** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or

regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's supply chain;

**"Form of Contract"** means Section 1 of the Contract;

**"GDPR"** means the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**"General Anti-Abuse Rule"** means:

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

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence 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;

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

**"HMRC"** means HM Revenue & Customs;

**"ICT Environment"** means the Authority System and the Contractor System;

**"Information"** has the meaning given under section 84 of the FOIA;

**"Initial Contract Period"** means the period from the Commencement Date to the End Date;

**"Intellectual Property Rights"** means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003;

**"Key Personnel"** mean those persons named in the Specification as key personnel;

**"Key Performance Indicators"** means the key performance indicators listed in the Schedule 11 and a Key Performance Indicator ("KPI") shall mean any one of them;

**"Know-How"** means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

**"Law"** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of

practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply;

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

**"Loss"** means any losses, costs, charges, expenses, interest, fees (including legal fees on a solicitor/client basis), disbursements and costs of investigation, litigation, settlements, payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term **"Losses"** shall be construed accordingly;

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

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10;

**"Month"** means calendar month;

**"NICs"** means National Insurance Contributions;

**"Occasion of Tax Non-Compliance"** means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;

**"Pre-Existing Intellectual Property Rights"** shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority of the Contractor of their obligations under this Contract;

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

**"Price"** means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 3 for the full and proper performance by the Contractor of its obligations under the Contract;

**"Pricing Schedule"** means Schedule 3 containing details of the Price;

**"Processing"** has the meaning given to it in the Data Protection Legislation but, for the purposes of the Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;

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

**"Prohibited Act"** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK;

**"Property"** means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract;

**"Protective Measures"** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Schedule 8 (Security Management and Plan);

**"Purchase Order"** means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract;

**"Quality Standards"** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1;

**"Receipt"** means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time;

**"Regulations"** means the Public Contract Regulations 2015 (SI 2015/102);

**"Regulator Correspondence"** means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under this Contract;

**"Regulatory Body"** means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority;

**"Relevant Conviction"** means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority;

**"Relevant Requirements"** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

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

**"Replacement Contractor"** means any third-party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

**"Request for Information"** means a request for information under the FOIA or the EIR;

**"Restricted Countries"** means

- (a) any country outside the European Economic Area; and
- (b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC;

**"Returning Employees"** means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period;

**"Services"** means the services set out in Schedule 1 including any modified or alternative services;

**"Specification"** means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards;



**"SSCBA"** means the Social Security Contributions and Benefits Act 1992;

**"Staff"** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract;

**"Staff Vetting Procedure"** means the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority;

**"Sub-Contractor"** means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and **"Sub-Contract"** shall be construed accordingly;

**"Sub-processor"** means any third party appointed to process Personal Data on behalf of the Processor related to this Agreement;

**"Supplier Code of Conduct"** means the HM Government Supplier Code of Conduct dated September 2017

**"Tender"** means the Authority's invitation to supply to contractors consisting of the Specification, these clauses and form of Letter of Engagement;

**"Tender Response"** means the document submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 2;

**"Termination Notice"** means a written notice delivered by the Authority to the Contractor indicating that it intends to terminate this Contract in accordance with its terms;

**"TFEU"** means the Treaty on the Functioning of the European Union;

**"Third Party IP Claim"** has the meaning given to it in clause E8.7 (Intellectual Property Rights);

**"Third Party Software"** means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7;

**"Treaties"** means the Treaty on European Union and the TFEU;

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

**"TUPE Information"** means the information set out in clause B10.1;

**"Valid Invoice"** means an invoice containing the information set out in clause C2.5;

**"Variation"** means a variation to the Specification, the Price or the terms or conditions of the Contract;

**"VAT"** means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994;

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London;

*In the Contract, unless the context implies otherwise:*

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words "other", "in particular", "for example", "including" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

## **A2 The Authority's Obligations**

- A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

## **A3 Contractor's Status**

- A3.1 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.
- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.



#### **A4 Notices and Communications**

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.

A4.2 If it is not returned as undelivered a notice served:

- (a) in a letter is deemed to have been received 2 Working Days after the day it was sent; and
- (b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A4.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

(a) For the Authority:

Contact Name: [REDACTED]

Address 151 Buckingham Palace Road, London SW1W 9SZ; and

Email: [REDACTED]

(b) For the Contractor:

Contact Name: [REDACTED]

Address: 2 Park Court; Pyrford Road, West Byfleet, Surrey KT14 6SD and

Email: [REDACTED]

#### **A5 Mistakes in Information**

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

#### **A6 Conflicts of Interest**

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal

interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

- A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, 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 Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B. THE SERVICES**

### **B1 Specification**

- B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.
- B1.2 The Contractor shall comply fully with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligations in relation to the quality, performance and provision of the Services).

### **B2 Provision and Removal of Equipment**

- B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.
- B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

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

**B2.8** Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein

### **B3 Manner of Carrying Out the Services**

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

**B3.2** The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

**B3.3** If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

- (a) accept the installation; or
- (b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

**B3.4** If the Authority rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

**B3.5** The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

**B3.6** During the Contract Period, the Contractor shall:

- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

B3.7 The Contractor shall at all times comply with the Supplier Code of Conduct (<https://www.gov.uk/government/publications/supplier-code-of-conduct>).

#### **B4 Key Personnel**

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.
- B4.2 The Contractor shall designate a Key Personnel to act on behalf of the Contract as the Contract manager to oversee the provision of the Services and liaise and report to the representatives of the Authority.
- B4.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.
- B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

#### **B5 Contractor's Staff**

- B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
  - (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable or if not suitably qualified to carry out the Services.

- B5.2** The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.
- B5.3** At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B5.4** If the Contractor fails to comply with clause B5.3 within two Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Authority, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B5.5** The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.
- B5.6** The Contractor shall provide all necessary training on a continuing basis for all its Staff employed or engaged in the provision of the Services in compliance with the Specification, the Security Policy and the Security Plan.
- B5.7** The Contractor shall ensure that:
- (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Act 2010 ("the Equality Legislation"); and
  - (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B5.8** The Contractor shall ensure that it does not engage in any act or omission that would contravene Anti-Slavery and Human Trafficking Laws

**B6 Inspection of Premises NOT USED**

**B6.1 NOT USED**

## **B7      Licence to Occupy Premises**

- B7.1** Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.
- B7.2** The Contractor shall limit access to the land or Premises to such Staff as is necessary for 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 Premises as the Authority may reasonably request.
- B7.3** Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay.
- B7.4** The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority
- B7.5** The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B8      Property**

- B8.1** All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2** The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B8.3** The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B8.4** The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.



**B8.5** The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**B9 Offers of Employment**

**B9.1** Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter neither party shall employ or make an offer employment to the other party's staff who have been associated with the Services and/or the Contract without consent of the other Party.

**B10 Employment Provisions – NOT USED**

## **C PAYMENT**

**C1 Price**

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

**C1.2** [The Contract Price is fixed and is not subject to indexation or escalation during the Contract Period.]

**C2 Payment and VAT**

**C2.1** Unless otherwise stated in the Contract, payments shall be once a month in arrears.

**C2.2** The Contractor shall submit invoices to the Authority on the dates set out in Schedule 3.

**C2.3** The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**C2.3** The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.

**C2.4** All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

**C2.5** Valid Invoices shall include:

- (a) the Contractor's full name, address and title of the Contract;
- (b) the Purchase Order number

**and, if requested by the Authority:**

- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) separate identification of time spent travelling and/or meal or rest breaks; and
- (j) where appropriate, details of journeys made and distances travelled.

C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.

C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

C2.8 NOT USED

C2.9 NOT USED

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 NOT USED

C2.12 NOT USED

C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).

C2.14 NOT USED

C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.



- C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
- Care Quality Commission  
T70 Payables F175  
Phoenix House  
Topcliffe Lane  
Wakefield  
West Yorkshire WF3 1WE
- C2.19 If the Contractor enters into a Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.
- C2.20 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.21 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.22 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.
- C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

### **C3 Recovery of Sums Due**

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.

- C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.
- C4 Price during Extension**
- C4.1 Subject to Schedule 3 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.
- C5 Euro**
- C5.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1.

## **D. STATUTORY OBLIGATIONS**

### **D1 Prevention of Fraud and Bribery**

- D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Contractor shall not during the Contract Period:
- (a) commit a Prohibited Act; and/or

- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Contractor shall, during the Contract Period:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware that any breach of clauses D1.1 and/or D1.2 has occurred or is likely to occur, or has reason to believe that it has or any of the Staff have:

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

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- (c) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any breach of those clauses.

- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).
- D1.8 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.9 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

## **D2 Discrimination**

### **D2.1 The Contractor shall:**

- (a) perform its obligations under the Contract in accordance with:
  - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
  - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **D3 Rights of Third Parties**

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

## **D4 Environmental Requirements**

- D4.1 The Contractor shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender. Without prejudice to the generality of the foregoing, the Contractor shall:
- (a) comply with all Policies and/or procedures and requirements set out in the Specification and Tender in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Contractor's supply chain;
  - (b) maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the Services being supplied and as proportionate to the nature and scale of the Contractor's business operations; and
  - (c) maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in Clause D4.1 (b).

D4.2 The Contractor shall meet reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause D.

#### **D5 Business Continuity and Disaster Recovery Plan**

- D5.1 The Contractor shall comply at all times with the relevant provisions of the Business Continuity and Disaster Recovery Plan to be appended hereto in Schedule 12.
- D5.2 The Business Continuity and Disaster Recovery Plan shall be compliant with the current British Standard (ISO22301) code of practice and specification for business continuity management or equivalent. In particular the Business Continuity and Disaster Recovery Plan must show that the Contractor is able to maintain the Services throughout the terms of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.
- D5.3 The Authority further reserves the right to undertake or commission an independent audit of the Business Continuity Plan that is put in place by the Contractor in respect of Services supplied to or on behalf of the Authority.
- D5.4 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:
- (a) implement the Disaster Recovery Plan
  - (b) continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
  - (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.
- D5.5 To the extent that the Contractor complies fully with the provisions of this clause D5 (and the reason for the declaration of a Disaster was not a breach of any of the other terms of this Contract on the part of the Contractor), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in

Schedule 11 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

## **D6 Health and Safety**

**D6.1** The Contractor shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety (including Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety); and
- (b) the Authority's health and safety policy while at the Authority's Premises.

**D6.2** Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

# **E PROTECTION OF INFORMATION**

## **E1 Authority Data**

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

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

**E1.3** To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.

**E1.4** The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

**E1.5** The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.

**E1.6** The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.

**E1.7** If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E2 Data Protection and Privacy**

E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 14 by the Authority and may not be determined by the Contractor.

E2.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

E2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 14, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:



- (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 14);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.



E2.5 Subject to clause E2.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

E2.6 The Processor's obligation to notify under clause E2.5 shall include the provision of further information to the Controller in phases, as details become available.

E2.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

E2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;

- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- E2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- E2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
  - (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause E2 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- E2.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- E2.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- E2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E2.15 Subject to clause G1.2A, the Processor shall indemnify the Controller on a continuing basis against any and all Losses incurred by the Controller arising from the Processor's Default under this Clause E2 and/or any failure by the Processor or any Sub-processor to comply with their respective obligations under Data Protection Legislation.
- E2.16 Nothing in this clause E2 shall be construed as requiring the Processor or any relevant Sub-processor to be in breach of any Data Protection Legislation.
- E2.17 The provision of this clause E2 applies during the Contract Period and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

- E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.
- E3.2 The Contractor shall not remove from the Authority's premises any classified or privacy marked material without the Authority's express agreement. The Contractor must keep any such material so removed under conditions approved by the Authority for the housing of such classified or privacy marked material.
- E3.3 In the event that the Contractor or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

### **E4 Confidential Information**

- E4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- E4.2 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E4.3 Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- E4.4 The Authority may consult with the Contractor to inform its decision regarding any redactions, but the Authority shall have the final decision in its absolute discretion.
- E4.5 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- E4.6 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

- E4.7 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- E4.8 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.9 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.10 Clause E4.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- E4.11 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts;
  - (b) for the purpose of 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;
  - (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
  - (d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests

that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.12 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.13 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.
- E4.14 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.
- E4.15 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.16 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.17 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and the Contractor shall and shall procure that any Sub-Contractors shall:
  - (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
  - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

- E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.
- E5.4 The Contractor acknowledges that (notwithstanding the provisions of clause E4) 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 ('Code'), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services in certain circumstances:
- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;
- provided always that where E5.4(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- E5.5 The Contractor shall ensure that all information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## **E6 Publicity, Media and Official Enquiries**

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

- E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with Schedule 8 (Security Requirements and Plan).
- E7.3 The Contractor shall comply, and shall procure compliance of its Staff with Schedule 8 (Security Requirements and Plan).
- E7.4 The Authority shall notify the Contractor of any changes or proposed changes to Schedule 8 (Security Requirements and Plan). Any changes shall be agreed in accordance with the procedure in clause F6 (Variation).

E7.5 Until and/or unless a change to the Charges is agreed by the Authority, the Contractor shall continue to perform the Services in accordance with its existing obligations.

E7.6 The Contractor shall be liable for, and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any breaches of this clause E7 (Security) and Schedule 8 (Security Requirements and Plan) (to the extent that such Losses were not caused by any act or omission by the Authority).

## **E8 Intellectual Property Rights**

E8.1 All Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- (a) furnished to or made available to the Contractor by or on behalf of the Authority;
- (b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or
- (c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the "IP Materials")

shall vest in the Authority and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.1A Unless otherwise specified in this Contract, a party will not acquire any right, title or interest in or to the Intellectual Property Rights (IPR's) of the other Part or its licensors

E8.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.

E8.4 The Contractor shall ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third-party supplying services to the Authority.



- E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown from and against all Losses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:
- (a) items or materials based upon designs supplied by the Authority; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third-party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
  - (b) take due and proper account of the interests of the Authority; and
  - (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).
- E8.9 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.
- E8.10 If any Third-Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.4 and G2.1(g)) use its best endeavours to:



- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

- E8.11 The Contractor grants to the Authority a royalty-free, perpetual, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date which are embedded in or which are an integral part of the IP Materials and which the Authority reasonably requires in order to exercise its rights under, and receive the full benefits of the Contract (including, without limitation, the Services).

#### **E8A Use of Documents and Information**

- E8A.1 Except with the consent in writing of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- E8A.2 Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract.
- E8A.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract.
- E8A.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E8A.5 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E8A.6 To the extent that Authority Data is held and/or processed by the Contractor the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification Schedule [and/or the Exit Management Strategy].

- E8A.7 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E8A.8 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster
- E8A.9 Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than [three] monthly intervals.
- E8A.10 The contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- E8A.11 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than [ten calendar days]; and/or
  - (b) itself restore or procure the restoration of Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.
- E8A.12 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **E9 Audit**

- E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

- E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.
- E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E10 Tax Compliance**

- E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly give the Authority:
    - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:
- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
  - (c) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

## **F. CONTROL OF THE CONTRACT**

### **F1A Monitoring of Contract Performance**

**F1A.1** The Contractor shall comply with the monitoring arrangements set out in the KPI Schedule and the Specification including, but not limited to:

- (a) reporting performance of the Services against the KPIs;
- (b) providing all management and reporting information listed in the Specification at such intervals as specified; and
- (c) providing such other performance data and information as the Contractor may be required to produce by the Authority under the Specification or otherwise under the Contract from time to time.

**F1A.2** The Contractor shall measure its performance against the KPIs, and within 7 days of submitting of its claim for payment each Month, the Contractor shall provide the Authority with a performance report setting out the Contractor's performance against all KPIs and the Overall KPI Performance Score in respect of the immediately preceding Month. Where KPI's are only measured Quarterly or Half Yearly they shall be reported in the Month immediately following the relevant Quarterly or Half Yearly performance report date.

### **F1 Failure to meet requirements**

**F1.1** If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

### **F2 NOT USED**

### **F3 Remedies for inadequate performance**

**F3.1** If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's

reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;

(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 Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

(a) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or

(a) terminate the Contract in accordance with clause H2.

**F3.2** Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

**F3.3** If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

**F3.4** If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:

(a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

(b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

**F3.5** If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:

(a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and

(b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

**F3.6** If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

#### **F4 Transfer and Sub-Contracting**

- F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, novate, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records, then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- F4.4 If the Authority has consented to the placing of Sub-Contracts, the Contractor shall:
- (a) impose obligations on its Sub-Contractor on the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
  - (b) provide a copy at no charge to the Authority, of any Sub-Contract, on receipt of a request for such by the Authority.
- F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (the “Assignee”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both clauses F4.6 and F4.7.
- F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

- F4.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least [5] Working Days prior to submission of the relevant invoice.
- F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval of the Authority.
- F4.9 Subject to clause F4.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F4.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee;
  - (b) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F4.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F4.13 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.



F4.14 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.

F4.15 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the Contract where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Contract;

(b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

## **F5 Waiver**

F5.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A4 (Notices and Communications).

F5.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F6 Variation**

F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause F6.

F6.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

(a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or

(b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

**F6.4** Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 4 and approved in writing by the Authority.

**F6.5** The provisions of clause F6.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a Change of Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

**F7.1** If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F8 Remedies Cumulative**

**F8.1** Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract 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.

## **F9 Entire Agreement**

**F9.1** The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

**F9.2** In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

## **F10 Counterparts**

- F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **G LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

**G1.1** Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

**G1.2** Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

**G1.2A** The Contractor's liability for all Losses suffered or incurred by the Authority arising from the Contractor's Default resulting in the destruction, corruption, degradation or damage to Authority Data or Personal Data or any copy of such Authority Data or Personal Data shall in no event exceed £500,000.

**G1.3** Subject to clause G1.1 and G1.2A the Contractor's aggregate liability in respect of the Contract shall not exceed £1,000,000

**G1.4** The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

**G1.5** The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;

- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

G1.8 The Contractor shall hold:

- (a) employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
- (b) public liability with the minimum cover per claim of five million pounds (£ 5 ,000,000);
- (c) product liability with the minimum cover per claim of one million pounds £ 1 ,000,000];  
and
- (d) professional indemnity with the minimum cover per claim of £ one million pounds (£1 000,000),  
or any sum as required by Law unless otherwise agreed with the Authority in writing. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any fraud;
  - (c) as at the Commencement Date, all information contained in the Tender Response or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
  - (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
  - (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
  - (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:

- i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.
- (l) (if an individual) he is regarded by HM Revenue & Customs as self-employed and accordingly shall indemnify the Authority against tax, national insurance contributions or similar impost for which the Authority may be liable in respect of the Contractor by reason of this Contract.

### **G3 Force Majeure**

- G3.1** Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2** The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- G3.3** If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- G3.4** Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate

timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

- G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to continue to perform its obligations under the contract and prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- G3.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
    - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
    - ii) neither Party shall be liable for any Default arising as a result of such failure;
  - (b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.
  - (c) either Party is prevented from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.
- G4 Guarantee NOT USED**



## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

- H1.1** The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor 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 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
  - (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor 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 Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

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

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

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to 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, his creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction

**H1.5** The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (h) a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

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

## **H2 Termination on Default**

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

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

H2.2 If, 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 Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

## **H3 Non Default Termination or Change of Government Policy**

H3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.

H3.2 The Authority may terminate the Contract by giving to the Contractor at least 1 Month's notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Authority acting reasonably, the Services are no longer required or are no longer affordable to the Authority.

## **H4 Termination under the Regulations**

H4.1 The Authority may terminate the Contract on written notice to the Contractor if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

## **H5 Consequences of Expiry or Termination**

- H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.
- H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
  - (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act and Privacy), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E7 (Security), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H7 Recovery upon Termination**

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
  - (c) immediately vacate any Authority Premises occupied by the Contractor;
  - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
  - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H7.2 Alternatively, on termination of the Contract for any reason, the Contractor shall at the written request of the Authority and at the Contractor's cost:
- (a) carry out the destruction of any of the Confidential Information, Personal Data and IP Materials ;



(b) using a method of secure destruction to be specified by the Authority and in accordance with Good Industry Practice; and

(c) provide a certificate of secure destruction to the Authority.

H7.3 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H7.4 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H7.1(d) and (e) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H8 Retendering and Handover**

H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.

H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

H8.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies



of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

- H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of the provision of the Services to a replacement contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.
- H9.2 Within ninety (90) days of the Commencement Date, the Contractor shall provide a draft Exit Management Strategy to (to be appended to Schedule 10) and within ten (10) Business Days of provision of such Exit Management Strategy, the Parties shall meet and use all reasonable endeavours to agree the contents of the Exit Management Strategy, which must provide for the orderly transition of the provision of the Services from the Contractor to the Authority and/or any replacement contractor in the event of any termination (in whole or in part) or expiry of this Contract and allow for the Contractor to comply with its obligations under clause H6 and H7. If the Parties are unable to agree the contents of the Exit Management Strategy within a 20 Business Day period, either Party may refer the dispute for resolution in accordance with clause I2. The Exit Management Strategy as agreed or determined shall be the Exit Management Strategy.
- H9.3 The Contractor shall keep the Exit Management Strategy under continuous review and include any proposed updates to the Exit Management Strategy in each Monthly Contract Management Meeting.
- H9.4 In addition, within ten (10) days after service of a Termination Notice by either Party or six (6) months prior to the end of the expiry of the Contract, the Contractor shall update the Exit Management Strategy into a final form that could be implemented immediately and provides for a transition to and is compatible with any mobilisation plan of any replacement contractor or the Authority (as the case may be) and in doing so, provide as much detail as is appropriate given the nature of the termination or expiry and the timing of termination, so that such Exit Management Strategy can be submitted to the Authority for review and approval. The Parties shall meet and use their respective reasonable endeavours to agree the contents of such Exit Management Strategy.

**H9.5** During the final six (6) months prior to the expiry of the Contract or following the service of a Termination Notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of the provision of Services (or any part of the Services) to the Authority or any replacement contractor, and the Contractor shall:

- (a) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the replacement contractor and/or the completion of any work in progress;
- (b) implement the Exit Management Strategy;
- (c) liaise with the Authority and/or any replacement contractor, and provide reasonable assistance and advice concerning the provision of the Services and their transfer to the Authority or to such replacement contractor

and in all instances, shall be in accordance with timescales reasonably stipulated by the Authority.

## **H10 Exit Procedures**

**H10.1** Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

**H10.2** The following commercial approach shall apply to the transfer of the Services if the Contractor:

- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
- (b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price.

**H10.3** When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

**H10.4** Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

## **H11 Knowledge Retention**

**H11.1** The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine

operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

# **I DISPUTES AND LAW**

## **I1 Governing Law and Jurisdiction**

- I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless: (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "**Arbitration Notice**") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;

- (b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

**IN WITNESS** of which this Contract has been duly executed by the parties.

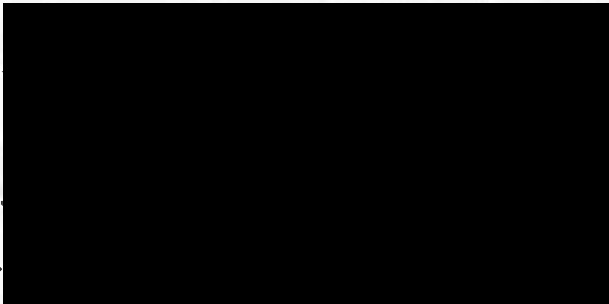
**SIGNED** for and on behalf of **CARE QUALITY COMMISSION**

Signature .

Name .....

Position .....

Date .....



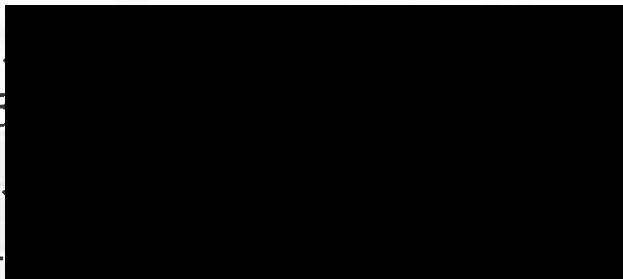
**SIGNED** for and on behalf of **SOCIALOPTIC LTD.**

Signature ...

Name .....*S*

Position .....

Date .....



# SCHEDULE 1 - SPECIFICATION

- **Annual survey platform subscription** including: Unlimited responses for the year and up to 15 admin users, holding of data, management of platform and self-service usage.
- **Design and delivery of a long annual survey module** (including question design support and survey set up, target data preparation and import, data cleansing and coding for up to three free text questions, reporting, analysis and insight).
- **Design and delivery of minimum 1 pulse survey module** (including question design support and survey set up, target data preparation and import, data cleansing and coding one free text question, and reporting)
- **CQC may wish to commission further surveys during the life of the contract in line with the pricing schedule.**

## Cost Envelope

Up to £30,000 including VAT

Start Date	End Date	Extension (If Applicable)
September 2019	September 2020 (1 years)	Option to extend up to 6 months

## Authority Responsibilities



CQC's Head of Organisational Development is the senior business owner responsible for delivery of the programme. Designated members of CQC's Organisational Development team will be responsible for day-to-day management and delivery of the programme.

If required/applicable, the Authority will facilitate access to previous survey data from our previous supplier(s).

The Authority will ensure all milestone payments are made promptly in line with the contract.

### **Contractor Responsibilities**

The supplier shall:

- Appoint a contract and/or a programme manager to oversee the work and liaise with/report as required to CQC's programme manager;
- Agree the nature and frequency of meetings required with CQC;
- Perform quality assurance on all aspects of the programme;
- Provide CQC with timely and ongoing evaluation and quality assurance information relating to the programme;
- Provide CQC with updates on costs and progress as required.

### **Contract Management Arrangement**

There will be a clear programme plan with deliverables which will be monitored by CQC and the supplier.

Additionally, the supplier will be expected to:

- Communicate and meet (e.g. teleconferences) frequently with CQC as agreed;
- Work within agreed key performance indicators relating to quality, delivery of products and levels of service;
- Measure performance and provision of service on an ongoing basis against specific target dates;
- Provide weekly reports on progress to the programme manager;
- Attend key meetings in person to review progress and discuss the service, as required by the programme manager;
- Attend a post contract review with the CQC to review whether the objectives of the contract were met, to review the benefits achieved; and
- Identify any lessons learnt for future programmes.

#### . Key Performance Indicators

Indicator	Measured by	Reference Point or Target	Review Date
Surveys and associated products are delivered in a timely way and in accordance with agreed deadlines.	Progress to be tracked against milestones as part of the programme plan – outcomes to be discussed at meetings	100%	Regular milestones within programme and at the end of each survey
Surveys and associated products are delivered to the highest possible quality and in accordance with agreed quality	Quality standards include (but not limited to): <ul style="list-style-type: none"> <li>• Accuracy and reliability of data</li> <li>• Confidentiality and anonymity</li> </ul>	100% reporting to be error-free	Regular milestones within programme and at the end of each survey

standards.	thresholds <ul style="list-style-type: none"> <li>• Visually engaging reports</li> <li>• User friendly online tools</li> </ul>		
Surveys are fully accessible to all colleagues and are compatible with CQC IT systems.	Ease of access for all staff, across different devices and specialist software	100% access for all CQC colleagues	Regular milestones within programme and at the end of each survey
Client queries resolved	Query outcomes to be discussed at regular meetings (frequency to be agreed)	<ul style="list-style-type: none"> <li>• 100% of programme team queries to be responded to within 1 working day</li> <li>• 100% of CQC staff queries to be responded to within 2 working days</li> </ul>	Regular milestones within programme and at the end of each survey
Services will be delivered in accordance with information security , data protection, GDPR .	Supplier to all required policies and processes in place.  Supplier to include a privacy notice statement on survey communications	Zero queries or challenges from survey users on handling of data	

## 11. Milestones

The table below sets out a proposed timetable of activity for the first year. Please note that this is intended as a guide and is subject to change and amendment with the supplier.

Description	Target Date	Action to Achieve Milestone	Review Date
Preparation for first survey: e.g. design,	Sept – Oct 2019	Planning Project Management	Sept – Oct 2019

testing, reporting requirements			
First survey live	28 Oct – 15 Nov	Survey out live	11 November
Reporting of results	18 Nov – 13 Dec	Reports Delivered to satisfactory standard	18 Nov
Preparation for pulse survey: e.g. design, testing, reporting requirements	Feb – Mar 2020	Planning review sign off final version	Feb 2020
Second survey live	March/April 2020	Survey out live	March 2020
Reporting of results	April/May 2020	Reports Delivered to satisfactory standard	April 2020
Additional pulse survey - OPTIONAL	Q2 2020	Survey out as required if commissioned	Tbc

## 12. Skills and Knowledge Transfer

The supplier will be working closely with programme team members throughout. In addition to providing specialist support and advice, the supplier will also be expected to share knowledge and expertise of key survey elements (data analysis or action planning for example) with CQC colleagues over the duration of the programme.

CQC colleagues will regularly report to the wider team on progress, findings, and share best practice internally.

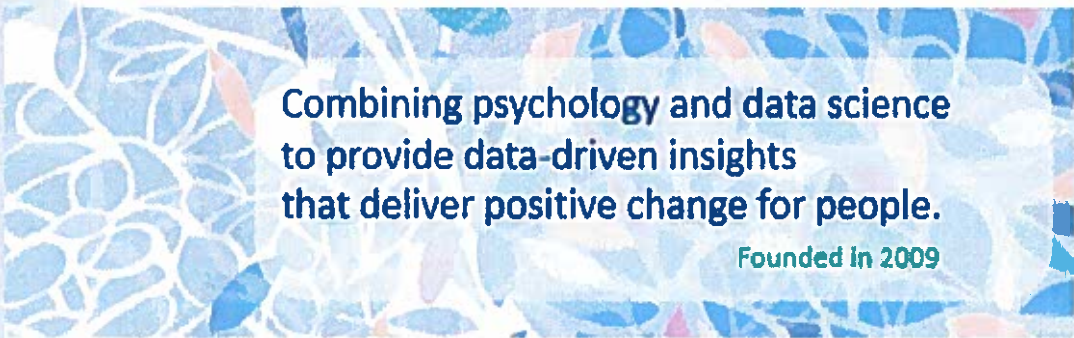
Additionally, lessons learned sessions between CQC and the supplier will be held with findings recorded.

Upon cessation of the contract, the supplier will be expected to ensure the appropriate data is made available to subsequent supplier, as selected by the Authority.

## SCHEDULE 2 – TENDER RESPONSE




human interaction    transparent measurement



Combining psychology and data science  
to provide data-driven insights  
that deliver positive change for people.

Founded in 2009



### Module pricing

**Annual survey platform subscription from 24 Sept 2019**  
(unlimited responses for the year and up to 10 admin users, holding of data, management of platform and self service usage)

**Long annual survey module**  
(including question design support and survey set up, target data preparation and import, data cleansing and coding for up to three free text questions, reporting, analysis and insight)

**Pulse survey module**  
(including question design support and survey set up, target data preparation and import, data cleansing and coding one free text questions, and reporting)

Quotation valid for 30 days





## SCHEDULE 3 – PRICING

Combining psychology and data science to provide data-driven insights that deliver positive change for people.

Founded in 2009

### Module pricing

<p><b>Annual survey platform subscription from 24 Sept 2019</b>  <small>(Unlimited responses for the year and up to 10 admin users, holding of data, management of platform and self service usage)</small></p> <p><b>Long annual survey module</b>  <small>(including question design support and survey set up, target data preparation and import, data cleansing and coding for up to three free text questions, reporting, analysis and insight)</small></p> <p><b>Pulse survey module</b>  <small>(including question design support and survey set up, target data preparation and import, data cleansing and coding for up to three free text questions, and reporting)</small></p>	
---	--



# SCHEDULE 4 - CHANGE CONTROL

## Contract Change Note

Contract Change Note Number	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of CQC Staff Survey-Our Voices Continuous Feedback dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this Change Control Notice:

Change Requestor / Originator		
Summary of Change		
Reason for Change		
Revised Contract Price	Original Contract Value	£
	Previous Contract Changes	£
	Contract Change Note [x]	£
	New Contract Value	£
Revised Payment Schedule		
Revised Specification (See Annex [x] for Details)		
Revised Contract Period		
Change in Contract Manager(s)		
Other Changes		

2. Save as herein amended all other terms of the Original Contract shall remain effective.
3. This Change Control Notice shall take effect on from the date on which both the Authority and the Contractor have communicated acceptance of its terms.

<b>SIGNED ON BEHALF OF THE AUTHORITY:</b>	<b>SIGNED ON BEHALF OF THE CONTRACTOR:</b>
<b>Signature:</b>	<b>Signature:</b>
<b>Name:</b>	<b>Name:</b>
<b>Position:</b>	<b>Position:</b>
<b>Date:</b>	<b>Date:</b>

## SCHEDULE 5 - COMMERCIALLY SENSITIVE INFORMATION

- 1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

# SCHEDULE 6 - NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is made the [insert day] day of [insert date] (the "Commencement Date")

BETWEEN:

[Insert full name of contractor] of [insert full address but if registered company please insert the following - (registered in England and Wales under number [insert company number]) whose registered office is situated at [ ] (the "Contractor");

and

[Insert name and address of the Staff member, professional advisor or consultant of the Contractor ] (the "Disclosee").

(each a "Party" and together the "Parties").

WHEREAS:

- (a) The Contractor has contracted with the Care Quality Commission (the "Authority") to provide services to the Authority in an agreement dated [insert date] (the "Contract").
- (b) The Contract places an obligation of confidentiality on the Contractor. The Disclosee is an [insert employee, professional advisor or consultant] of the Contractor engaged in the provision of services to the Authority in support of or in connection with the services to be provided by the Contractor under the Contract.
- (c) The Disclosee may therefore, have communicated to it, certain Confidential Information belonging to the Authority which is proprietary and must be held in confidence. Accordingly, the Contract requires the Contractor to ensure that the Disclosee enters into a non-disclosure agreement with the Contractor on the terms set out herein.
- (d) Any Confidential Information disclosed by the Authority or the Contractor to the Disclosee, whether contained in original or copy documents, will at all times remain the property of the Authority together with all notes, memoranda and drawings that have been made as a result of access to such Confidential Information.

NOW IT IS AGREED as follows:

## Definition and Interpretation

1. In this Agreement:

- a) "Confidential Information" means: any information which has been designated as confidential by the Authority in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) whether commercial, financial, technical or otherwise including (without limitation) information belonging to or in respect of the Authority which relates to research, development, trade secrets, formulae, processes, designs, specifications, the Authority data, internal management, information technology and infrastructure and requirements, price lists and lists of, and information about, customers and employees, all materials and information belonging to third parties in respect of

which the Disclosee owes obligations of confidence; information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, intellectual property rights or know-how of the Authority and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; whether or not that information is marked or designated as confidential or proprietary; whether arising prior to, on or after the Commencement Date;

b) "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.

2. In construing this Agreement the general words introduced or followed by the word include(s) or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
3. Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
4. Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
5. References to any person shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency, or any association or partnership (whether or not having a separate legal personality).

## **CONFIDENTIALITY**

6. The Disclosee undertakes to: keep confidential all Confidential Information and safeguard it accordingly; and that any Confidential Information supplied will not be used by it for any purpose other than in connection with the Contractor's delivery of the services under the Contract without the prior written permission of the Authority.
7. The Disclosee will take all necessary precautions to ensure that the Confidential Information is held in confidence and will provide proper and secure storage for all information and any papers, drawings or other materials which relate to or are compiled from such information.
8. The Disclosee shall, with respect to any Confidential Information it receives directly from or on behalf of the Authority or from the Contractor, comply, with all instructions and/or guidelines produced and supplied by or on behalf of the Authority from time to time for the handling and storage of Confidential Information, generally or for specific items.
9. The Disclosee will not disclose any Confidential Information or any part thereof to any third party.
10. Where the Disclosee is an employee, breach of the obligations set out herein in this Agreement shall be a cause of disciplinary proceedings, and the Contractor shall institute

and enforce such disciplinary proceedings as against the Disclosee in relation to such breach.

11. Where the Disclosee is a professional advisor or consultant, breach of the obligation set out herein shall entitle the Contractor to terminate the contract of engagement with the Disclosee immediately, and the Contractor shall enforce such right of termination as against the Disclosee in relation to such breach.
12. All Confidential Information in tangible form received hereunder together with all copies thereof shall be destroyed or returned immediately to the Contractor or where so required by the Authority and notified to the Disclosee, to the Authority, upon request or upon completion of the task for the purposes of which such Confidential Information was released.
13. The Confidential Information will not be used by the Disclosee for any purpose or in any way other than under this Agreement.
14. The following circumstances shall not constitute a breach of the obligations of confidentiality contained in this Agreement:
  - 14.1 Disclosure of Confidential Information by the Disclosee when required to do so by Law or pursuant to the rules or any order having the force of Law of any court, of competent jurisdiction;
  - 14.2 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information has, except as a result of breach of confidentiality, become publicly available or generally known to the public at the time of such disclosure;
  - 14.3 Disclosure authorised in writing by the Authority;
  - 14.4 Disclosure of Confidential Information by the Disclosee where and to the extent that the Confidential Information is already lawfully in the possession of a recipient or lawfully known to it prior to such disclosure;
  - 14.5 Possession of Confidential Information by the Disclosee where it has been acquired from a third party who is not in breach of any obligation of confidence in providing that Confidential Information;

provided that, in no event shall information relating to the affairs of any identifiable person be disclosed or released from the obligations herein without the prior written consent of the Authority.

15. The Disclosee shall: notify the Contractor and the Authority promptly of the date and circumstances of the loss or unauthorised disclosure, if any, of the Confidential Information or any part of the Confidential Information and in addition, the action being taken to rectify that loss or unauthorised disclosure.
16. The obligations contained in this Agreement shall continue until notified in writing by the Authority or the Confidential Information becomes public knowledge (other than by breach of the terms of this Agreement).



17. No licence of any intellectual property rights (including but not limited to patent rights, copyrights, trademarks and rights in proprietary information and/or know-how and whether registrable or unregistrable) is granted hereby, beyond that necessary to enable use of the Confidential Information for the purpose for which the Confidential Information was released.
18. Nothing in this Agreement shall be construed as compelling any of the Parties to disclose any Confidential Information or to enter into any further contractual relationship with any other party.
19. No representation or warranties are given regarding the accuracy, completeness or freedom from defects of the Confidential Information or with respect to infringement of any rights including intellectual property rights of others.
20. Without affecting any other rights or remedies that the other Parties may have, the Disclosee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of any of the provisions of this Agreement.

## GENERAL

21. No failure or delay by any Party to this Agreement in exercising any of its rights hereunder shall operate as a waiver of such rights, nor shall any single or partial exercise preclude any further exercise of such rights. Any waiver by a Party of any breach or non-compliance with any term of this Agreement shall not constitute a waiver of any subsequent breach of non-compliance with the same or any other term of this Agreement.
22. No Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the Authority.
23. Any notice under this Agreement shall be in writing and shall be delivered by post, fax or e-mail to the address of the Party in question set out at the beginning of this Agreement or such other address (or e-mail address or fax number) as the Parties may notify one another from time to time.
24. No term of this Agreement shall be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement other than the Authority. The Parties shall only with the prior written consent of the Authority be entitled to vary any of the provisions of this Agreement without notifying or seeking the consent of any third party and the rights conferred by section 2 of the Contracts (Rights of Third Parties) Act 1999 are excluded.
25. This Agreement shall be governed by and shall be interpreted in accordance with the laws of England.
26. The courts of England have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly that any proceedings, suit or action arising out of or in connection therewith shall be brought in such courts.

This Agreement has been entered into on the date first written above.

SIGNED by the authorised signatory for and on behalf of the Contractor:



# SCHEDULE 1 - CONTRACTOR AND THIRD PARTY SOFTWARE

SIGNED by the Disclosee:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE

## CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, "**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. The Contractor Software comprises the following items:

Software	Supplier (if Affiliate of the Contractor)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?
<b>Survey Optic Online Platform</b>		<b>Online platform for survey design, delivery and reporting</b>	<b>15</b>				

## THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, "**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 including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?



# SCHEDULE 8 - SECURITY REQUIREMENTS AND PLAN

## INTERPRETATION AND DEFINITION

For the purposes of this Schedule 8, unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Breach of Security”** means the occurrence of unauthorised access to or use of the Premises, the Premises, the Services, the Contractor System, or any ICT or data (including Authority Data) used by the Authority or the Contractor in connection with the Contract.

**“Contractor Equipment”** means the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-Contractor (but not hired, leased or loaned from the Authority) for the provision of the Services;

**“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 and which is specified as such in Schedule 8.

**“ICT”** means Information Communications Technology and includes a diverse set of technological tools and resources used to communicate, and to create, disseminate, store and manage information, including computers, the Internet, broadcasting technologies (radio and television), and telephony.

**“Protectively Marked”** shall have the meaning as set out in HMG Security Policy Framework.

**“Security Plan”** means the Contractor’s security plan prepared pursuant to paragraph 3 an outline of which is set out in an Appendix to this Schedule 8.

**“Software”** means Specially Written Software, Contractor Software and Third Party Software.

**“Specially Written Software”** means any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this 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 including the software and which is specified as such in Schedule 7.

## 1. INTRODUCTION

This Schedule 8 covers:

- 1.1 principles of security for the Contractor System, derived from HMG Security Policy Framework, including without limitation principles of physical and information security;
- 1.2 wider aspects of security relating to the Services;
- 1.3 the creation of the Security Plan;

- 1.4 audit and testing of the Security Plan; and
- 1.5 breaches of security.

## **2. PRINCIPLES OF SECURITY**

- 2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor System. The Contractor also acknowledges the confidentiality of Authority 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:
  - 2.2.1 is in accordance with Good Industry Practice and Law;
  - 2.2.2 complies with HMG Security Policy Framework; and
  - 2.2.3 meets any specific security threats to the Contractor System.
- 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 maintain the following at acceptable risk levels (to be defined by the Authority):
  - 2.3.1 loss of integrity of Authority Data;
  - 2.3.2 loss of confidentiality of Authority Data;
  - 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - 2.3.4 unauthorised access to network elements, buildings, the Premises, and tools used by the Contractor in the provision of the Services;
  - 2.3.5 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
  - 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.
  - 2.3.7 processing and storage of authority data within the UK or by exception within the EEA. Any processing outside of the UK must be subject to specific approval by the Authority.

## **3. SECURITY PLAN**

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period (and after the end of the term as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule 8.
- 3.2 A draft Security Plan provided by the Contractor as part of its bid is set out herein.

- 3.3 Prior to the Commencement Date the Contractor will deliver to the Authority for approval the final Security Plan which will be based on the draft Security Plan set out herein.
- 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 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 19 (Dispute Resolution). No approval to be given by the Authority pursuant to this paragraph 3.4 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 3.4 shall be deemed to be reasonable.
- 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:
- 3.5.1 the provisions of this Schedule 8;
  - 3.5.2 the provisions of Schedule 1 relating to security;
  - 3.5.3 the Information Assurance Standards;
  - 3.5.4 the data protection compliance guidance produced by the Authority;
  - 3.5.5 the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Security Policy Framework;
  - 3.5.6 any other extant national information security requirements and guidance, as provided by the Authority's IT security officers; and
  - 3.5.7 appropriate ICT standards for technical countermeasures which are included in the Contractor System.
- 3.6 The references to Quality Standards, guidance and policies set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such Quality Standards, guidance and policies, from time to time.
- 3.7 If there is any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authorised Representative of such inconsistency immediately upon becoming aware of the same, and the Authorised 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 or other equivalent policy or procedure, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.
- 3.9 The Security Plan shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 8.

#### **4. AMENDMENT AND REVISION**

- 4.1 The Security Plan will be fully reviewed and updated by the Contractor annually or from time to time to reflect:
- 4.1.1 emerging changes in Good Industry Practice;
  - 4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes;
  - 4.1.3 any new perceived or changed threats to the Contractor System;
  - 4.1.4 changes to security policies introduced Government-wide or by the Authority; and/or
  - 4.1.5 a reasonable request by the Authority.
- 4.2 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.
- 4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to Schedule 1 or otherwise) shall be subject to a Variation and shall not be implemented until Approved.

#### **5. AUDIT, TESTING AND PROTECTIVE MONITORING**

- 5.1 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 an Approved form) as soon as practicable after completion of each Security Test.
- 5.2 Without prejudice to any other right of audit or access granted to the Authority pursuant to the 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 of the Services.
- 5.3 Where any Security Test carried out pursuant to paragraphs 5.1 or 5.2 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



Approval in accordance with paragraph 4.3, 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 HMG Security Policy Framework or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

## **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 immediately take all reasonable steps necessary to:
  - 6.2.1 remedy such breach or protect the Contractor System against any such potential or attempted breach or threat; and
  - 6.2.2 prevent an equivalent breach in the future;
  - 6.2.3 collect, preserve and protect all available audit data relating to the incident and make it available on request to the Authority;
  - 6.2.4 investigate the incident and produce a detailed report for the Authority within 5 working days of the discovery of the incident.
- 6.3 Such steps shall include any action or changes reasonably required by the Authority. If 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 the Contract, then the Contractor shall be entitled to refer the matter to the variation procedure set out in the Contract.
- 6.4 The Contractor shall as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

## **7. CONTRACT EXIT – SECURITY REQUIREMENTS**

In accordance with clause H7 of the Contract, on termination of the Contract, either via early termination or completion of the Contract then the Contractor will either return all data to the Authority or provide a certificate of secure destruction using an industry and Authority approved method. Destruction or return of the data will be specified by the Authority at the time of termination of the Contract.

## **APPENDIX 1- OUTLINE SECURITY PLAN**

### **ANNEX 1: BASELINE SECURITY REQUIREMENTS**

#### **1. SECURITY CLASSIFICATION OF INFORMATION**

- 1.1 If the provision of the Services requires the Contractor to Process Authority Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Contractor shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.

#### **2. END USER DEVICES**

- 2.1 The Contractor shall ensure that any Authority which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Contractor shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

## **2A. TESTING**

The Contractor shall at their own cost and expense, procure a CHECK or CREST Certified Contractor to perform an ITHC or Penetration Test prior to any live Authority data being transferred into their systems. The ITHC scope must be agreed with the Authority to ensure it covers all the relevant parts of the system that processes, stores or hosts Authority data.

## **3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION**

- 3.1 The Contractor and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Contractor must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority Data will be subject to at all times.
- 3.2 The Contractor shall not, and shall procure that none of its Sub-contractors, process Authority Data outside the EEA without the prior written consent of the Authority and the Contractor shall not change where it or any of its Sub-contractors process Authority Data without the Authority's prior written consent which may be subject to conditions.
- 3.3 The Contractor must be able to demonstrate they can supply a copy of all data on request or at termination of the service, and must be able to securely erase or destroy all data and media that the Authority data has been stored and processed on.

The Contractor shall:

- 3.3.1 provide the Authority with all Authority Data on demand in an agreed open format;
- 3.3.2 have documented processes to guarantee availability of Authority Data in the event of the Contractor ceasing to trade;
- 3.3.3 securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Authority Data held by the Contractor when requested to do so by the Authority.

## **4. NETWORKING**

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted when transmitted.
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

## **5. SECURITY ARCHITECTURES**

- 5.1 Contractors should design the service in accordance with:

- NCSC " Security Design Principles for Digital Services "
- NCSC " Bulk Data Principles "
- NSCS " Cloud Security Principles "

## **6. PERSONNEL SECURITY**

- 6.1 All Contractor Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Contractor maybe required implementing additional security vetting for some roles.

## **7. IDENTITY, AUTHENTICATION AND ACCESS CONTROL**

- 7.1 The Contractor must operate an appropriate access control regime to ensure that users and administrators of the service are uniquely identified. The Contractor must retain records of access to the physical sites and to the service.

## **8. AUDIT AND PROTECTIVE MONITORING**

- 8.1 The Contractor shall collect audit records which relate to security events in delivery of the service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Contractor audit records should (as a minimum) include:

- 8.1.1 regular reports and alerts setting out details of access by users of the service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data. The retention periods for audit records and event logs must be agreed with the Authority and documented.

- 8.2 The Contractor and the Authority shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

- 8.3 The Contractor shall retain audit records collected in compliance with this Paragraph 8.3 for a period of at least 6 months.

## **9. VULNERABILITIES AND CORRECTIVE ACTION**

- 9.1 Contractors shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.

- 9.2 Contractor must ensure that all COTS Software and Third-Party COTS Software be kept up to date such that all Contractor COTS Software and Third-Party COTS Software are always in mainstream support.

## **10. RISK ASSESSMENT**

- 10.1 The Contractor should perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.

## **ANNEX 1: SECURITY POLICY**

# **SocialOptic Data Security and Protection Policy**

### **Version Control block**

**v 1.6 March 2019**

**Version 1.1 April 2017**

**changes:**

**added new requirements for G-Cloud and links to COSPF**

**added recommendation for 2FA by default**

**Version 1.2 12 Sept 2017**

**Clarify configuration requirements**

**Version 1.3 12 December 2017**

**Add IASME reference and Privacy by Design reference**

**Version 1.4 24th May 2018**

**Updates for GDPR - references to PII and sensitive added, and data erasure added**

**Version 1.5 8<sup>th</sup> Sept 2018**

**Added account creation process and updated device set up instructions.**

Update to v 1.1 of Cabinet office Security policy framework. Clarified restrictions on confidential and above printed materials. Remove IoD hub from recovery location and added "The Roost"

## Overarching Principles and Objectives

Security is a board-level responsibility, owned by the Managing Director. Security failures carry significant financial and reputational risks, but more than that, effective information security and assurance is a key component of what SocialOptic does as a business. Assessments will identify potential threats, vulnerabilities and introduce appropriate controls to reduce the risks to people, information and infrastructure to an acceptable level. SocialOptic follows IASME (<https://www.iasme.co.uk/wp-content/PDFs/IASMEStandardv4.pdf>) and the model of the Cabinet Offices Security Policy Framework (May 2018/2014 - <https://www.gov.uk/government/publications/security-policy-framework/hmq-security-policy-framework>). It is everyone's responsibility to protect SocialOptic IPR and confidential information, and also customer confidential information and IPR, particularly with regard to any contractual agreements and NDAs that are in place. In addition, SocialOptic and those working with the business are required to comply with The GDPR, and the UK's Data Protection Act 2018.

## Governance

Board-level oversight of security compliance and auditing processes, with security as a standing agenda item for board meetings. Risk assessments are reviewed every 12 months and approved at board level. Changes to systems are noted in the change management system. All changes to production code pass through the software change management system. Before taking on board any new data a risk assessment (and DPIA - data privacy impact assessment) should be carried out and the outcome recorded.

## Culture and Awareness

### SocialOptic maintains:

- A mature understanding of the security risks throughout the organisation.
- A clearly-communicated set of security policies and procedures, which reflect business objectives to support good risk management.



- Mechanisms and trained specialists to analyse threats, vulnerabilities, and potential impacts which are associated with business activities.
- Arrangements to determine and apply cost-effective security controls to mitigate the identified risks within agreed levels.
- Assurance processes to make sure that mitigations are, and remain, effective.

## **Personnel Security**

All staff hires with access to customer data are screened to BPSS

(<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>) or BS7858:2012 as appropriate to their role.

Staff handling personal or sensitive data should be familiar with the requirements for doing so. Such data should never be stored on removable devices (e.g. USB sticks, DVDs, etc...) and any customer confidentially contract clauses should be adhered to, together with the DPA and the GDPR. In the event of any uncertainty, the DPO should be consulted. All new data handling should be subject to a risk assessment.

## **Physical Security and Asset Management**

- Processes and plans in place, including those developed from the early stages of building acquisition or design, to determine the appropriate physical security requirements through planning and risk assessment.
- Mechanisms to implement internal and external security controls in a layered fashion that deter or prevent unauthorised access and protect assets, especially those that are critical or sensitive, against forcible or surreptitious attack.
- SocialOptic operates a "clean desk" policy. All data classified as confidential or above should be shredded or securely filed at the end of each day.
- All devices with data encryption capabilities have this function enabled. The use of removable media for storing customer data is not permitted.
- On sale or retirement, media encryption keys are reset and all media is securely erased, and the OS "Reset to as new" function activated, where available.

## **Access Management / Access Control**

- Access to networks and data will be restricted to appropriate personal with a business justification for access and a register of access rights is maintained.
- Access rights are subject to annual review and with drawn on termination of contract of employment or role change and not to be given without contract and briefing.

- User accounts on devices should only be created where there is a specific business need. New accounts should be approved by the management team and added to the main register, then removed when no longer required.
- Access logs are maintained and periodically checked for servers and private network.
- Anti-virus and anti-malware software is installed on all servers and desktops and auto run disabled.
- When devices do not require Internet access, they are not internet enabled.
- Root Login access is disabled on all servers, and Fail2Ban is enabled for SSH.
- Default passwords must be over-ridden. All passwords must be 8 characters or more, and include a mixture of letters, numbers and symbols OR be a pass phrase and be unique to the device or account.
- Administrative account passwords, where present, should be changed at least every 60 days.
- Administrator level access to non-local servers requires board approval and users are added to the register of admin users.
- Software firewalls should be enabled on devices, where they are supported.
- Mobile devices (phones and tablets) should have tracking and remove wipe facilities enabled.
- Desks should be cleared of any confidentially paperwork at the end of each day, or if visitors are in the office. Paper work that does not need to be kept should be shredded, and other paperwork should be securely filed in a lockable cabinet.

### **Data Management and Life Cycle**

- Any data that contains personally identifiable data should only be retained for its defined retention period, after this it should be securely erased.
- General project data should be kept as required by tort (7 years) and as long as the contract lasts. Other data should be kept as specified in NDA's or confidentiality agreements within the project. These agreements should be filed as part of the project data.
- Attention should be paid to back ups and operating system 'recycling bins' - these should be emptied periodically, at least once a month, and by the end of the day after the deletion of any sensitive data.

### **Secure Configuration and Patch Management**

- Firewalls enabled on all host systems by default (desktop and server).
- Security patches are set to be automatically applied, with periodic checks.
- Any guest accounts should be disabled on the operating system.
- All devices with confidential or above data should have secure (encrypted) automated backups.
- Backups should occur at least daily and be verified at least monthly.
- Software and server configurations are managed through git version control, with an impact assessment made for each committed change.
- Security patches must be checked for and applied at least every 14 days, if not sooner.

### **Network Security**

- For network access, all ports are blocked by default. No public network services are operated from private networks.
- No network device should be left with a default or weak password, and any unnecessary services should be disabled.
- Firewall rules should be periodically reviewed for unused services or IP addresses.

### **Preparing for and Responding to Security Incidents**

Business continuity arrangements aligned to industry standards, to maintain key business services, building resilience and security to facilitate a rapid and effective response to recover from incidents. Processes are in place to regularly conduct risk and vulnerability assessments and review resilience planning for critical assets. If a breach is suspected, the final remediation must include changing all passwords.

All breaches and security incidents are noted in the change management system, together with a change request for remediating actions and the Incident Management Process is invoked (see Incident Management Process). Affected systems are isolated and snapshotted, and any a new system is created, restoring necessary data and services from a clean back up. After snapshotting the affected system, root cause and impact analysis is carried out, and change requests raised to cover remediation and mitigation, and document findings. The reporting mechanisms for incidents of unauthorised disclosure and breaches, including reporting to the Information Commissioner's Office, if a serious loss or breach of personal data occurs. Breaches should be notified to the ICO and to the data subjects within 72 hours of discovering the breach.

### **Disaster Recovery & Business Continuity**

The SocialOptic operational model allows for rapid and seamless relocation:

- VoIP calls are handed by the answering service and can be redirect via the service portal if required.
- In the event of loss of local Internet Access, switch to shared mobile data via mobile devices.
- In the event of loss of physical premise, relocate to Penny Hill Park Business suite or The Roost.

- In the event of loss of primary data centre, activate servers in secondary data centre.
- Backups at least daily and tested at least monthly.

Business impact assessment, business continuity and disaster recovery plans are required for all mission critical systems and data. These plans are kept with the appropriate system documentation. These plans are reviewed and tested annually.

### **For Service Design**

Service should follow the ICO's privacy by design concepts, and the NCSC security design principles: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>

## **ANNEX 2: SECURITY MANAGEMENT PLAN**

**PLEASE NOTE –INFORMATION SECURITY POLICY TO BE INCLUDED HERE**

## **SCHEDULE 9 – NOT USED**

# SCHEDULE 10 - EXIT MANAGEMENT STRATEGY

**To be inserted following contract award**

Please note – as per Clause H9.2

- (a) Draft Exit Management Strategy to be provided by the Contractor within (90) days of the Contract Commencement Date



## (b) SCHEDULE 11 – KEY PERFORMANCE INDICATORS

Indicator	Measured by	Reference Point or Target	Review Date
Surveys and associated products are delivered in a timely way and in accordance with agreed deadlines.	Progress to be tracked against milestones as part of the programme plan – outcomes to be discussed at meetings	100%	Regular milestones within programme and at the end of each survey
Surveys and associated products are delivered to the highest possible quality and in accordance with agreed quality standards.	Quality standards include (but not limited to): <ul style="list-style-type: none"> <li>• Accuracy and reliability of data</li> <li>• Confidentiality and anonymity thresholds</li> <li>• Visually engaging reports</li> <li>• User friendly online tools</li> </ul>	100% reporting to be error-free	Regular milestones within programme and at the end of each survey
Surveys are fully accessible to all colleagues and are compatible with CQC IT systems.	Ease of access for all staff, across different devices and specialist software	100% access for all CQC colleagues	Regular milestones within programme and at the end of each survey
Client queries resolved	Query outcomes to be discussed at regular meetings (frequency to be agreed)	<ul style="list-style-type: none"> <li>• 100% of programme team queries to be responded to within 1 working day</li> <li>• 100% of CQC staff queries to be</li> </ul>	Regular milestones within programme and at the end of each survey

		responded to within 2 working days	
Services will be delivered in accordance with information security , data protection, GDPR .	Supplier to all required policies and processes in place.  Supplier to include a privacy notice statement on survey communications	Zero queries or challenges from survey users on handling of data	

# **SCHEDULE 12 – BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

[To be provided by the Contractor within (30) days of contract commencement ]

# SCHEDULE 13 – MOBILISATION PLAN

[To be mutually agreed between the Authority and the Contractor – to be inserted following contract award]

# SCHEDULE 14 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Controller's Data Protection Officer are: Nimali de Silva, Care Quality Commission, 3<sup>rd</sup> Floor, Buckingham Palace Road, London SW1W 9SZ.
2. The contact details of the Processor's Data Protection Officer are: Benjamin Ellis
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor in accordance with Clause E2.1.
Subject matter of the processing	Measurement of employee opinion through people surveys, incorporating quantitative and qualitative research
Duration of the processing	01/08/2019 – 21/10/2020 [anticipated]  (Option to extend contract additional 6 month to be included in contract)
Nature and purposes of the processing	The contractor shall be responsible for the collection, processing, management and storage of identifiable employee opinion data in relation to the completion of CQC people surveys. Surveys will be conducted at a frequency to be agreed with the contractor, ranging from monthly to annually.  This will include the controlling and management of employment-specific personal data and home address data for a limited

	<p>number of staff (for the purposes of sending paper surveys) provided by the authority.</p> <p>The contractor shall be responsible for appropriate disclosure and provision of aggregated and anonymised participation and response data to the authority.</p> <p>Data shall be handled according to best practice in the contractor's industry and in line with the MRS Code of Conduct, or equivalent recognised standards and guidelines.</p>
Type of personal data	<p>To enable all employees and temporary staff to participate in CQC people surveys, the authority will provide the following to the contractor: Name; employee number; job grade; email address; assignment status (only in instances that individuals are out of the business); home address (only in instances that individuals are out of the business).</p> <p>The contractor will manage all individual survey participation and response data. This will be anonymised before reporting and provision of data to the authority.</p>
Categories of Data Subject	Staff (including temporary workers)
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>Personal data that is collected by the contractor shall be retained for a period of 2 years after collection, unless both parties agree to extend this period. After the end of the 2-year (or agreed extended) period, it will be deleted, and the contractor will no longer have a copy of it.</p> <p>Individuals have the right to withdraw their consent to the contractor processing their personal data. The contractor will delete the personal data concerned at that point and will not keep a copy of it.</p>

