DATED

12TH JANUARY 2017

(1) THE SECRETARY OF STATE FOR WORK AND PENSIONS

AND

(2) THE SHAW TRUST LIMITED

UMBRELLA AGREEMENT FOR THE PROVISION OF EMPLOYMENT AND HEALTH RELATED SERVICES

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THIS AGREEMENT is dated 12TH JANUARY 2017

BETWEEN:-

(1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose principal place of business is at Caxton House, Tothill Street, Greater London, SW1H 9NA (the "**Authority**"); and

(2) **The Shaw Trust Limited** (Company Number: **1744121**) whose registered address is at **Third Floor, 10 Victoria Street, Bristol, BS1 6BN** (the "**Contractor**").

BACKGROUND

(A) The Authority placed a contract notice 347401-2016 on 06 October 2016 in the Official Journal of the European Union inviting potential providers to tender for the provision of employment and health related services (divided into the Lots) to Contracting Bodies.

(B) The Contractor submitted a tender on 09 November 2016.

(C) On the basis of the Contractor's tender, the Authority selected the Contractor to enter an umbrella agreement to provide employment and health related services to Contracting Bodies in accordance with this Umbrella Agreement.

(D) This Umbrella Agreement sets out (i) the procedure for running Mini-Competitions, (ii) the procedure for ordering Call-Off Services, (iii) the main terms and conditions for any Call-Off Contract, and (iv) the obligations of the Contractor during and after the term of this Umbrella Agreement.

(E) It is the Parties' intention that there will be no obligation for the Authority or any Other Contracting Body to award any orders under this Umbrella Agreement during its Term.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Admin Fees"	means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Authority at the following link: http://CCS.cabinetoffice.gov.uk/i-am-Contractor/management-information/admin-fees
"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
"Approval"	means the prior written consent of the Authority
"Audit"	means an audit carried out pursuant to Clause 28

"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or any internal auditor or any other body appointed by the relevant Contracting Body from time to time
"Authority Data"	(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 and/or any Other Contracting Body; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Umbrella Agreement; or (b) any Personal Data for which the Authority and/or any Other Contracting Body is the Data Controller
"BravoSolution Portal"	means the "BravoSolution" electronic portal through which the Authority has published the Umbrella ITT, which is accessible by the Contractor
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Umbrella Agreement or an umbrella agreement on the same or substantially similar terms as this Umbrella Agreement) for the provision of Call-Off Services between a Contracting Body and a UA Provider comprising an Order Form and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 8.3.4)
"Call-Off Services"	means the Services which a UA Provider is contracted to provide to the Authority or any Other Contracting Body under a Call-Off Contract
"Call-Off Services Award Criteria"	means the award criteria to be applied to tenders received through Mini-Competitions held for the award of Call-Off Contracts for Call-Off Services as set out in Schedule 2 (Call-Off Services Award Criteria)
"Call-Off Terms and Conditions"	means the indicative terms and conditions in Schedule 4 (Call Off Terms and Conditions) (as supplemented, amended and/or refined by the relevant Contracting Body pursuant to Clause 8.3.4)
"Change in Law"	means any change in Law which impacts on the supply of the Services and performance of the Call-Off Terms and Conditions which comes into force after the Commencement Date
"Change of Control"	shall have the meaning given to it in Clause 36.4
"Code"	shall have the meaning given to it in Clause 34.5

"Commencement Date"	means 12TH JANUARY 2017.
"Commercially Sensitive Information"	means the information: (i) listed in Schedule 5 (Commercially Sensitive Information); or (ii) notified to the Authority in writing (prior to the commencement of this Umbrella Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:- (a) which is provided in writing by the Contractor to the Authority in confidence for the period set out in Schedule 5 (Commercially Sensitive Information) or the notification; and/or (b) that constitutes a trade secret
"Comparable Supply"	means the supply of services to another customer of the Contractor that are the same or similar to the Services
"Complaint"	means any formal complaint raised by any Contracting Body in relation to the performance of this Umbrella Agreement or any Call-Off Contract in accordance with Clause 51
"Confidential Information"	means:- (a) means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and (b) all personal data and sensitive data within the meaning of the DPA but excluding this Umbrella Agreement and any Call-Off Contract in accordance with Clause 29.11
"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (as amended) other than the Authority
"Contracting Bodies"	means the Authority and any other contracting bodies described in the OJEU notice, including any successors and permitted assigns, and **"Contracting Body"** shall be interpreted accordingly

"Contractor's Group"	means the Contractor, its ultimate holding company and all subsidiaries of its ultimate holding company, and any company under the Control of the Contractor, its ultimate holding company or any subsidiary of its ultimate holding company (the definitions of holding company and subsidiary being those set out in Section 1159 of the Companies Act 2006)
"Contractor System"	means any such electronic or hard copy system/process utilised in the delivery of the Services and that is used to transfer, disclose, receive or store Authority Data including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system
"Contractor's Lot(s)"	means the Lot(s) to which the Contractor has been appointed under this Umbrella Agreement, as set out in Schedule 1
"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
"CPA"	means the geographical/contract package area in which a UA Provider must provide Services to Participants under a Call-Off Contract
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "**Crown Body**" shall be construed accordingly
"Data Controller"	shall have the meaning given to it under the DPA
"Data Processor"	shall have the meaning given to it under the DPA
"Data Protection Change"	shall have the meaning given to it in Clause 32.9
"Data Protection Principle"	means the eight data protection principles, as set out in Schedule 1 of the DPA
"Data Subject"	shall have the meaning given to it under the DPA

"Default"	means any breach (including any anticipatory breach) of the obligations of the relevant Party under this Umbrella Agreement (including but not limited to fundamental breach or breach of a fundamental term), any failure to supply the Services in accordance with a Call-Off Contract or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Umbrella Agreement and in respect of which such Party is liable to the other
"Deliverable"	means an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Contractor at any stage during the performance of this Umbrella Agreement or any Call-Off Contract
"Document Retention End Date"	means 31 December 2026.
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter 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 2004 and as extended to national insurance contributions by the National Insurance Contributions (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 1998 and any subordinate legislation made under such Act from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Due Diligence Information"	means any information supplied to the Contractor by the Authority and/or any Other Contracting Body
"DWP Code of Conduct"	means the Department for Work and Pensions' Code of Conduct at Annex 1 to the DWP Commissioning Strategy which can be found at https://www.gov.uk/government/publications/dwp-commissioning-strategy-2014, as may be updated and amended from time to time
"Environmental Information Regulations"	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations

"Equivalent Services"	means services which the Contractor can supply which are the same or similar to the Services
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Umbrella Agreement and/or any Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown
"General Anti-Abuse Rule"	means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future tax legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions
"General Change in Law"	means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply
"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
"Guidance"	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000
"Intellectual Property Rights" or "IPRs"	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"IPR Claim"	shall have the meaning given to it in Clause 33.10

"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
"Lot(s)"	means the contractual subdivision(s) set out in the OJEU Notice in which a Contracting Body may decide to award its requirement for Services
"Management Information" or "MI"	means the management information specified in Clause 26
"Merlin Standard"	means: (a) the Authority's standard and accreditation process in respect of supply chain management as described in Schedule 12 (The Merlin Standard) (and as further detailed in the Order Form and/or the Call-Off Terms and Conditions), as may be updated and/or replaced by the Authority from time to time; and/or (b) any equivalent policy of any Other Contracting Body, as notified to the Contractor from time to time (including any policy detailed in the Order Form and/or the Call-Off Terms and Conditions), as such policies may be updated and/or replaced by the Contracting Body from time to time, which shall apply to this Umbrella Agreement and any Call-Off Contract made between the Authority and/or any Other Contracting Body (as applicable) and the Contractor
"Mini-Competition"	means a competition conducted by the Authority or any Other Contracting Body in accordance with this Umbrella Agreement, the Regulations and Guidance for the procurement of Call-Off Services in respect of the Contractor's Lot(s)
"MI Failure"	means when an MI Report: (a) contains any material errors or material omissions or a missing mandatory field; or (b) is submitted using an incorrect MI Reporting Template; or (c) is not submitted by the Reporting Date (including where a Nil Return should have been filed)
"Minimum Economic and Financial Capacity Requirements"	means the minimum economic and financial capacity requirements referred to in the OJEU Notice and more particularly set out in the Umbrella ITT

"MI Report"	means a report containing Management Information submitted to the Authority in accordance with Clause 26
"MI Reporting Template"	means the form of report setting out the information that the Contractor is required to supply to the Authority, as notified to the Contractor by the Authority from time to time
"Month"	means a calendar month
"Nil Return"	has the meaning given to it in Clause 26.12
"Occasion of Tax Non-Compliance"	means where: (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 in any jurisdiction 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 a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which 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
"OJEU Notice"	means the contract notice 347401-2016 published in the Official Journal of the European Union on 06 October 2016
"Order"	means an order for Services served by any Contracting Body on a UA Provider in accordance with the Ordering Procedures
"Order Form"	means a document setting out details of an Order in the form set out in Schedule 3 (Order Form) or such similar or analogous form acceptable to a Contracting Body from time to time]
"Ordering Procedures"	means the ordering and award procedures specified in Clause 8

"Other Contracting Bodies"	means all Contracting Bodies except the Authority
"Parent Company"	means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "**Holding Company**" shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Participants"	means the customers of the relevant Contracting Body who are directly in receipt of the Services
"Party"	means the Authority and/or the Contractor
"Personal Data"	shall have the meaning given to it under the DPA
"Pre-Existing IPR"	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 or the Contractor of their obligations under this Umbrella Agreement and/or any Call-Off Contract made between the Authority and the Contractor and in respect of the Authority includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
"Premises"	means the location where the Services are to be supplied, as set out in the Call-Off Contract
"Processing"	shall have the meaning given to it under the DPA and "**Process**" and "**Processed**" shall be interpreted accordingly

"Prohibited Act"	means: (a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Body and/or 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; or (b) committing any offence: (i) under the Bribery Act 2010; or (ii) under legislation creating offences concerning Fraud; or (iii) at common law concerning Fraud; or committing (or attempting or conspiring to commit) Fraud
"Project Specific IPRs"	means:- (a) IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the performance by the Authority or the Contractor of their obligations under this Umbrella Agreement and/or any Call-Off Contract made between the Authority and the Contractor including, any Deliverables and all updates and amendments of these items; and/or (b) IPRs arising as a result of the performance of the Contractor's obligations under this Umbrella Agreement and/or any Call-Off Contract made between the Authority and the Contractor
"Provider Assurance Team"	means the Authority's provider assurance team whose primary purpose is to provide the Authority with an assurance that payments to contracted employment provision contractors are in accordance with the Authority and Treasury requirements that seek to ensure that public funds and Authority Data are protected and represent value for money
"Regulations"	means the Public Contracts Regulations 2015 (as amended) as applicable

"Regulatory Body"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen, and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Umbrella Agreement or any other affairs of the Authority
"Relevant Call-Off Services"	shall have the meaning given to it in Clause 8.3.1
"Relevant CPA(s)"	shall have the meaning given to it in Clause 8.3.2
"Relevant Tax Authority"	means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Contractor is established
"Reporting Date"	means the seventh (7th) day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Authority and the Contractor
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
"SAaP Process"	means the Authority's supplier accreditation and passporting process, as may be updated and notified by the Authority to the Contractor from time to time
"Security Plan"	means the Contractor's security plan prepared pursuant to paragraph 3 of Schedule 9 (Security Aspects, Requirements and Plan)
"Security Policy"	means the Authority's security policies and standards annexed to Schedule 9 (Security Aspects, Requirements and Plan) as updated from time to time

"Serious Breach"	means: (a) a material breach; or (b) a Default that is serious in the widest sense of having a serious effect on the benefit which the Party against whom the Default is committed would otherwise derive from: (i) this Umbrella Agreement; or (ii) any of the obligations set out in the following Clauses: Clause 8 (Award Procedures); Clause 12 (Safeguard Against Fraud); Clause 18 (Statutory Requirements, DWP Code of Conduct - The Merlin Standard); Clause 22 (Non-Discrimination and Other Requirements); Clause 26 (Provision of Management Information); Clause 28 (Records and Audit Access); Clause 32 (Data Protection); Clause 34 (Freedom of Information); Clause 24 (Security Requirements); Clause 41 (Transfer and Sub-contracting); and/or any other Schedule, and in deciding whether any breach is a Serious Breach no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding
"Services"	means the services set out in Part A of Schedule 1 (Services and Contractor's Lot(s)) which may be required by the Contracting Bodies during the Term
"Specific Change in Law"	means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply
"Staff"	means all persons employed or engaged by the Contractor (and/or each Sub-contractor) to perform its obligations under this Umbrella Agreement and/or any Call-Off Contract together with the Contractor's (and/or each Sub-contractor's) servants, consultants, agents, volunteers, suppliers and sub-contractors used in the performance of its obligations under this Umbrella Agreement and/or any Call-Off Contract

"Standards"	means: (a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (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; (b) any standards detailed in this Umbrella Agreement and/or by the Contracting Body in the Call-Off Contract or as agreed by the Parties from time to time; (c) any relevant Government codes of practice and guidance applicable from time to time
"Sub-contract"	means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services (or any part thereof) or facilities or services necessary for the provision of the Services (or any part thereof) or necessary for the management, direction or control of the Services (or any part thereof)
"Sub-contractor"	means the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents
"Subject Access Request"	means a request made by a Data Subject to access his or her Personal Data pursuant to section 7 of the DPA
"Tender"	means the tender for this Umbrella Agreement submitted by the Contractor to the Authority on 09 November 2016.
"Term"	means the period commencing on the Commencement Date and ending on the date falling four (4) years after the Commencement Date or on earlier termination of this Umbrella Agreement
"UA Providers"	means all providers selected to enter into an umbrella agreement pursuant to the OJEU Notice
"Umbrella Agreement"	means this agreement and all Schedules to this agreement
"Umbrella Agreement Variation Procedure"	means the procedure set out in Schedule 6 (Umbrella Agreement Variation Procedure)

"Umbrella ITT" means the suite of documents published by the Authority via the BravoSolution Portal in connection with this Umbrella Agreement comprising the following documents:

(a) the Umbrella Specification;

(b) the instructions to potential suppliers;

(c) the invitation to tender questions response form;

(d) the Call-Off Terms and Conditions; and

(e) such other supporting documents published by the Authority via the BravoSolution Portal

"Umbrella Specification" means the specification relating to the Services set out in the "Umbrella Agreement for the provision of Employment and Health Related Services (UAEHRS) Specification and Supporting Information", as comprised in the Umbrella ITT

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales

"Year" means a calendar year

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

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

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

1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.6 headings are included in this Umbrella Agreement for ease of reference only and shall not affect the interpretation or construction of this Umbrella Agreement;

1.2.7 references in this Umbrella Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Umbrella Agreement so numbered;

1.2.8 references in this Umbrella Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Umbrella Agreement so numbered;

1.2.9 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;

1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules; and

1.2.11 in the event and to the extent only of any conflict between the Call-Off Terms and Conditions and the provisions of this Umbrella Agreement, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Call-Off Terms and Conditions;

(b) the Umbrella Agreement.

2. STATEMENT OF INTENT

2.1 In delivering the Services, the Contractor shall operate at all times in accordance with any and all of the Authority's published objectives and in accordance with the following objectives and statement of intent:-

2.1.1 the Authority wishes to establish a framework-type umbrella agreement for the provision of employment and health related services with the objective of providing employment and health related support services which help people who are unemployed or have a disability, or have any other barrier to work, to select, train for, obtain and retain employment; and

2.1.2 the Contractor has been appointed and the Authority has entered into this Umbrella Agreement on the basis of the Contractor's response to the Umbrella ITT.

2.2 Clause 2 is an introduction to this Umbrella Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Umbrella Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

PART ONE: UMBRELLA AGREEMENT ARRANGEMENTS AND AWARD PROCEDURE

3. TERM OF UMBRELLA AGREEMENT

The Umbrella Agreement shall take effect on the Commencement Date and shall continue in full force and effect (unless it is terminated earlier in

accordance with its terms or otherwise lawfully terminated) until the expiry of the Term, when it shall terminate automatically without notice.

4. DUE DILIGENCE

4.1 The Contractor acknowledges that:

4.1.1 the Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Umbrella Agreement;

4.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;

4.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) and has entered into this Umbrella Agreement in reliance on its own due diligence alone;

4.1.4 it shall not be excused from the performance of any of its obligations under this Umbrella Agreement on the grounds of, nor shall the Contractor by entitled to recover any additional costs or charges, arising as a result of any:

(a) misrepresentation of the requirements of the Contractor in the Umbrella ITT or elsewhere; and/or

(b) failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

5. SCOPE OF UMBRELLA AGREEMENT

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

5.2 The Authority and (subject to the following provisions of this Clause 5.2) Other Contracting Bodies may at their absolute discretion and from time to time order Services from the Contractor in accordance with the Ordering Procedures during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to order Services pursuant to this Umbrella Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedures. If there is a conflict between Clause 8 and the Regulations and the Guidance, the Other Contracting Body shall comply with the Regulations and the Guidance.

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

5.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Authority and/or any Other Contracting Body in respect of the total quantities or values of the Services to be ordered by them pursuant to this Umbrella Agreement and the

Contractor acknowledges and agrees that it has not entered into this Umbrella Agreement on the basis of any such undertaking, statement, promise or representation.

5.5 The Contractor shall notify the Authority in writing of its intention to take part in any Mini-Competition that is conducted by any Other Contracting Body prior to taking part in such Mini-Competition.

5.6 In the event that any Other Contracting Body makes an approach to the Contractor with a request for the supply of Equivalent Services, the Contractor shall promptly and in any event within five (5) Working Days of the request by the Other Contracting Body, and before any supply of Equivalent Services is made:

5.6.1 inform such Other Contracting Body of the existence of this Umbrella Agreement and the Other Contracting Body's ability to award Call-Off Contracts for Services pursuant to this Umbrella Agreement; and

5.6.2 notify the Authority in writing of such Other Contracting Body's request for the supply of Equivalent Services.

6. CONTRACTOR'S APPOINTMENT

6.1 The Authority appoints the Contractor as a potential provider of the Services on the basis of the Tender, which shall be deemed to be incorporated into this Umbrella Agreement, and the Contractor shall be eligible to be considered for the award of Orders for such Services by the Authority and Other Contracting Bodies during the Term.

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

7. NON-EXCLUSIVITY

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

8. AWARD PROCEDURE

8.1 If the Authority or any Other Contracting Body decides to source Services through this Umbrella Agreement then it may award a Call-Off Contract for the provision of Call-Off Services to a UA Provider on and subject to the terms set out in Schedule 4 (Call Off Terms and Conditions) of this Umbrella Agreement (as supplemented, amended and/or refined pursuant to Clause 8.3.4), provided that the Contracting Body conducts a Mini-Competition in respect of such Call-Off Services in accordance with the requirements of this Clause 8.

Mini-Competitions

8.2 If the Authority or any Other Contracting Body decides to source Call-Off Services through this Umbrella Agreement then it will conduct a Mini-Competition, in accordance with the requirements of this Umbrella Agreement, the Regulations and the Guidance, leading to the award of a Call-Off Contract(s) for the Call-Off Services.

8.3 For each Mini-Competition, the Authority or any Other Contracting Body ordering the Call-Off Services under that Mini-Competition shall:-

8.3.1 identify the nature and scope of the Call-Off Services to which the Mini-Competition relates ("**Relevant Call-Off Services**");

8.3.2 determine the relevant CPA(s) for the delivery of the Relevant Call-Off Services ("**Relevant CPA(s)**");

8.3.3 invite all of the UA Providers who have been appointed to the Lot to which the Mini-Competition relates to tender for that Mini-Competition (such invitation shall include all necessary information on the Mini-Competition procedure, including without limitation relevant timescales and deadlines, the Call-Off Services Award Criteria, and the terms and conditions for the provision of the Call-Off Services and shall confirm the maximum number of Relevant CPAs or Call-Off Contracts that can be awarded to a UA Provider under the Mini-Competition);

8.3.4 supplement, amend and/or refine the Call-Off Terms and Conditions in respect of the Relevant Call-Off Services in the Authority's absolute discretion;

8.3.5 apply the Call-Off Services Award Criteria to the UA Providers' compliant tenders submitted in response to the invite to participate in the particular Mini-Competition as the basis of its decision to award a Call-Off Contract for the Relevant Competed Services; and

8.3.6 subject to Clause 8.4, award Call-Off Contract(s) for the Relevant Call-Off Services by placing Order(s) with the successful UA Provider(s) which:-

(a) state(s) the nature and scope of the Relevant Call-Off Services;

(b) identify(ies) the Relevant CPA(s) to which the Call-Off Contract(s) relate(s);

(c) state(s) the price payable for the Relevant Call-Off Services in accordance with the tender submitted by the successful UA Provider; and

(d) incorporate(s) the Call-Off Terms and Conditions applicable to the Relevant Call-Off Services, as supplemented, amended and/or refined pursuant to Clause 8.3.4.

8.4 The Authority and/or any Other Contracting Body (as applicable) reserves the right to:

8.4.1 combine several or all Call-Off Contracts awarded to any single UA Provider under any Mini-Competition, irrespective of whether such Call-Off Contracts relate to more than one Lot; and

8.4.2 determine the maximum number of CPAs or Call-Off Contracts that can be awarded to any UA Provider under any Mini-Competition.

8.5 The Contractor agrees that all tenders submitted by the Contractor in relation to a Mini-Competition held pursuant to this Clause 8 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation to participate in the Mini-Competition issued by the relevant Contracting Body).

8.6 Notwithstanding the fact that the Contracting Body has followed the Mini-Competition procedure set out in this Clause 8, the Contracting Body shall be entitled at all times to decline to make an award for Call-Off Services. Nothing in this Umbrella Agreement shall oblige any Contracting Body to place any Order for Services with any UA Provider at any time.

Responsibility for Awards

8.7 The Contractor acknowledges that each Contracting Body is independently responsible for its conduct of any Mini-Competition(s) or its award of any Call-Off Contract(s) under this Umbrella Agreement and that the Authority is not responsible or accountable for, and shall have no liability whatsoever in relation to:-

8.7.1 the conduct of Other Contracting Bodies in relation to this Umbrella Agreement; or

8.7.2 the performance or non-performance of any Call-Off Contracts between the Contractor and Other Contracting Bodies entered into pursuant to this Umbrella Agreement.

Form of Order

8.8 Subject to Clauses 8.1 to 8.7 above, each Contracting Body may place an Order with the Contractor by serving an order in writing in substantially the form set out in Schedule 3 (Order Form).

Accepting Orders

8.9 Subject to Clause 8.10, the Contractor shall promptly and in any event within three (3) Working Days acknowledge receipt of the Order and notify the relevant Contracting Body that it accepts the Order by signing and returning the Order Form within the time limit stipulated by the Contracting Authority.

8.10 If the Contractor does not return the Order Form within the time limit stipulated by the Contracting Authority under Clause 8.9, then the offer from the Contracting Body to the Contractor shall lapse and the relevant Contracting Body may offer that Order to the UA Provider that submitted the next most economically advantageous tender in accordance with the relevant Call-Off Services Award Criteria, without any liability to the Contractor.

8.11 The Contractor in agreeing to accept such an Order pursuant to Clause 8.9 above shall enter a Call-Off Contract with the relevant Contracting Body for the provision of Services referred to in that Order. A Call-Off Contract shall be formed on the Contracting Body's receipt of the signed Order Form provided by the Contractor pursuant to Clause 8.9.

PART TWO: CONTRACTOR'S GENERAL UMBRELLA OBLIGATIONS

9. WARRANTIES AND REPRESENTATIONS

9.1 Each Party represents and warrants that:

9.1.1 it has full capacity and authority to enter into and to perform this Umbrella Agreement;

9.1.2 this Umbrella Agreement is executed by its duly authorised representative;

9.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Contractor, any of its Affiliates) that might affect its ability to perform its obligations under this Umbrella Agreement; and

9.1.4 its obligations under this Umbrella Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

9.2 The Contractor warrants and represents to the Authority that:-

9.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

9.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its Parent Company) and regulatory approvals to enter into and perform its obligations under this Umbrella Agreement;

9.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Commencement Date;

9.2.4 its execution, delivery and performance of its obligations under this Umbrella Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;

9.2.5 as at the Commencement Date, all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its Tender, and any other documents submitted by it, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Umbrella Agreement;

9.2.6 as at the Commencement Date, it has notified the Authority in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in connection with any Occasion of Tax Non-Compliance;

9.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Umbrella Agreement; and

9.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority and/or Other Contracting Bodies.

10. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

10.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Umbrella Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

10.2 The Contractor warrants that it has not paid commission nor agreed to pay any 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 this Umbrella Agreement, any Call-Off Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority or any other public body.

10.3 If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by Clauses 10.1 or 10.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 the Authority may:-

10.3.1 terminate this Umbrella Agreement with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the

amount of any loss suffered by the Authority resulting from the termination;

10.3.2 recover in full from the Contractor and the Contractor shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 10, whether or not this Umbrella Agreement has been terminated; and/or

10.3.3 recover in full from the Contractor the amount or value of any gift, consideration or commission.

11. CONFLICTS OF INTEREST

11.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor (or of any Affiliate of the Contractor or of the Contractor's Group) or Staff and the duties owed to the Authority and Other Contracting Bodies under the provisions of this Umbrella Agreement or any Call-Off Contract.

11.2 The Contractor shall promptly notify and provide full particulars to the Authority or the relevant Other Contracting Body if such conflict referred to in Clause 11.1 above arises or is reasonably foreseeable to arise.

11.3 The Authority reserves the right to terminate this Umbrella Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor (or of any Affiliate of the Contractor or of the Contractor's Group) and the duties owed to the Authority under the provisions of this Umbrella Agreement or any Call-Off Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

11.4 This Clause 11 shall apply during the Term and for a period of two (2) years after the later of termination or expiry of this Umbrella Agreement and the termination or expiry of the last Call-Off Contract between a Contracting Body and the Contractor in full force and effect.

12. SAFEGUARD AGAINST FRAUD

12.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the provision of the Services. The Contractor shall use its best endeavours to safeguard the Authority's and any Other Contracting Body's funding of this Umbrella Agreement and/or any Call-Off Contract against Fraud generally and, in particular, Fraud on the part of the Contractor or its Staff. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority and (if applicable) any Other Contracting Body immediately if it has reason to suspect that any Fraud or irregularity has occurred or is occurring or is likely to occur.

12.2 Notwithstanding the general obligation in Clause 12.1, the Contractor shall and shall procure that each Sub-contractor shall:

12.2.1 have an established system that enables its Staff to report inappropriate behaviour by colleagues in respect of any claims for payment in relation to any Call-Off Contract;

12.2.2 ensure that the Contractor's (or each Sub-contractor's) performance management systems do not encourage individual Staff to make false claims for payment in relation to any Call-Off Contract;

12.2.3 ensure a segregation of duties within the Contractor's (or each Sub-contractor's) operations between those Staff directly involved in delivering the Services and those making claims for payment in relation to any Call-Off Contract; and

12.2.4 establish an audit system to provide periodic checks, at a minimum of six (6) monthly intervals, to ensure effective and accurate recording and reporting of performance of the Services.

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

12.4 Any act of Fraud or irregularity committed by the Contractor or any of its Sub-contractors (whether under this Umbrella Agreement, any Call-Off Contract, or any other contract with the Authority or any Other Contracting Body or other public body or person employed by or on behalf of the Authority, any Other Contracting Body or any other public body) shall entitle the Authority to:-

12.4.1 terminate this Umbrella Agreement and any other contract the Authority has with the Contractor, without liability, with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination;

12.4.2 recover in full from the Contractor and the Contractor shall indemnify the Authority in full from and against any other loss sustained by the Authority in consequence of any breach of this Clause 12, whether or not this Umbrella Agreement has been terminated; and/or

12.4.3 where the Authority finds that the Contractor has deliberately submitted a false claim for payment in relation to any contract entered into with the Authority or any Other Contracting Body with the knowledge of its senior officers, recover in full from the Contractor the amount or value of such payment.

13. UMBRELLA AGREEMENT PERFORMANCE

13.1 The Contractor shall perform its obligations under this Umbrella Agreement in accordance with:

13.1.1 the requirements of this Umbrella Agreement;

13.1.2 the terms and conditions of the respective Call-Off Contracts;

13.1.3 Good Industry Practice;

13.1.4 all applicable Standards; and

13.1.5 all applicable Law.

13.2 The Contractor shall bring to the attention of the Authority any conflict between any of the requirements of Clause 13.1 and the Contractor shall comply with the Authority's decision on the resolution of any such conflict.

14. STANDARDS

14.1 The Contractor shall comply with the Standards at all times during the performance by the Contractor of this Umbrella Agreement and any Call-Off Contract.

14.2 Throughout the Term, the Parties shall notify each other of any new or emergent standards which could affect the Contractor's provision, or the receipt by a Contracting Body under a Call-Off Contract, of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Umbrella Agreement Variation Procedure (provided that the Contractor shall not unreasonably withhold or delay its agreement to any such change).

14.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Contractor shall be responsible for ensuring that the potential impact on the Contractor's provision, or a Contracting Body's receipt under a Call-Off Contract, of the Services is explained to the Authority and the relevant Contracting Body within a reasonable timeframe, prior to the implementation of the new or emergent standard.

14.4 Where Standards referenced conflict with each other or with best professional practice or Good Industry Practice adopted after the Commencement Date, then the later Standard or best practice shall be adopted by the Contractor. Any such alteration to any Standard(s) shall require Approval and shall be implemented within an agreed timescale.

14.5 Where a standard, policy or document is referred to by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall agree the impact of such change.

15. MINIMUM ECONOMIC AND FINANCIAL CAPACITY REQUIREMENTS

15.1 No Call-Off Contract with an anticipated contract value in excess of £5 million (excluding VAT) shall be awarded to the Contractor if it does not show that it meets the Minimum Economic and Financial Capacity Requirements at the time of the proposed award of that Call-Off Contract.

15.2 The Authority shall assess the Contractor's compliance with the Minimum Economic and Financial Capacity Requirements:

15.2.1 upon the request of any Contracting Body; or

15.2.2 otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.

15.3 In the event that the Contractor does not demonstrate that it meets the Minimum Economic and Financial Capacity Requirements in an assessment carried out pursuant to Clause 15.2, the Authority shall so notify the Contractor (and any Contracting Body in writing) and may invoke any rights in might have under this Umbrella Agreement in respect of a Serious Breach of this Umbrella Agreement.

16. CALL-OFF CONTRACT PERFORMANCE

16.1 The Contractor shall perform all Call-Off Contracts entered into with the Authority or any Other Contracting Body in accordance with:-

16.1.1 the requirements of this Umbrella Agreement; and

16.1.2 the terms and conditions of the particular Mini-Competition and the relevant Call-Off Contract(s).

16.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Umbrella Agreement and the Call-Off Terms and Conditions, the Call-Off Terms and Conditions shall prevail.

17. PRICES FOR SERVICES

The prices under Call-Off Contracts entered into with Contracting Bodies for Call-Off Services shall be based on the prices tendered in accordance with the requirements of the particular Mini-Competition held pursuant to Clause 8.

18. STATUTORY REQUIREMENTS, DWP CODE OF CONDUCT – THE MERLIN STANDARD

18.1 The Contractor shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of this Umbrella Agreement and any Call-Off Contract entered into with any Contracting Body.

18.2 Where the Contractor enters into a Sub-contract in connection with any Call-Off Contract with a Contracting Body, the Contractor shall (at its own expense) at all times comply with the DWP Code of Conduct and the Merlin Standard (including for the avoidance of doubt any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) and shall maintain accreditation with the relevant Merlin Standard authorisation body.

18.3 Any breach by the Contractor of this Clause 18 (including, for the avoidance of doubt, any part thereof) shall be a Serious Breach for the purposes of Clause 36.1 and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 36.1.

19. BENCHMARKING

The Parties shall comply with the provisions of Schedule 16 (Continuous Improvement and Benchmarking) in relation to the benchmarking of any or all of the Services.

20. PROMOTING TAX COMPLIANCE

20.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

20.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

20.1.2 promptly provide to the Authority:

(a) details of the steps that the Contractor is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonable require.

20.2 In the event that the Contractor fails to comply with this Clause 20 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable such non-compliance and/or failure shall be a Serious Breach for the purpose of Clause 36.1 and shall entitle the Authority (as its absolute discretion) to exercise its rights under the corresponding provisions of Clause 36.1.

21. LEGISLATIVE CHANGE

21.1 The Contractor shall not be relieved of its obligations under this Umbrella Agreement as the result of:

21.1.1 a General Change in Law; or

21.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

22. NON-DISCRIMINATION AND OTHER REQUIREMENTS

22.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

22.2 The Contractor shall take all reasonable steps to secure the observance of Clause 22.1 by all Staff.

22.3 In delivering the Services pursuant to a Call-Off Contract made between the Authority and the Contractor, the Contractor shall operate at all times in accordance with the diversity and equality requirements set out in Schedule 7 (Diversity and Equality Requirements) or such other diversity and equality requirements as set out in the Call-Off Contract.

22.4 Where delivering the Services in Wales pursuant to a Call-Off Contract made between a Contracting Body and the Contractor, the Contractor shall comply

at all times with the requirements set out in Schedule 8 (Welsh Language Scheme) or such other requirements as set out in the Call-Off Contract.

22.5 In delivering the Services pursuant to a Call-Off Contract made between a Contracting Body and the Contractor, the Contractor shall operate at all times in accordance with the provisions of Schedule 10 (Apprenticeships and Skills Requirements) and Schedule 14 (Life Chances).

23. ENVIRONMENTAL REQUIREMENTS

23.1 The Contractor shall, when working on the Premises, perform its obligations under any Call-Off Contract entered into with a Contracting Body in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

23.2 In delivering the Services pursuant to a Call-Off Contract made between a Contracting Body and the Contractor, the Contractor shall operate at all times in accordance with the sustainable development requirements set out in Schedule 11 (Sustainable Development Requirements) or such other sustainable development requirements as set out in the Order Form and/or the Call-Off Terms and Conditions.

24. SECURITY REQUIREMENTS

24.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Contractor in the performance of the Services.

24.2 Whilst on the Authority's premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises.

24.3 The Contractor shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out in Schedule 9 (Security Aspects, Requirements and Plan).

24.4 Without prejudice to the general obligation in Clause 24.3, the Contractor shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan. The Contractor shall ensure that the Security Plan fully complies with the Security Policy.

24.5 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.

25. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

25.1 All of the provisions relating to the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**"), as amended from time to time, which may apply to the Authority and/or any Other Contracting Body (as applicable) and the Contractor under or in connection with this Umbrella Agreement and any Call-Off Contract are more particularly set out in the Call-Off Terms and Conditions.

25.2 This Umbrella Agreement may facilitate Call-Off Contracts which may involve TUPE. The Contractor acknowledges and agrees that it will take its own advise as to whether TUPE applies on a Call-Off Contract by Call-Off Contract basis.

PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS

26. PROVISION OF MANAGEMENT INFORMATION

General Requirements

26.1 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this Clause 26.

26.2 The Contractor shall also supply such Management Information as may be required by a Contracting Body in accordance with the terms of any Call-Off Contract entered into by the Contractor and a Contracting Body.

26.3 The Contractor grants the Authority a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to:

26.3.1 use and share with:

(a) any Crown Body;

(b) any other Contracting Authority; and

(c) any other third party as may be agreed by the Authority and the Contractor from time to time (such Contractor's agreement not to be unreasonably withheld); and/or

26.3.2 publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Authority for the Authority's normal operational activities including but not limited to administering this Umbrella Agreement and/or all Call-Off Contracts, monitoring public expenditure, identifying savings or potential savings and planning future procurement activity.

Management Information and Format

26.4 The Contractor agrees to provide timely, full, accurate and complete MI Reports to the Authority which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template will be notified to the Contractor by the Authority as soon as reasonably practicable after the Commencement Date.

26.5 The Authority may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Contractor. The Authority shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.

26.6 If the MI Reporting Template is amended by the Authority at any time, then the Contractor agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Authority.

26.7 The Authority may provide the Contractor with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The Contractor agrees to complete the Monthly MI Report in accordance with any such guidance.

26.8 The Contractor may not make any amendment to the MI Reporting Template without Approval.

26.9 The Authority shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Contractor is required to supply to the Authority.

Frequency and Coverage

26.10 All MI Reports must be completed by the Contractor using the MI Reporting Template and returned to the Authority on or prior to the Reporting Date every Month during the Term and thereafter, until all transactions relating to Call-Off Contracts to which the Contractor is a party have permanently ceased.

26.11 The MI Report should be used (among other things) to report activity and transactions occurring during the Month(s) to which the MI Report relates.

26.12 Unless otherwise notified to the Contractor by the Authority, the Contractor must return the MI Report for each Month(s) even where there are no transactions to report in the relevant Month (a "**Nil Return**").

26.13 The Contractor must inform the Authority of any errors or corrections to the Management Information:

26.13.1 in the next MI Report due immediately following discovery of the error by the Contractor; or

26.13.2 as a result of the Authority querying any data contained in an MI Report.

Submission of the Monthly MI Report

26.14 The completed MI Report shall be completed electronically and returned to the Authority by uploading and/or sending the MI Report in accordance with the instructions notified by the Authority to the Contractor from time to time. The Contractor agrees to comply with any such instructions provided they do not materially increase the burden on the Contractor.

Defective Management Information

26.15 The Contractor acknowledges that it is essential that the Authority receives timely and accurate Management Information pursuant to this Umbrella Agreement because Management Information is used by the Authority to inform strategic decision making.

26.16 Following an MI Failure the Authority may issue reminders to the Contractor or require the Contractor to rectify defects in the MI Report provided to the Authority. The Contractor shall rectify any deficient or incomplete MI Report as soon as possible and not more than five (5) Working Days following receipt of any such reminder.

Meetings

26.17 The Contractor agrees to attend meetings between the Authority and the Contractor in person to discuss the circumstances of any MI Failure(s) at the request of the Authority (without prejudice to any other rights the Authority may have). If the Authority requests such a meeting the Contractor shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Authority and the Contractor shall document these measures and continue to monitor the Contractor's performance.

Admin Fees

26.18 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Contractor acknowledges and agrees that the Authority shall have the right to invoice the Contractor Admin Fees and (subject to Clause 26.19) in respect of any MI Failures as they arise in subsequent Months.

26.19 If, following activation of the Authority's right to charge Admin Fee(s) in respect of MI Failures pursuant to Clause 26.18, the Contractor submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Authority shall not be prevented from exercising such right again during the Term if the conditions in Clause 26.18 are met.

26.20 The Contractor acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Authority as a result of the Contractor failing to supply Management Information as required by this Umbrella Agreement.

26.21 The Authority shall notify the Contractor if any Admin Fees arise pursuant to Clause 26.18 above and shall be entitled to invoice the Contractor for such Admin Fees, which shall be payable by the Contractor within thirty (30) days of the date of the relevant invoice. Any exercise by the Authority of its rights

under this Clause 26.21 shall be without prejudice to any other rights that may arise pursuant to the terms of this Umbrella Agreement.

Financial Information

26.22 Without prejudice to the general obligation in Clause 26.1, the Contractor shall provide financial information to the Authority in accordance with the requirements set out in Schedule 15 (Annual Financial Assurance Declaration) or in accordance with any other requirements notified by the Authority to the Contractor from time to time. The Parties acknowledge that the Contractor shall have no obligation to provide information of the type listed in Schedule 15 (Annual Financial Assurance Declaration) (or of the type notified by the Authority to the Contractor from time to time pursuant to this Clause 26.22) where to do so would be in breach of listing or accounting rules of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing provided that the Contractor shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.

26.23 Upon receipt of the financial information supplied by the Contractor pursuant to Clause 26.22, the Authority may:

26.23.1 store and analyse the financial information and produce statistics; and

26.23.2 share the financial information or any analysis or statistics produced using the financial information with any Crown Body, any other Contracting Authority and any other third party as may be agreed by the Authority and the Contractor from time to time.

SAaP Process

26.24 Without prejudice to the general obligation in Clause 26.1, the Contractor shall, on or before each anniversary of the Commencement Date and as otherwise required by the Authority from time to time, update any and all information which the Contractor has previously submitted to the Authority under or in accordance with the SAaP Process.

27. UMBRELLA AGREEMENT MANAGEMENT

The Parties shall manage this Umbrella Agreement in accordance with Schedule 17 (Umbrella Agreement Management).

28. RECORDS AND AUDIT ACCESS

28.1 Subject to Clause 28.2, the Contractor shall at all times keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Umbrella Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Umbrella Agreement, including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body, and such other items as each Contracting Body may reasonably require from time to time.

28.2 Notwithstanding Clause 28.1, where the Contracting Body is funding the delivery of a Call-Off Contract using European Social Fund ("**ESF**") monies (or

in its role as a co-financing organisation is using a Call-Off Contract as a match for ESF provision), the Contractor and each Sub-contractor engaged by it shall maintain the records and accounts referred to in this Clause 28 until at least the Document Retention End Date.

28.3 Notwithstanding the general obligation in Clause 28.1, the Contractor shall and shall procure that each of its Sub-contractors shall at all times:

28.3.1 maintain a full record of the costs of performing the Services;

28.3.2 when requested by the Contracting Body, provide a summary of any of the costs of performing the Services in such form and detail as the Contracting Body may reasonably require; and

28.3.3 provide such facilities as the Contracting Body may reasonably require for its representatives (such representatives shall enter into a non-disclosure agreement and have the relevant expertise and competence) to visit any place where the records and accounts maintained under this Clause 28 are held and to examine the records and accounts for the purposes of carrying out an examination into the economy, efficiency and quality of the Services and effectiveness with which the Contractor has used the Contracting Body's resources in the performance of this Umbrella Agreement and any Call-Off Contract.

28.4 The Contractor shall keep the records and accounts referred to in this Clause 28 in accordance with best accountancy practice.

28.5 The Contractor shall provide (or procure provision of) access at all reasonable times to each Contracting Body's internal auditors or other duly authorised staff or agents to inspect such records and accounts (including those of Sub-contractors) as the relevant Contracting Body may require from time to time. Each Contracting Body shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Contracting Body to do so.

28.6 Duly authorised staff or agents of each Contracting Body shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to Participants during the hours when the Contractor is delivering the Services with a view to verifying that the Contractor is delivering the Services in accordance with this Umbrella Agreement and any Call-Off Contract.

28.7 The Contractor shall provide the records and accounts referred to in this Clause 28 (together with copies of the Contractor's published accounts) during the Term and for a period of seven (7) years after expiry of the Term to the relevant Contracting Body and the Auditor.

28.8 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Call-Off Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.

28.9 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Bodies under this Clause 28.

28.10 The Contractor shall provide the rights set out in this Clause 28 to any duly authorised staff or agents of the Authority (including, without limitation, the Provider Assurance Team), the National Audit Office, the European Court of Auditors, the European Commission and any third parties as notified by the relevant Contracting Body to the Contractor from time to time.

28.11 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to performance of the Services, the Authority reserves for itself and the Other Contracting Bodies, any statutory auditors of the Authority (or any Other Contracting Body) and their respective authorised agents or any government department the right of immediate access to all records and accounts referred to in this Clause 28 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Term or at any time thereafter.

28.12 The Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor (or each Sub-contractor) of this Clause 28.

28.13 Without prejudice to Clause 28.12, the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28.

29. CONFIDENTIALITY

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

29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

29.2 This Clause 29 shall not apply to the extent that;

29.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;

29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

29.2.3 such information was obtained from a third party without obligation of confidentiality;

29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Umbrella Agreement; or

29.2.5 it is independently developed without access to the other Party's Confidential Information.

29.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

29.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Umbrella Agreement.

29.5 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Umbrella Agreement.

29.6 Nothing in this Umbrella Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:

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

29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

29.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

29.6.4 to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;

29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Umbrella Agreement and for the purpose of the examination and certification of the Authority's accounts; or

29.6.6 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

29.7 The Authority shall use reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed

pursuant to this Clause 29 is made aware of the Authority's obligations of confidentiality.

29.8 Nothing in this Clause 29 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Umbrella Agreement or any Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

29.9 Any breach by the Contractor of Clauses 29.1 to 29.4 shall be a Serious Breach for the purposes of Clause 36.1 and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 36.1.

29.10 Clauses 29.1 to 29.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

29.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Umbrella Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Umbrella Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

29.12 Notwithstanding any other term of this Umbrella Agreement, the Contractor hereby gives consent for the Authority to publish this Umbrella Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Umbrella Agreement, to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Umbrella Agreement.

30. OFFICIAL SECRETS ACTS

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

30.1.1 the Official Secrets Act 1911 to 1989; and

30.1.2 Section 182 of the Finance Act 1989.

30.2 In the event that the Contractor or its Staff fail to comply with this Clause 30, the Authority reserves the right to terminate this Umbrella Agreement with immediate effect by giving notice in writing to the Contractor.

31. AUTHORITY DATA

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

31.2 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 Umbrella Agreement or as otherwise expressly authorised in writing by the Authority.

31.3 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 by the Authority from time to time.

31.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

31.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.

31.6 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.

31.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Authority may:

31.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable but not later than twenty-four (24) hours; and/or

31.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

31.8 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.

31.9 Any breach by the Contractor of this Clause 31 shall be a Serious Breach for the purposes of Clause 36.1 and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 36.1.

32. DATA PROTECTION

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

32.1.1 the Authority shall be a Data Controller of the Personal Data relating to the Participants where such data is being Processed for purposes not directly connected with the Services provided under any Call-Off Contract and/or this Umbrella Agreement;

32.1.2 the Contractor shall be a Data Controller of the Personal Data relating to the Contractor's Staff whether or not such Personal Data is Processed pursuant to this Umbrella Agreement;

32.1.3 the Authority and the Contractor shall each be a joint Data Controller where they Process (or procure the Processing of) the Personal Data in relation to the Services and/or otherwise perform their respective obligations and/or receive the benefit of their respective rights under this Umbrella Agreement. Such Personal Data provided by the Authority, and collected and held by the Contractor in performing the Services, shall form part of the Authority Data;

32.1.4 the Contractor shall have no right or authority to Process the Personal Data other than under, or in connection with, this Umbrella Agreement, save in respect of Personal Data relating to the Contractor's Staff; and

32.1.5 the Parties do not anticipate that the Contractor will Process Personal Data as Data Processor on behalf of the Authority. Notwithstanding the foregoing, if and to the extent that the Contractor is Processing Personal Data on behalf of the Authority, Clause 32.6 shall apply to such Processing.

32.2 Where the Parties are Processing (or procuring the Processing of) the Personal Data as joint Data Controllers, the Parties agree that they shall each be responsible for the compliance obligations imposed on a Data Controller by the DPA, as follows:

32.2.1 in respect of any Personal Data Processed prior to the Commencement Date, the Authority shall be responsible for compliance with Data Protection Principles 1, 2 and 3;

32.2.2 in respect of any Personal Data Processed by either Party on and from the Commencement Date, the Contractor shall be responsible for compliance with Data Protection Principles 1, 2, 3, 4, 5, 6 and 8 (where applicable), including, in particular, responding to Subject Access Requests pursuant to Clauses 32.5.2 and 32.5.3; and

32.2.3 each Party shall be responsible for compliance with Data Protection Principle 7 where the Participant Personal Data has been transmitted by it, or while Participant Personal Data is in its possession or control.

32.3 The Parties shall at all times comply with their respective obligations under the DPA.

32.4 Each Party shall:

32.4.1 ensure it is not subject to any prohibition or restriction which would:

(a) prevent or restrict it from disclosing or transferring the Participant Personal Data to the other Party, as required under this Umbrella Agreement;

(b) prevent or restrict it from granting the other Party access to the Participant Personal Data, as required under this Umbrella Agreement; or

(c) prevent or restrict either Party from Processing the Participant Personal Data, as envisaged under this Umbrella Agreement;

32.4.2 ensure that all fair processing notices have been given (and/or, as applicable, explicit consents obtained) and are sufficient in scope to enable each Party to Process the Participant Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Contract in accordance with the DPA, which shall include notification to the Participants that Participant Personal Data may be shared with the Authority and with any other third party organisations envisaged within this Umbrella Agreement; and

32.4.3 ensure that all Participant Personal Data disclosed or transferred to, or accessed by, the other Party is accurate and up-to-date, as well as adequate, relevant and not excessive to enable either Party to Process the Participant Personal Data, as envisaged under this Umbrella Agreement.

32.5 The Contractor shall:

32.5.1 maintain technical and organisational measures sufficient to comply at least with the obligations imposed on a Data Controller by Data Protection Principle 7, and shall take reasonable steps to ensure the reliability of its personnel who shall have access to the Participant Personal Data;

32.5.2 notify the Authority (within two (2) Working Days) if it receives:

(a) a request from a Participant making a Subject Access Request; and/ or

(b) a complaint or request relating to the Authority's obligations under the DPA;

32.5.3 provide the Authority with full cooperation and assistance in relation to any complaint or Subject Access Request or other Data Subject request made, including by:

(a) providing the Authority with full details of the complaint or request;

(b) complying with a Subject Access Request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;

(c) providing the Authority with any Participant Personal Data it holds in relation to the requesting Participant within the timescales required by the Authority; and

(d) providing the Authority with any information requested by the Authority;

32.5.4 immediately, and in any event within twenty-four (24) hours, notify the Authority where it believes that any instruction given under this Umbrella Agreement is contrary to the DPA;

32.5.5 permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Clause 32;

32.5.6 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data within the timescales required by the Authority;

32.5.7 without prejudice to the generality of Clause 32.5.1, without undue delay, and in any event within twenty-four (24) hours, notify the Authority about any actual or suspected breach of Clause 32.5 and shall, within such timescale to be agreed by the Parties (acting reasonably and good faith):

(a) implement any measures necessary to restore the security of compromised Participant Personal Data; and

(b) support the Authority to make any required notifications to the UK Information Commissioner and affected Participants.

32.6 Notwithstanding Clause 32.1.5, if and to the extent that the Contractor is acting as Data Processor for and on behalf of the Authority, then, in addition to meeting its obligations set out in Clause 32.5, it shall:

32.6.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Umbrella Agreement as otherwise notified by the Authority to the Contractor during the Term);

32.6.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law (including the DPA) or any Regulatory Body (including the UK Information Commissioner);

32.6.3 take reasonable steps to ensure the competence of any Staff who have access to the Personal Data and restrict the disclosure of the Participant Personal Data to those of its Staff who may be required by it to assist it in meeting its obligations under this Umbrella Agreement, and shall ensure that no other Staff shall have access to such Participant Personal Data. Such Staff used by the Contractor to Process the Participant Personal Data to provide the Services as they relate to Participant Personal Data shall have:

(a) undergone reasonable levels of training in the DPA and in the care and handling of Personal Data; and

(b) are informed of the confidential nature of, and have entered into appropriate contractually binding confidentiality undertakings in relation to, the Processing of Personal Data;

32.6.4 not transfer any Participant Personal Data outside the European Economic Area without the Authority's prior written consent and procuring compliance with Data Protection Principle 8;

32.6.5 hold the Participant Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Contractor;

32.6.6 obtain prior written consent from the Authority in order to transfer the Participant Personal Data to any Sub-contractors or agents for the provision of the Services. Such consent shall be conditional upon the Contractor undertaking thorough due diligence on the proposed Sub-contractor, including a risk assessment of the information governance related practices and processes of the subcontractor, which shall be used by the Contractor to inform any decision on appointing the proposed sub-contractor. Where requested, the Contractor shall provide to the Authority the results of any such due diligence;

32.6.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority; and

32.6.8 without prejudice to the generality of Clause 38, on expiry or termination of this Umbrella Agreement, howsoever caused, the Contractor shall immediately cease Processing the Participant Personal Data and, at the Authority's option or direction, arrange for the prompt and safe return and/or secure and permanent destruction of all Participant Personal Data, together with all copies in its possession or control and, where requested by the Authority, certify that such destruction has taken place. The provisions of this Clause 32 shall survive termination of this Umbrella Agreement.

32.7 The Contractor shall indemnify on demand and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever caused, which the Authority may suffer or incur arising out of, in respect of, or in connection with, any breach by the Contractor (or any Sub-contractor) of this Clause 32.

32.8 The Parties acknowledge and agree that Schedule 1 (Services and Contractor's Lot(s)) is an accurate statement of:

32.8.1 the subject matter and duration of the Processing;

32.8.2 the nature and purpose of the Processing;

32.8.3 the type of Personal Data being Processed; and

32.8.4 categories of Data Subjects.

32.9 The Contractor shall be responsible for, and bear the risk and cost of, compliance with any change in the DPA affecting this Umbrella Agreement (a **"Data Protection Change"**), and shall seek to implement all necessary changes required to this Umbrella Agreement to address a Data Protection

Change, as shall be agreed between the Parties in accordance with the Umbrella Agreement Variation Procedure (for the purposes of which, a Data Protection Change shall constitute a variation).

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Save as granted elsewhere under this Umbrella Agreement, neither the Authority nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing IPR.

33.2 The Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of this Umbrella Agreement) without Approval, use or disclose any Authority Pre-Existing IPR or the Project Specific IPRs to any third party.

33.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Authority. The Contractor hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

33.4 The assignment under Clause 33.3 shall either take effect on the date of this Umbrella Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

33.5 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Umbrella Agreement or any Call-Off Contract which may be entered into with the Authority.

33.6 If requested to do so by the Authority, the Contractor shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to perfect the assignment under Clause 33.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

33.7 The Authority hereby grants to the Contractor a non-exclusive, revocable, non assignable licence to use the Authority Pre-Existing IPR and the Project Specific IPRs during the Term for the sole purpose of enabling the Contractor to provide the Services.

33.8 Prior to using any third party Intellectual Property Rights, the Contractor shall obtain Approval. The Contractor shall provide the Authority with details of any third party licence required by the Contractor and/or the Authority in order for the Contractor to carry out its obligations under this Umbrella Agreement or any Call-Off Contract which may be entered into with the Authority using the third party Intellectual Property Rights. The Authority reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.

33.9 Where the Contractor is granted Approval by the Authority to use the third party rights, the Contractor shall procure that the owner of third party rights grants to the Authority a licence upon the terms informed to the Authority when seeking the Approval.

33.10 The Contractor shall, during and after the Term, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of any claim that the provision by the Contractor of the Services and/or the possession or use by the Authority of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**IPR Claim**") except where the IPR Claim arises from:-

33.10.1 items or materials based upon designs supplied by the Authority; or

33.10.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of this Umbrella Agreement or any Call-Off Contract which may be entered into with the Authority.

33.11 The Authority shall notify the Contractor in writing of the IPR Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Contractor:-

33.11.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

33.11.2 shall take due and proper account of the interests of the Authority; and

33.11.3 shall not settle or compromise the IPR Claim without Approval (not to be unreasonably withheld or delayed).

33.12 If an IPR Claim is made in connection with this Umbrella Agreement or any Call-Off Contract which may be entered into with the Authority or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall immediately notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:-

33.12.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

33.12.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Contractor is unable to comply with Clauses 33.12.1 or 33.12.2 within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate this Umbrella Agreement (and/or any Call-Off Contract with the Authority) with immediate effect by notice in writing

and the Contractor shall, upon demand, refund the Authority with all monies paid in respect of the Services or Deliverable that is subject to the IPR Claim.

33.13 In the event that a modification or substitution in accordance with Clause 33.12.1 is not possible so as to avoid the infringement, or the Contractor has been unable to procure a licence in accordance with Clause 33.12.2 the Authority shall be entitled to delete the relevant Service from this Umbrella Agreement and/or any Call-Off Contract with the Authority.

33.14 This Clause 33 sets out the entire financial liability of the Contractor with regard to the infringement of any Intellectual Property Right as a result of the provision of the Services or the provision of the Deliverables hereunder. This shall not affect the Contractor's financial liability for other defaults or causes of action that may arise hereunder.

34. FREEDOM OF INFORMATION

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

34.2 The Contractor shall and shall procure that its Sub-contractors shall:

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

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

34.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

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

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

34.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 34.2) the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

34.5.1 in certain circumstances without consulting the Contractor; or

34.5.2 following consultation with the Contractor and having taken their views into account,

provided always that where Clause 34.2 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

34.6 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.

34.7 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Clause 34.

35. PUBLICITY AND VISITS

35.1 The Contractor shall not:-

35.1.1 make any press announcements or publicise this Umbrella Agreement or its contents or, if terminated earlier in accordance with its terms, the reasons for such termination, in any way; or

35.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without Approval (which shall not be unreasonably withheld or delayed).

35.2 The Authority shall be entitled to publicise this Umbrella Agreement in accordance with any legal obligation upon the Authority, including any examination of this Umbrella Agreement by the Auditor or otherwise.

35.3 The Contractor shall pay the utmost regard to the standing and reputation of the Authority and shall not do anything (by act or omission) which may:-

35.3.1 damage the reputation of the Authority;

35.3.2 bring the Authority into disrepute;

35.3.3 attract adverse publicity to the Authority; or

35.3.4 harm the confidence of the public in the Authority.

35.4 The Contractor shall at all times deliver the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

35.5 The Contractor and its Sub-contractors shall not use any logos and/or markings on its notepaper or other written material relating to the performance of the Services without Approval and, where Approval is so obtained, any such use of logos and markings shall be at the Contractor's sole cost and expense. This may include, but shall not be limited to, such banners or logos as the Authority shall use to identify the Services from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in

relation this Umbrella Agreement, any Call-Off Contract with the Authority or the Services shall be submitted to the Authority's representative for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

PART FOUR: UMBRELLA AGREEMENT TERMINATION AND SUSPENSION

36. TERMINATION

Termination on Default

36.1 The Authority may terminate this Umbrella Agreement by serving written notice on the Contractor with effect from the date specified in such notice:-

36.1.1 where the Contractor commits a Serious Breach of this Umbrella Agreement and:-

(a) the Contractor has not remedied the Serious Breach to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Serious Breach and requesting it to be remedied; or

(b) the Serious Breach is not, in the reasonable opinion of the Authority, capable of remedy; or

36.1.2 where any Contracting Body terminates a Call-Off Contract awarded to the Contractor under this Umbrella Agreement as a consequence of default by the Contractor.

Termination on Financial Standing

36.2 The Authority may terminate this Umbrella Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of the Authority), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which:

36.2.1 adversely impacts on the Contractor's ability to supply the Services under this Umbrella Agreement and/or any Call-Off Contract; or

36.2.2 could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Services under this Umbrella Agreement and/or any Call-Off Contract.

Termination on Insolvency and Change of Control

36.3 The Authority may terminate this Umbrella Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:-

36.3.1 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;

36.3.2 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);

36.3.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;

36.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

36.3.5 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;

36.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;

36.3.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

36.3.8 any event similar to those listed in Clause 36.3.1 to Clause 36.3.7 occurs under the law of any other jurisdiction.

36.4 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010 (**"Change of Control"**). The Authority may terminate this Umbrella Agreement by giving notice in writing to the Contractor with immediate effect within six (6) Months of:-

36.4.1 being notified that a Change of Control has occurred; or

36.4.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

Termination on failure to submit a tender

36.5 The Authority may terminate this Umbrella Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where:-

36.5.1 the Authority has invited the Contractor to submit a tender in writing in accordance with Clause 8.3.3 on three (3) separate consecutive occasions; and

36.5.2 the Contractor has failed to submit, in the Authority's reasonable opinion, a competitive tender to the Authority on each such occasion.

Termination by the Authority

36.6 The Authority shall have the right to terminate this Umbrella Agreement, or to terminate the provision of any part of this Umbrella Agreement at any time by giving at least three (3) Months' written notice to the Contractor and all other UA Providers. The Parties acknowledge that if the Authority exercises its rights under this Clause 36.6 it shall exercise its equivalent rights under all agreements with the UA Providers.

Partial Termination

36.7 Where the Authority has the right to terminate this Umbrella Agreement, the Authority is entitled to terminate all or part of this Umbrella Agreement pursuant to this Clause 36 provided always that, if the Authority elects to terminate this Umbrella Agreement in part, the parts of this Umbrella Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Umbrella Agreement.

36.8 The Parties shall endeavour to agree the effect of any variation necessitated by a partial termination in accordance with Clause 42 including the effect that the partial termination may have on the provision of any other Services and the price of the Services.

37. SUSPENSION OF CONTRACTOR'S APPOINTMENT

37.1 If the Authority is entitled to terminate this Umbrella Agreement pursuant to Clause 36, the Authority may instead elect in its sole discretion to suspend the Contractor's ability to accept Orders under this Umbrella Agreement by giving notice in writing to the Contractor, and the Contractor agrees that it shall not be entitled to enter into any new Call-Off Contract during the period specified in the Authority's notice.

37.2 Any suspension under Clause 37.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

37.3 The Parties acknowledge that suspension shall not affect the Contractor's obligation to perform any existing Call-Off Contracts concluded prior to the suspension notice.

37.4 If the Authority provides notice to the Contractor in accordance with Clause 37.1, the Contractor's appointment under this Umbrella Agreement shall be suspended for the period set out in the notice or such other period notified to the Contractor by the Authority in writing from time to time.

37.5 For the avoidance of doubt, no period of suspension under this Clause 37 shall result in an extension of the Term.

38. CONSEQUENCES OF TERMINATION AND EXPIRY

38.1 Notwithstanding the service of a notice to terminate this Umbrella Agreement, the Contractor shall continue to fulfil its obligations under this Umbrella Agreement until the date of expiry or termination of this Umbrella Agreement or such other date as required under this Clause 38.

38.2 Termination or expiry of this Umbrella Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

38.3 Within thirty (30) Working Days of the date of termination or expiry of this Umbrella Agreement, and if requested by the Authority, the Contractor shall return to the Authority any data and Confidential Information belonging to the Authority in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Umbrella Agreement, or such period as is necessary for such compliance.

38.4 Subject to Clause 28.2, the Authority shall be entitled to require access to data or information arising from the provision of the Services from the Contractor until the latest of:-

38.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Umbrella Agreement; or

38.4.2 the expiry of a period of twelve (12) Months following the date on which the Contractor ceases to provide Services under any Call-Off Contract.

38.5 Termination or expiry of this Umbrella Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Umbrella Agreement prior to termination or expiry.

38.6 The provisions of Clauses 9, 10, 11, 12, 28, 29, 30, 32, 35, 39, 40 and 53 shall survive the termination or expiry of this Umbrella Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

PART FIVE: INSURANCE AND LIABILITY

39. LIABILITY

39.1 Neither Party excludes or limits its liability for:-

39.1.1 death or personal injury caused by its negligence, or that of its Staff;

39.1.2 fraud or fraudulent misrepresentation by it or its Staff;

39.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

39.1.4 any claim under the indemnity in Clause 28.12;

39.1.5 any claim under the indemnity in Clause 32.7;

39.1.6 any claim under the indemnity in Clause 33.10;

39.1.7 any claim under Clause 29; or

39.1.8 any claim under Clause 34.

39.2 Subject to Clause 39.1 and Clause 39.3, each Party's total aggregate liability in connection with this Umbrella Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to £10 million (ten million pounds). For the avoidance of doubt, the Parties acknowledge and agree that this Clause 39 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

39.3 Subject to Clause 39.1, in no event shall either Party be liable to the other for any indirect or consequential loss or damage.

39.4 Subject to Clause 39.1 the Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Umbrella Agreement 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 or indirectly by any act or omission of the Contractor. This Clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or by any circumstances within its or their control.

40. INSURANCE

40.1 The Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Umbrella Agreement and any Call-Off Contract including death or personal injury, or loss of or damage to property.

40.2 The Contractor shall effect and maintain the following insurances for the duration of the Umbrella Agreement in relation to the performance of the Umbrella Agreement:-

40.2.1 public liability insurance adequate to cover all risks in the performance of this Umbrella Agreement from time to time; and

40.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time.

40.3 Any excess or deductibles under such insurance (referred to in Clause 40.1 and Clause 40.2) shall be the sole and exclusive responsibility of the Contractor.

40.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Umbrella Agreement.

40.5 The Contractor shall produce to the Authority, on request, copies of all insurance policies referred to in this Clause 40 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.

40.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Umbrella Agreement then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

40.7 The Contractor shall maintain the insurances referred to in Clause 40.1 and Clause 40.2 for a minimum of six (6) years following the expiration or earlier termination of the Umbrella Agreement.

PART SIX: OTHER PROVISIONS

41. TRANSFER AND SUB-CONTRACTING

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

41.2 The Authority shall be entitled to:-

41.2.1 assign, novate or otherwise dispose of its rights and obligations under this Umbrella Agreement or any part thereof to any Other Contracting Body; or

41.2.2 novate this Umbrella Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority,

provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under this Umbrella Agreement.

42. VARIATIONS TO THE UMBRELLA AGREEMENT

Any variations to the Umbrella Agreement must be made only in accordance with this Umbrella Agreement Variation Procedure set out in Schedule 6 (Umbrella Agreement Variation Procedure).

43. RIGHTS OF THIRD PARTIES

Save as provided in Clauses 5, 8 and 9.2 and the rights specified in this Umbrella Agreement for the benefit of Contracting Bodies, a person who is not party to this Umbrella Agreement ("**Third Party**") has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Umbrella Agreement without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is

available otherwise than pursuant to that Act and does not apply to the Crown. If the Parties rescind this Umbrella Agreement or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Umbrella Agreement or terminate this Umbrella Agreement, such rescission, variation or termination will not require the consent of any Third Party.

44. FURTHER ASSURANCE

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

45. SEVERABILITY

45.1 If any provision or part of a provision of this Umbrella Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision or part of a provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Umbrella Agreement had been executed with the invalid provision or part of a provision eliminated.

45.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Umbrella Agreement, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

46. CUMULATIVE REMEDIES

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

47. WAIVER

47.1 The failure of either Party to insist upon strict performance of any provision of this Umbrella Agreement, 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 this Umbrella Agreement.

47.2 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 49.

47.3 A waiver of any right or remedy arising from a breach of this Umbrella Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Umbrella Agreement.

48. ENTIRE AGREEMENT

48.1 This Umbrella Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes,

cancels or nullifies any previous agreement between the Parties in relation to such matters.

48.2 Each of the Parties acknowledges and agrees that in entering into this Umbrella Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Umbrella Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Umbrella Agreement.

48.3 Nothing in this Clause 48 shall operate to exclude Fraud or fraudulent misrepresentation.

49. NOTICES

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

49.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 49.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

49.3 For the purposes of Clause 49.2, the address of each Party shall be:

49.3.1 For the Authority:-

Address: [REDACTED]

For the attention of: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

49.3.2 For the Contractor:-

Address: [REDACTED]

For the attention of: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

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

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

50. COUNTERPARTS

50.1 This Umbrella Agreement may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same agreement.

51. COMPLAINTS HANDLING AND RESOLUTION

51.1 The Contractor shall notify the Authority of any Complaint made by Other Contracting Bodies within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.

51.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Umbrella Agreement or a Call-Off Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of this Umbrella Agreement or a Call-Off Contract, the Contractor shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

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

52. DISPUTE RESOLUTION

52.1 The Parties shall resolve Disputes arising out of or in connection with this Umbrella Agreement in accordance with the Dispute Resolution Procedure set out in Schedule 13 (Dispute Resolution Procedure).

52.2 The Contractor shall continue to provide the Services in accordance with the terms of this Umbrella Agreement and/or any Call-Off Contract until a Dispute has been resolved.

53. LAW AND JURISDICTION

Subject to the provisions of Clause 51 and Clause 52, the Authority and the Contractor accept the exclusive jurisdiction of the courts of England and Wales and agree that this Umbrella Agreement is to be governed by and construed in accordance with the law of England and Wales.

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

Signed by an authorised signatory for and on behalf of the Authority

Signature	[REDACTED]
Date	[REDACTED]
Name (in Capitals)	[REDACTED]
Address	[REDACTED]

Signed by an authorised signatory for and on behalf of the Contractor

Signature	[REDACTED]
Date	[REDACTED]
Name (in Capitals)	[REDACTED]
Address	[REDACTED]

SCHEDULE 1 - SERVICES AND CONTRACTOR'S LOT(S)

PART A

THE SERVICES

The Services shall include employment and health related support services helping people who are unemployed, disabled, have a health condition or barrier to work, to select, train for, obtain and retain employment, as more particularly set out in the Umbrella Specification.

PART B

CONTRACTOR'S LOT(S)

Lot 1 – Central England
Lot 2 – North East England
Lot 4 – Southern England
Lot 5 – Home Counties
Lot 6 – Wales
Lot 7 – National: England and Wales

SCHEDULE 2 – CALL-OFF SERVICES AWARD CRITERIA

Call-Off Services Award Criteria

The Call-Off Services Award Criteria for each Mini-Competition shall be set out in the invite to participate in the Mini-Competition pursuant to Clause 8.3.3 in a form substantially similar to the below table:

Criterion Number	**Criterion**	**Percentage Weightings** (or rank order of importance where applicable)
1	As set out in invite to participate in Mini-Competition	As set out in invite to participate in Mini-Competition
2	As set out in invite to participate in Mini-Competition	As set out in invite to participate in Mini-Competition
3	As set out in in invite to participate in Mini-Competition	As set out in in invite to participate in Mini-Competition
4	As set out in invite to participate in Mini-Competition	As set out in invite to participate in Mini-Competition
5	As set out in invite to participate in Mini-Competition	As set out in invite to participate in Mini-Competition

SCHEDULE 3 – ORDER FORM

Template Order Form

SECTION A

This Order Form is issued in accordance with the provisions of the umbrella agreement between (1) the Secretary of State for Work and Pensions and (2) [INSERT NAME OF CONTRACTOR] dated [INSERT DATE] for the provision of employment related support services with contract reference number [INSERT REFERENCE] (**Umbrella Agreement**). The Contractor agrees to supply the Call-Off Services specified below on and subject to the terms of this Call-Off Contract and for the avoidance of doubt this Call-Off Contract consists of the terms set out in this Order Form and the Call-Off Terms and Conditions attached to this Order Form.

FROM

Contracting Body:	[ ] (["**Contracting Body**"]["**Authority**"]) [1] [acting as part of the Crown]
Service Address:	Caxton House, Tothill Street, London SW1H 9DA
Invoice Address:	[ ]
Contact Reference:	Name: [ ] Ref: [ ] Phone: [ ] e-mail: [ ]
Order Number:	[ ] *To be quoted on all correspondence relating to this Order:*
Order Date:	[ ]

TO

Contractor:	[ ] (**"Contractor"**)
Registered Number:	[ ]
Service Address:	[ ]

[1] [Guidance Note: to insert provision for any co-commissioning authority where relevant.]

Contact Reference:	Name: [ ] Ref: [ ] Phone: [ ] e-mail: [ ]

herein after called the **"Parties"**, each being a **"Party"**.

SECTION B

1. FORMATION OF CALL OFF CONTRACT

1.1 BY SIGNING AND RETURNING THIS ORDER FORM the Contractor agrees to enter a Call-Off Contract with the [Authority][Contracting Body] to provide the Call-Off Services.

1.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Call-Off Terms and Conditions (attached hereto) and by signing below agree to be bound by this Call-Off Contract.

For and on behalf of the Contractor:

Name and Title	
Signature	
Date	

For and on behalf of the [Contracting Body][Authority] (acting as part of the Crown):

Name and Title	
Signature	
Date	

SCHEDULE 4 – CALL OFF TERMS AND CONDITIONS

THESE TEMPLATE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE TO COVER THE SPECIFIC REQUIREMENTS OF EACH CALL-OFF CONTRACT. THE SPECIFIC CALL-OFF TERMS AND CONDITIONS FOR EACH CALL-OFF CONTRACT WILL BE PUBLISHED WITH THE INVITATION TO PARTICIPATE IN THE MINI-COMPETITION FOR THE RELEVANT CALL-OFF CONTRACT.

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[DN: This form of Call-Off Terms and Conditions are subject to change. Specific Call-Off Terms and Conditons for each Call-Off Contract will be published at the time of Mini-Competition.]

A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

"**Action Plan**" means the action plan agreed between the Contractor and an individual Participant in relation to the Call-Off Services. Such action plan must detail activities linked to the requirements of the Call-Off Contract, set out clear goals and must be agreed and signed by the Participant and Contractor, or otherwise as required by the Call-Off Specification.

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

"**Admin Fees**" means the costs incurred by the Contracting Body in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Contracting Body at the following link: http://CCS.cabinetoffice.gov.uk/i-am-Contractor/management-information/admin-fees

"**Approval**" means the prior written consent of the Contracting Body.

"**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.

"**Audit Agents**" means:

(a) the Contracting Body's internal and external auditors;

(b) the Contracting Body's statutory or regulatory auditors;

(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;

(d) HM Treasury or the Cabinet Office;

(e) the European Commission;

(f) the European Court of Auditors;

(g) any party formally appointed by the Contracting Body and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and

(h) successors or assigns of any of the above.

"**Breach of Security**" means the occurrence of unauthorised access to or use of the Premises, the Call-Off Services, the Contractor System or any ICT or data (including the Contracting Body's Data) used by the Contracting Body or the Contractor in connection with this Call-Off Contract.

"**Bribery Act 2010**" means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant Government department concerning the legislation.

"**Business Continuity and Disaster Recovery Plan**" or "**BCDR Plan**" means any plan prepared as directed in clause H6.6, as may be amended from time to time.

"**Call-Off Contract**" means this contract between the Contracting Body and the Contractor (entered into pursuant to the Umbrella Agreement) consisting of the Order Form and the Call-Off Terms and Conditions.

"**Call-Off Commencement Date**" means the date from when this Call-Off Contract becomes legally binding. The Call-Off Contract will be deemed to take effect on the date of the second Party's signature.

"**Call-Off Commercially Sensitive Information**" means the information:

(a) listed in the Call-Off Commercially Sensitive Information Schedule; or

(b) is Commercially Sensitive Information under the Umbrella Agreement.

"**Call-Off Commercially Sensitive Information Schedule**" means Schedule 5.

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

(a) the Document Retention End Date; or

(b) such earlier date of termination or partial termination of the Call-Off Contract in accordance with:

(i) the Law; or

(ii) the provisions of the Call-Off Contract;

(iii) or the provisions of the Umbrella Agreement.

"**Call-Off Services**" means any and all of the services to be supplied by the Contractor in accordance with this Call-Off Contract, including those described in Schedule 1 (The Call-Off Services).

"**Call-Off Services Cessation Date**" means the date [♦ (♦)] years after the Call-Off Service Start Date, as may be extended in accordance with clause F11.

"**Call-Off Service Start Date**" means the date from which the Contractor shall start delivering Call-Off Services. The Call-Off Service Start Date is [♦].

"**Call-Off Specification**" means the Contracting Body's specification for the Call-Off Services as set out in Appendix 1 to Schedule 1 (The Call-Off Services) (including all amendments to, variations of, or supplements to such specification).

"**Call-Off Specification Customer Service Standards**" means the customer service standards set out by the Contracting Body in the Call-Off Specification for the Call-Off Contract.

"**Call-Off Specification Performance Levels**" means the performance levels set out by the Contracting Body in the Call-Off Specification for the Call-Off Contract.

"**Change Authorisation Note**" means a written confirmation of a Contract Change which shall be substantially in the form of Appendix 2 of Schedule 13 (Change Control Procedure) or as otherwise determined by the Contracting Body from time to time.

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

"**Change Control Procedure**" means the procedure for changing this Call-Off Contract, as set out in Schedule 13.

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

"**Change Request**" means a written request for a Contract Change which shall be substantially in the form of Appendix 1 of Schedule 13 (Change Control Procedure) or as otherwise determined by the Contracting Body from time to time.

"**Commercially Sensitive Information**" shall have the meaning given to it in the Umbrella Agreement.

"**Completer**" means an individual who has completed the [***DN: Programme name to be inserted***] to which this Call-Off Contract relates.

"**Confidential Information**" means:

(a) means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and

(b) all personal data and sensitive data within the meaning of the DPA

but excluding this Call-Off Contract in accordance with clause E4.11.

"**Contract Change**" means any change, amendment, variation, restatement or supplement to this Call-Off Contract other than an Operational Change or a Substantial Change.

"**Contract Performance Reviews**" or "**CPRs**" shall have the meaning as set out in Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance).

"**Contracting Authority**" means any contracting authority as defined in Regulation 2 of the Public Contract Regulations 2015.

"**Contracting Body 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 Contracting Body; or

  (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Call-Off Contract;

(b) any Personal Data for which the Contracting Body is the Data Controller.

"**Contracting Body Determined Outcome**" has the meaning set out in the Call-Off Specification.

[DN: This definition is subject to change. Specific definition of "Contracing Body Determined Outcome" for each Call-Off Contract will be published at the time of Mini-Competition.]

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

"**Contracting Body Software**" means software which is owned by or licensed to the Contracting Body, including software which is, or will be used by the Contractor for the purpose of providing the Call-Off Services but excluding the Contractor Software.

"**Contracting Body's Representative**" means the individual named at clause A10.1 or such other individual as the Contracting Body may notify in writing to the Contractor from time to time and the Contracting Body's Representative is authorised to act on behalf of the Contracting Body on all matters relating to the Call-Off Contract. For the avoidance of doubt "in writing" for this purpose may include email.

"**Contractor Claimed Outcome**" has the meaning set out in the Call-Off Specification.

[DN: This definition is subject to change. Specific definition for "Contractor Claimed Outcome" for each Call-Off Contract will be published at the time of Mini-Competition.]

"**Contractor Software**" means softare which is owned or licensed to the Contractor, including software which is, or will be, used by the Contractor for the purpose of providing the Call-Off Services.

"**Contractor System**" means any such electronic or hard copy system/process utilised in the delivery of the Call-Off Services and that is used to transfer, disclose, receive or store Contracting Body Data including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system.

"**Contractor Termination Event**" means:

(a) the occurrence of [♦] Defaults in any [♦] Month period;

(b) the Contractor committing a material Default which is irremediable;

(c) as a result of the Contractor's Default, the Contracting Body incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in clause G1.5(b);

(d) a Performance Improvement Plan Failure;

(e) the representation and warranties given by the Contractor pursuant to clause D6.1 being materially untrue or misleading;

(f) the Contractor committing a material Default under clause D6.2 or failing to provide details of steps taken and mitigating factors pursuant to clause D6.2 which in the reasonable opinion of the Contracting Body are acceptable;

(g) the Contractor committing a material Default under any of the following clauses:

  (i) clause E2 (Protection of Personal Data);

  (ii) clause E4 (Confidential Information);

  (iii) clause E5 (Freedom of Information);

(h) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the

Contracting Body with the Guarantor or with another guarantor which is acceptable to the Contracting Body);

(i) a failure by the Contractor to comply in the performance of the Call-Off Services with legal obligations in the fields of environmental, social or labour law; or

(j) the Contractor commits a Serious Breach.

[DN: The definition of "Contractor Termination Event" is subject to change. Specific definition of "Contractor Termination Event" for each Call-Off Contract to be published at the time of Mini-Competition.]

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

"**Contractor's Representative**" means the individual named at clause A10.3 or such other individual as the Contractor may notify in writing to the Contracting Body from time to time and the Contractor's Representative is authorised to act on behalf of the Contractor on all matters relating to the Call-Off Contract. For the avoidance of doubt "in writing" for this purpose may include email.

"**Contract Year**" means a consecutive period of twelve (12) Months commenceing on the Call-Off Commencement Date or each anniversary thereof.

"**Control**" the possession by person, directly or indirectly, of 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;

"**CPA**" has the meaning given to it in the Umbrella Agreement.

"**Crown**" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf and "**Crown Body**" shall be construed accordingly.

"**Customer Service Standards**" means the service levels to which the Call-Off Services are to be supplied by the Contractor as set out in Schedule 2 (Minimum Performance Levels and Customer Service Standards) and which shall include the Call-Off Specification Customer Service Standards and the Tender Customer Service Standards.

"**Data Controller**" shall have the meaning given to it under the DPA.

"**Data Processor**" shall have the meaning given to it under the DPA.

"**Data Protection Change**" shall have the meaning given to it in clause E2.9.

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

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

"**Data Subject**" shall have the meaning given to it under the DPA.

"**Default**" means any breach of the obligations of the Contractor (including but not limited to abandonment of this Call-Off Contract in breach of its terms) or any other default (including material Default) after the words, act, omission, negligence or statement of the Contractor, of its Sub-contractors or any Staff, howsoever arising in connection with or in relation to the subject-matter of this Call-Off Contract and in respect of which the Contractor is liabile to the Contracting Body.

"**Deliverable**" means an item, feature or service associated with the provision of the Call-Off Services or a change in the provision of the Call-Off Services which is required to be delivered by the Contractor at any stage during the performance of this Call-Off Contract.

"**Delivery Fee**" means the amount(s) set out in Schedule 4 (Fees and Payment).

"**Disputes**" means any dispute, difference or question of interpretation arising out of or in connection with this Call-Off Contract, including any dispute, difference or question of interpretation relating to the Call-Off Services, failure to agree in accordance with the Change Control Procedure or any matter where this Call-Off Contract directs the Parties to resolve an issue by reference to clause I2.

"**Dispute Resolution Procedure**" means the dispute resolution procedure set out in Schedule 16 (Dispute Resolution Procedure).

"**Document Retention End Date**" means [♦]

[DN: This date is subject to change. Specific "Document Retention End Date" for each Call-Off Contract will be published at the time of Mini-Competition.]

"**DOTAS**" means the Disclosure of Tax Avoidance Schemes rules which require a promoter 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 2004 and as extended to national insurance contributions by the National Insurance Contributions (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 1998 and any subordinate legislation made under such Act from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.

"**Due Diligence Information**" means any information supplied to the Contractor by the Contracting Body.

"**DWP**" means the Department of Work and Pensions.

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

"**Environmental Information Regulations**" mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

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

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

(d) compensation for less favourable treatment of part-time workers or fixed term employees;

(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

(f) employment claims whether in tort, contract or statute or otherwise; or

(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

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

"**ESF Co-Financing Organisation**" means designated bodies including the Contracting Body which channel both ESF and match funding to meet ESF priorities.

"**ESF Requirements**" means the requirements set out or referred to in Schedule 12 for contracts which are, or may become during their term, funded using ESF monies and/or for contracts which are used as a match for contracts funded using ESF monies including but not limited to:

(a) the common principles, rules and standards for the European Social Fund as defined by Regulation (EU) No 1303/2013 of 17 December 2013; and

(b) the European Commission's requirements;

(c) the Managing Authority's requirements; and

(d) the Contracting Body's requirements.

"**European Community State Aid Rules**" means those rules embodied in Articles 107-109 of Section 2, Title VII, of the 'Common Rules on Competition, Taxation and Approximation of Laws- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union' (2008/C 115/01).

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

[DN: ESF requirements are subject to change. The specific ESF requirements which apply to each Call-Off Contract will be published at the time of Mini-Competition.]

"**Expiry**" means the expiry of this Call-Off Contract, however arising.

"**Financial Distress Event**" the occurrence of one or more of the events listed in [♦].

"**Fees**" means the amounts (exclusive of any applicable VAT) as set out in Schedule 4 (Fees and Payment), payable by the Contracting Body under the Call-Off Contract, including the Delivery Fee and any Outcome Payments, to which the Contractor is entitled for the full and proper performance by the Contractor of its obligations under the Call-Off Contract.

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

"**Formal Warning Notice**" means notice issued by the Contracting Body under clause F7 in respect of a Non Service Failure Default.

"**Fraud**" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Call-Off Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

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

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future tax legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

"**Good Industry Practice**" means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the [Call-Off] Services to a customer like the Contracting Body, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws.

"**Group**" means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

"**Group Company**" means in relation to a company, any member of its Group.

"**Guarantee**" means the deed of guarantee in favour of the Contracting Body entered into by the Guarantor on or about the date of the Call-Off Contract (which is substantially in the form set out in Schedule 9 (Parent Company Guarantee) or such similar form acceptable to the Contracting Body from time to time).

"**Guarantor**" means the body who has agreed to guarantee the due performance of the Call-Off Contract by the Contractor and has entered into the Guarantee in the form set out in Schedule 9 (Parent Company Guarantee).

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

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

"**HMRC RTI**" means the real time information held by HMRC in respect of Participants and used by the Contracting Body to determine Contracting Body Determined Outcome(s) and to verify Contractor Claimed Outcome(s).

[DN: The definition of "HMRC RTI" is subject to change. The information/system/process to be used in each Call-Off Contract will be published at the time of Mini-Competition.]

"**ICT**" means information and communications technology.

"**ICT Environment**" means the Contracting Body ICT System and the Contractor System.

"**Impact Assessment**" means an assessment of a Change Request in accordance with paragraph 6 of Schedule 13.

"**Implementation Call-Off Commencement Date**" means the date specified at paragraph 2 of Schedule 1.

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

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

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

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

"**Irregularity**" means directly or indirectly submitting a claim for, agreeing to receive, or accepting any Outcome Payment, Delivery Fee, financial or other advantage in connection with a Call-Off Contract which is the subject of an investigation by the Contracting Body's Internal Audit & Investigations team ("IAI") and which IAI finds is based on invalid, erroneous or false information or documentation.

"**Key Personnel**" means those persons named Schedule 14 (Key Personnel).

"Key Role" means [♦].

[DN: The definition of "Key Role" is subject to change. The Key Roles for each Call-Contract will be published at the time of Mini-Competition.]

"Key **Sub-contract**" means each Sub-contract with a Key Sub-contractor.

"**Key Sub-contractor**" means any Sub-contractor:

(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Call-Off Services; and/or

(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Fees forecast to be payable under this Call-Off Contract.

"**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.

"**Landed Resources**" means when the Contractor or its Sub-contractor causes foreign nationals to be brought to the United Kingdom to provide the Call-Off Services.

"**Liquidation**" means the appointment of a Liquidator who collects in and distributes the company's assets and dissolves the company. The company can also be put into provisional Liquidation before a final winding up order is granted.

"**Loss**" means direct losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such losses are reasonable, direct, proper and mitigated.

"**Malicious Software**" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

"**Management Information**" or "**MI**" means the management information specified in clause E13 and Schedule 21 (Management Information).

"**Managing Authority**" means Contracting Body's managing authority (within the Contracting Body's European Social Fund Division operating on behalf of the Secretary of

State which is the managing authority responsible for administering European Social Fund funds by means of which this Call-Off Contract is funded (where applicable).

"**Merlin Standard**" means:

(a) the DWP's standard and accreditation process in respect of supply chain management as further described at:

(i) http://www.merlinstandard.co.uk/;

(ii) http://www.dwp.gov.uk/docs/merlin-standard.pdf; and

(iii) http://www.dwp.gov.uk/docs/sub-contracting-merlin-guidance.pdf,

as may be updated and amended from time to time; and/or

(b) any equivalent policy of the Contracting Body, as notified to the Contractor from time to time as such equivalent policy may be updated and/or replaced by the Contracting Body from time to time.

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

"**MI Failure**" means when an MI Report:

(a) contains any material errors or material omissions or a missing mandatory field; or

(b) is submitted using an incorrect MI Reporting Template; or

(c) is not submitted by the Reporting Date (including where a Nil Return should have been filed).

"**Mini-Competition**" has the meaning given to it in the Umbrella Agreement.
"**Minimum Performance Level(s)**" or "**MPL(s)**" means the performance levels to which the Call-Off Services are to be supplied by the Contractor as set out in Schedule 2 (Minimum Performance Levels and Customer Service Standards) and which shall include both the Call-Off Specification Performance Levels and the Tender Performance Levels.
"**MI Report**" means a report containing Management Information submitted to the Authority in accordance with clause E13 and Schedule 21 (Management Information).

"**MI Reporting Template**" means the form of report setting out the information that the Contractor is required to supply to the Contracting Body, as notified to the Contractor by the Contracting Body from time to time.

"**Month**" means a calendar month.

"**Nil Return**" has the meaning given in paragraph 26.12 of Schedule 21 (Management Information).

"**Non Qualifying Participant**" has the meaning given in clause C3.2.

"**Non Service Failure Default**" means a Default other than a Service Failure.

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

(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 in any jurisdiction 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 a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which 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 Call-Off Commencement Date or to a civil penalty for fraud or evasion.

"**Open Book Data**" means complete and accurate financial and non-financial information which is sufficient to enable the Contracting Body to verify the Fees (including but not limited to any Outcome Payment(s)) already paid or payable and the Fees (including but not limited to any Outcome Payment(s)) forecast to be paid during the remainder of the Call-Off Contract Period and the Contractor's performance under this Call-Off Contract, including details and all assumptions relating to:

(a) the Contractor's costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; and

(b) operating expenditure relating to the supply of the Call-Off Services including an analysis showing:

(i) the unit costs and quantity consumables and bought-in services;

(ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;

(iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin;

(iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the supply of the Call-Off Services);

(v) overheads;

(vi) all interest, expenses and any other third party financing costs incurred in relation to the supply of the Call-Off Services;

(vii) the Contractor's profit margin achieved over the Call-Off Contract Period and on an annual basis;

(viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor; and

(ix) an explanation of the type and value of risk and contingencies associated with the supply of the Call-Off Services, including the amount of money attributed to each risk and/or contingency; and

(c) the Contractor's most up-to-date management accounts and annual accounts.

[DN: The definition of "Open Book Data" is subject to change. Specific definition for "Open Book Data" for each Call-Off Contract will be published at the time of Mini-Competition.]

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

(a) will not affect the Fees and will not result in any other costs to the Contracting Body;

(b) may change the way in which the Call-Off Services are delivered but will not adversely affect the output of the Call-Off Services or increase the risks in performing or receiving the Call-Off Services; and

(c) will not adversely affect the interfaces or interoperability of the Call-Off Services with any of the Contracting Body ICT System.

"**Operational Change Confirmation**" means a written response to an Operational Change Request in which the Party that received an Operational Change Request confirms its agreement to the Operational Change that is the subject of that Operational Change Request and which may be sent by electronic mail or by letter in accordance with clause A5.

"**Operational Change Request**" means a written request for an Operational Change which may be sent by electronic mail or by letter in accordance with clause A5.

"**Order**" shall have the meaning given to it in the Umbrella Agreement.

"**Order Form**" shall have the meaning given to it in the Umbrella Agreement.

"**Outcome**" means a Contracting Body Determined Outcome or a Contractor Claimed Outcome (as applicable).

"**Outcome Aggregate Error Amount**" shall have the meaning set out in clause C4.7.

"**Outcome Error Rate**" means in respect of each Payment Validation Period, the percentage of failures, errors and/or over-claims which the Contracting Body shall be entitled to assume have been made in respect of all of the Outcome Payments which have been paid by the Contracting Body to the Contractor (in respect of this Call-Off Contract) in that Payment Validation Period and which shall be calculated as follows:

(A/B) x 100 where:

A = Total Outcome Fails for that Payment Validation Period in respect of Outcomes (as determined by the Contracting Body); and

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

expressed as a percentage.

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

"**Outcome Payment**" means the fee payable by the Contracting Body to the Contractor on achievement of an Outcome as set out in Schedule 4 (Fees and Payment) and which shall be payable in accordance with the requirements of the Call-Off Contract.

"**Outcomes Sample**" shall have the meaning given to it in clause C4.

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

"**Participant**" means an individual in respect of whom the Contractor provides Call-Off Services.

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

"**Participants' records**" means the records prepared and maintained by the Contractor (in whatever form or storage media) concerning individual Participants, which shall include Participant Personal Data.

"**Participant Start**" means a Participant starting on Call-Off Services which is deemed to have happened when [♦].

[DN: The definition of "Participant Start" is subject to change. Specific definition of "Participant Start" for each Call-Off Contract will be published at the time of Mini-Competition.]

"**Party**" means the Contracting Body or the Contractor, and "**Parties**" shall be construed accordingly.

"**Payment Tail Period**" means the period of [♦ (♦)] Months starting immediately after the Call-Off Services Cessation Date.

"**Payment Validation Period**" means such period of time as the Contracting Body notifies the Contractor from time to time, for which period the Contracting Body shall validate payments made to the Contractor in accordance with clause C4.

"**Performance Improvement End Date**" means the date set out in the Performance Improvement Notice.

"**Performance Improvement Notice**" means a written notice given by the Contracting Body to the Contractor pursuant to clause B16.

"**Performance Improvement Period**" means the period from the date of issue of the Performance Improvement Notice until the Performance Improvement End Date.

"**Performance Improvement Plan**" means the plan agreed in accordance with clause B16.

"**Performance Improvement Plan Failure**" has the meaning set out in clause B16.9

"**Performance Improvement Process**" means the process set out in clause B16.

"**Performance Indicator(s)**" means the indicators set out in Part C of Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance), which the Contracting Body uses to monitor the Contractor's performance in accordance with clause B15.3.

"**Performance Indicator Review**" means a review carried out in accordance with clause B15.3.

"**Performance Indicator Course of Action**" means the actions, set out by the Contracting Body in the Performance Indicator Course of Action Notice, which the Contracting Body requires the Contractor to take to satisfy the Contracting Body that the Contractor can ensure compliance with its contractual obligations in relation to Performance Indicators.

"**Performance Indicator Course of Action Notice**" means a notice issued by the Contracting Body in accordance with Part C of Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance).

"**Performance Manager**" means the Contracting Body's and the Contractor's respective representative who will monitor and review the Contractor's supply of the Call-Off Services in accordance with the Minimum Performance Levels and the Customer Service Standards.

"**Personal Data**" shall have the meaning given to it under the DPA.

"**PRaP**" means DWP's prescribed provider referral and payments system, which DWP uses to refer Participants and pay providers, and/or any equivalent Contractor Body provider referral and payments system. For the avoidance of doubt, where PRaP is not available, a clerical system may be adopted by the Contracting Body in its place.

"**Premises**" means the location where the Call-Off Services are to be supplied, as set out in this Call-Off Contract.

"**Processing**" shall have the meaning given to it under the DPA and "**Process**" and "**Processed**" shall be interpreted accordingly.

"**Project Specific Intellectual Property Rights**" means IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the performance by the Contracting Body or the Contractor of their obligations under this Call-Off Contract including, any Deliverables and all updates and amendments of these items.

"**Programme Call-Off Contract**" means any Call-Off Contract between the Contracting Body and the Contractor in relation to [♦], covering any CPA.

[DN: Name of programme/project to be inserted at time of issue of Invitation to Mini-Competition for Call-Off Contracts for relevant programme.]

"**Property**" means the property, other than real property, issued or made available to the Contractor by the Contracting Body in connection with the Call-Off Contract.

"**Provider Guidance**" means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to sustainable development and promotion of race equality and non-discrimination, copies of which have been provided by the Contracting Body to the Contractor prior to the Call-Off Commencement Date, and any other instructions and recommended practices as updated by the Contracting Body to the Contractor from time to time.

"**Provider Referrals and Payments System**" shall have the same meaning as PRaP.

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

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

"**Referral**" means details of a prospective Participant recorded on PRaP by the Contracting Body in anticipation of Participant Start, and "**Referred**" shall be construed accordingly.

"**Referral Start Date**" means the earlier of:

(a) the date of the first Referral; or

(b) [♦].

"**Regulatory Body**" means those government departments and regulatory, statutory and other entities, committees, ombudsmen, and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Call-Off Contract or any other affairs of the the Contracting Body.

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

"**Replacement Contractor**" means any third party service provider of Replacement Services appointed by the Contracting Body from time to time (or where the Contracting Body is providing replacement Services for its own account, the Contracting Body).

"**Replacement Services**" means any services which are substantially similar to any of the Call-Off Services and which the Contracting Body receives in substitution for any of the Call-

Off Servics following the expiry of the Call-Off Contract Period, whether thoses services are provided by the Contracting Body internally and/or any third party.

"**Reporting Date**" means the seventh (7th) day of each Month following the Month to which the relevant Management Information relates, or such other date as may be agreed between the Contracting Body and the Contractor from time to time.

"**Requests for Information**" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

"**Schedule**" means a Schedule attached to, and forming part of, the Call-Off Contract.

"**Security Plan**" means the Contractor's security plan prepared pursuant to Schedule 6 (Security Requirements and Plan).

"**Security Policy**" means the Contractor's security plan prepared pursuant to Schedule 6 (Security Requirements and Plan).

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

"**Serious Breach**" means:

(a) a material breach; or

(b) a Default that is serious in the widest sense of having a serious effect on the benefit which the Contracting Body would otherwise derive from:

(i) this Call-Off Contract; or

(ii) any of the obligations set out in clauses A, B, C, D, E, F, G, H, I and/or the Schedules,

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

"**Service Failure**" means a failure by the Contractor to supply :

(a) any part of the Call-Off Services in accordance with the Minimum Performance Levels; and/or

(b) any part of the Call-Off Services in accordance with any of the Customer Service Standards.

"**Staff**" means all persons employed or engaged by the Contractor (and/or each Sub-contractor) to perform its obligations under this Call-Off Contract together with the Contractor's (and/or each Sub-contractor's) servants, consultants, agents, volunteers, contractors and sub-contractors used in the performance of its obligations under this Call-Off Contract

"**Staff Vetting Procedures**" means the Contracting Body's procedures for the vetting of personnel as detailed in Schedule 1 (The Call-Off Services), the Provider Guidance, the Security Plan and/or as advised to the Contractor by the Contracting Body.

"**Standards**" shall have the meaning given to it in the Umbrella Agreement.

"**Step-In Trigger Event**" means:

(a) any event which gives the Contracting Body the right to terminate the Call-Off Contract in accordance with clause H;

(b) a Default by the Contractor that is materially preventing or materially delaying the supply of the Call-Off Services or any material part of the Call-Off Services;

(c) the Contracting Body considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under the Call-Off Contract;

(d) the Contracting Body being advised by a regulatory body that the exercise by the Contracting Body or its rights under clause F5 is necessary;

(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Call-Off Services; and/or

(f) a need by the Contracting Body to take action to discharge a statutory duty.

"**Structural Funds Regulations**" means the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements (including National Eligibility Rules) issued by the Managing Authority. The following Regulations are particularly relevant: Regulation (EU) No 1303/2013; Regulation (EU) No 1304/2013; Commission Delegated Regulation (EU) No 480/2014; Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements; and European Community State Aid Rules applicable at the date that the Aid is granted to the recipients of the Aid. The Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

"**Sub-contract**" means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Call-Off Services (or any part thereof) or facilities or services necessary for the provision of the Call-Off Services (or any part thereof) or necessary for the management, direction or control of the Call-Off Services (or any part thereof).

"**Sub-contractor**" any third party with whom:

(a) the Contractor enters into a Sub-contract; or

(b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party.

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

"**Substantial Change**" means a modification to the terms of this Call-Off Contract that is substantial, where, for the purposes of this definition, "**substantial**" has the meaning ascribed to it by Regulation 72(8) of the Public Contracts Regulations 2015.

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

"**Tender Customer Service Standards**" means the customer service standards proposed by the Contractor in the Tender which must be equal to or greater than the Call-Off Specification Customer Service Standards.

"**Tender Performance Levels**" means the performance levels proposed by the Contractor in the Tender which must be equal to, or greater than, the Call-Off Specification Performance Levels

"Umbrella Agreement" means the umbrella agreement dated [♦] between the Secretary of State for Work and Pensions and the Contractor, pursuant to which this Call-Off Contract has been entered into.

"Unable To Validate Outcome Payment" means a Contractor Claimed Outcome Payment in respect of which:

(a) notwithstanding that the Contractor has provided supporting information to the Contracting Body, the Contracting Body has not been able to contact the Participant's employer or the Participant; and/or

(b) the Participant's employer or the Participant is unable and/or unwilling to provide the information requested by the Contracting Body so as to enable the Contracting Body to validate the Contractor Claimed Outcome and therefore the Contracting Body has been unable to verify that all of the relevant qualifying criteria and requirements in respect of that Contractor Claimed Outcome have been satisfied.

"Universal Credit" means the Government initiative of that name which is more particularly described in the Call-Off Specification.

"Variation" means any change to this Call-Off Contract other than an Operational Change.

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.

A1.2 In this Call-Off Contract, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) references to a clause or schedule are references to the clauses and schedules of this Call-Off Contract unless otherwise provided;

(c) reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended, extended, consolidated or re-enacted from time to time;

(d) references to any person include all individual, company, body, corporate, corporation, unincorporated association, firm, partnership, or other legal entity or other Government Body;

(e) the words **"including"**, **"other"**, **"in particular"**, **"for example"** 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"; and

(f) headings are for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract.

A1.3 Subject to Clauses A1.1 and A1.2 (**Definitions and Interpretation**), in the event of and only to the extent of any conflict between the Order Form, the Call-Off Terms and Conditions and the provisions of the Umbrella Agreement, the conflict shall be resolved in accordance with the following order of precedence:

A.1.3.1. the Call-Off Terms and Conditions;

A.1.3.2. the Order Form;

A.1.3.3. the Umbrella Agreement.

A2 Call-Off Contract Period

This Call-Off Contract shall commence on the Call-Off Commencement Date; and unless terminated at an earlier date in accordance with Clause H or otherwise by operation of law, shall terminate on the Document Retention End Date.

A3 Contractor's Status

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

A4 Contracting Body's Obligations

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

A5 Notices

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

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

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

(a) For the Contracting Body:

Address: **[Insert]**

For the attention of: **[Insert]**

Tel: **[Insert]**

Email: **[Insert]**

(b) For the Contractor:

Address: **[Insert]**

For the attention of: **[Insert]**

Tel: **[Insert]**

Email: **[Insert]**

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Contracting Body by the Contractor in connection with the supply of the Call-Off Services and shall pay the Contracting Body any extra costs occasioned by the Contracting Body by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Contracting Body.

A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Contracting Body under the provisions of this Call-Off Contract. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

A7.2 The Contracting Body reserves the right to terminate this Call-Off Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor or any staff and the duties owed to the Contracting Body under the provisions of this Call-Off Contract (and for the avoidance of doubt the provisions of clause H3 shall not apply). The actions of the Contracting Body pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Body.

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

A8 Prevention of Fraud

A8.1 The Contractor shall establish, maintain and enforce and require that its Staff and Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to prevent the occurrence of Fraud and/or Irregularity in connection with any Call-Off Contract.

A8.2 The Contractor shall establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce:

(a) a system that enables its Staff, Sub-contractors and any person involved in the supply of the Call-Off Services to report to the Contractor, the commission or suspected commission of Fraud or Irregularity by any person in connection with this Call-Off Contract;

(b) a personnel performance assessment system for any persons involved in the supply of the Call-Off Services in which personnel performance targets are appropriately set to ensure the commission of Fraud or Irregularity is not encouraged; and

(c) a segregation of duties between those persons directly involved in supplying the Call-Off Services to Participants and those persons providing the Contracting Body with Management Information under a Call-Off Contract in respect of compliance with the Minimum Performance Levels and Customer Service Standards.

A8.3 The Contractor shall notify the Contracting Body immediately in writing if it becomes aware of any Fraud or Irregularity, or has reason to believe that any Fraud or Irregularity has occurred, is occurring, or may occur in connection with this Call-Off Contract.

A8.4 If the Contractor notifies the Contracting Body under clause A8.3, the Contractor shall respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body access to the Open Book Data and/or any other relevant records/information in accordance with clause E9.

A8.5 If the Contractor fails to comply with its obligations under this clause A8, the Contracting Body may terminate this Call-Off Contract by written notice to the Contractor with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice) and without liability.

A8.6 If the Contractor, its Staff or its Sub-contractors commits Fraud or Irregularity, the Contracting Body may:

(a) terminate this Call-Off Contract, and any other contract between the Contracting Body and the Contractor, by written notice to the Contractor with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice) and without liability; and

(b) recover from the Contractor the amount of any Loss suffered by the Contracting Body resulting from the termination, including but without limitation, the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the Call-Off Services and any additional expenditure incurred by the Contracting Body resulting from the termination.

A9 ESF Funding

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

A9.2 The Contractor and any Sub-contractors appointed by it shall be bound by the ESF Requirements including but not limited to those set out in Schedule 12 (ESF Requirements).

[DN: At time of issue of the invite to the Mini-Competition, Schedule 1 of the Call-Off Terms and Conditions will confirm whether or not the Call-Off Contract is subject to the ESF Requirements.]

A10 Representatives of the Parties

A10.1 The following person is the Contracting Body's Representative:

Name **[Insert]**

Title: **[Insert]**

A10.2 The Contracting Body's Representative may approve deputy Contracting Body's Representatives to exercise the Contracting Body's Representative's powers on his/her behalf. The Contracting Body's Representative may notify the Contractor of any such deputy in accordance with clause A5.

A10.3 The following person is the Contractor's Representative:

Name **[Insert]**

Title: **[Insert]**

A10.4 The Contractor's Representative may approve deputy Contractor's Representatives to exercise the Contractor's Representative's powers on his/her behalf. The Contractor's Representative may notify the Contracting Body of any such deputy in accordance with clause A5.

B SUPPLY OF SERVICES

B1 The Call-Off Services

B1.1 The Contractor shall supply the Call-Off Services during the Call-Off Contract Period in accordance with the Contracting Body's requirements as set out in the Call-Off Contract (including for the avoidance of doubt, in accordance with the Call-Off Specification, the ESF Requirements and the Provider Guidance) in consideration of the payment of the Fees.

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

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

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

B1.5 Timely supply of the Call-Off Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Call-Off Services within the time agreed or on a specified date including the dates specified in the Call-Off Specification and the Implementation Plan. The Contracting Body may also inspect and examine the manner in which the Contractor supplies the Call-Off Services at the Premises during normal business hours on reasonable notice.

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

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

(a) any withholding of the Delivery Fee by the Contracting Body pursuant to clause B16.2, clause C6 or clause F9.6;

(b) the existence of an unresolved Dispute; and/or

(c) any failure by the Contracting Body to pay any Fees,

unless the Contractor is entitled to terminate this Call-Off Contract under clause H2.2 for failure to pay undisputed Fees.

B2 [NOT USED]

B3 No Guarantee of Volumes or Exclusivity

B3.1 Subject to clause B3.2 and clause B3.3, the Contracting Body will refer prospective Participants to the Contractor in accordance with the provisions of the Call-Off Contract (in particular, the Call-Off Specification).

B3.2 The Contractor acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Contracting Body in respect of levels or values of Call-Off Services referred to in the Schedules which are indicative only and shall not be binding on the Contracting Body.

B3.3 The Contractor acknowledges that, in entering the Call-Off Contract, no form of exclusivity has been granted by the Contracting Body for Call-Off Services from the Contractor and that the Contracting Body is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Call-Off Services.

B4 Provision and Removal of Equipment

B4.1 The Contractor shall provide all the Equipment necessary for the supply of the Call-Off Services.

B4.2 The Contractor shall not deliver any Equipment nor provide any work on the Contracting Body's Premises without obtaining Approval.

B4.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Contracting Body shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Contracting Body's Default. The Contractor shall provide for the haulage or carriage to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B4.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B4.5 The Contractor shall, at the Contracting Body's written request, at its own expense and as soon as reasonably practicable:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Contracting Body is hazardous, noxious or not in accordance with the Call-Off Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B4.6 On completion of the Call-Off Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Call-Off Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B4.7 The Contracting Body may at its option purchase any item of Equipment from the Contractor at any time, if the Contracting Body considers that the item is likely to be required in the

provision of the Call-Off Services following the expiry or termination of the Call-Off Contract. The purchase price to be paid by the Contracting Body shall be the higher of the fair market value and the net book value.

B5 Manner of Carrying Out the Call-Off Services

B5.1 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 Call-Off Services has not been specified in the Call-Off Contract, the Contractor shall agree the relevant standard of the Call-Off Services with the Contracting Body prior to the supply of the Call-Off Services and in any event, the Contractor shall perform its obligations under the Call-Off Contract in accordance with all applicable Law and Good Industry Practice and deliver the Call-Off Services using efficient business processes and ways of working having regard to the Contracting Body's obligation to ensure value for money.

B5.2 While not in any way limiting any other provision of this Call-Off Contract, in delivering the Call-Off Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

B5.3 The Contractor shall ensure that all Staff supplying the Call-Off Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Call-Off Services.

B5.4 The Contractor shall at all times comply and shall ensure that its Staff at all times comply with the provisions of Schedule 17 (Life Chances).

B5.5 To the extent required by the Contracting Body, the Contractor shall comply and shall ensure that its Staff comply with the provisions of Schedule 8 (Welsh Language Scheme) in providing the Call-Off Services in the Welsh language

[DN: This clause may be updated to include additional provisions for example relating to the Social Value Act, National Minimum Wage etc.]

B6 Participant Complaints

B6.1 The Contractor shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Contractor (and/or any of its Sub-contractors) including any of the Call-Off Services.

B6.2 If the dispute between any Participant and the Contractor (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.

B6.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Contractor shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Contractor for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Contractor or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Contractor or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Contractor (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.

B6.4 Without prejudice to clauses B6.1 to B6.3, the Contracting Body shall take all reasonable steps to investigate any complaint it receives regarding:

(a) the standard of Call-Off Services;

(b) the manner in which any Call-Off Services have been supplied,

(c) the manner in which work has been performed;

(d) the materials or procedures the Contractor uses; or

(e) any other matter connected with the performance of the Contractor's obligations under the Call-Off Contract.

B6.5 Without prejudice to its other rights and remedies under the Call-Off Contract, the Contracting Body may, in its sole discretion, uphold any complaint and take further action in accordance with clause F or clause H of the Call-Off Contract.

B7 The Merlin Standard

B7.1 The Contractor shall, with effect from the Call-Off Commencement Date and throughout the Call-Off Contract Period, comply with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains.

B7.2 Where the Contracting Body has approved the appointment of a Sub-contractor, the Contractor shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) any other guidance and/or codes of practice issued by the Contracting Body and shall achieve Merlin Accreditation no later than twelve (12) Months after the Call-Off Commencement date and shall maintain such Merlin Accreditation throughout the Call-Off Contract Period.

B7.3 For the avoidance of doubt and without prejudice to the rest of this clause B7, the Contractor shall comply with all necessary requirements to maintain Merlin Accreditation which may include, without limitation, notifying the relevant Merlin Standard authorisation body if it changes its name or undergoes a Change of Control.

B7.4 The Contractor acknowledges that all decisions relating to Merlin Accreditation are made by the relevant Merlin Standard authorisation body.

B7.5 The Contractor consents to the publication by and on behalf of the Contracting Body of all its scores relating to the Merlin Standard.

B7.6 Any breach by the Contractor of this clause B7 shall be a deemed Serious Breach for the purpose of this Call-Off Contract.

B8 Key Personnel

B8.1 The Contractor acknowledges that the Key Personnel are essential to the proper supply of the Call-Off Services.

B8.2 The Contractor shall give notice to the Contracting Body of any proposed changes to the Key Personnel in accordance with the provisions of clause A5.

B8.3 The Contractor shall not remove or replace any Key Personnel unless:

(a) requested to do so by the Contracting Body;

(b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

(c) the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or

(d) the Contractor obtains Approval.

B8.4 The Contractor shall:

(a) notify the Contracting Body promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);

(b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

(c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice; and

(d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Call-Off Services.

B8.5 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Call-Off Services.

B8.6 The Contracting Body shall not unreasonably withhold its Approval under clauses B8.3 or B8.5. Such Approval shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Call-Off Contract which could be caused by a change in Key Personnel.

B9 Contractor's Staff

B9.1 The Contracting Body may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Contracting Body's Premises:

(a) any member of the Staff; or

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

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

B9.2 At the Contracting Body's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Call-Off Contract to the Contracting Body's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Call-Off Contract and giving such other particulars as the Contracting Body may reasonably request.

B9.3 The decision of the Contracting Body as to whether any person is to be refused access to the Contracting Body's Premises and as to whether the Contractor has failed to comply with clause B9.2 shall be final and conclusive.

B9.4 The Staff, engaged within the boundaries of the Contracting Body's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Contracting Body's Premises.

B9.5 The Contractor shall comply with all applicable Law relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B9.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Call-Off Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Call-Off Services and accessing the Premises.

B9.7 The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the Call-Off Services in compliance with the Security Policy and Security Plan.

B9.8 The Contractor shall further use all reasonable endeavours to ensure that Staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.

B9.9 If the Contractor, in the reasonable opinion of the Contracting Body, fails to comply with clauses B9.4, B9.5, B9.6, B9.7 and B9.8 the Contracting Body shall be entitled to consider that failure a Serious Breach for the purposes of clause H2 (Termination on Default) entitling the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

B9.10 The Parties agree that the Contractor shall both during and after the Call-Off Contract Period indemnify the Contracting Body against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Body by any person where such claim arises from any act or omission of the Contractor or any Contractor's Staff.

B10 Inspection of Premises

The Contracting Body shall be entitled to inspect the Contractor's Premises prior to the Referral Start Date and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Call-Off Contract.

B11 Licence to Occupy Premises

B11.1 To the extent that any land or Premises is made available from time to time to the Contractor by the Contracting Body in connection with this Call-Off Contract this shall, subject to the provisions of any additional agreement entered into by the Parties as may be required by the Contracting Body, be made available to the Contractor on a non-exclusive licence basis, and shall be used by the Contractor solely for the purpose of performing its obligations under this

Call-Off Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Call-Off Contract.

B11.2 Subject to clause B11.1, the Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Call-Off 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 Contracting Body may reasonably request.

B11.3 Subject to clause B11.1, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Contracting Body, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B11.4 Subject to clause B11.1, the Parties agree that there is no intention on the part of the Contracting Body to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call-Off Contract, the Contracting Body retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B11.5 Subject to clause B11.1, should the Contractor request modifications to the Contracting Body's Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Contracting Body at the Contractor's expense. Ownership of such modifications shall rest with the Contracting Body.

B12 Property

B12.1 Where the Contracting Body provides Property free of charge to the Contractor such Property shall be and remain the property of the Contracting Body and the Contractor irrevocably licences the Contracting Body and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Contracting Body. The Contractor shall take all reasonable steps to ensure that the title of the Contracting Body 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 Contracting Body's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Contracting Body.

B12.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Contracting Body otherwise in writing within five (5) Working Days of receipt.

B12.3 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 Call-Off Contract and for no other purpose without Approval.

B12.4 The Contractor shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Call-Off Services, is secured in accordance with the Contracting Body's reasonable security requirements as published from time to time.

B12.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Contracting Body's Default. The Contractor shall inform the Contracting Body in writing within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B13 Offers of Employment

B13.1 For the duration of the Call-Off Contract and for a period of twelve (12) Months thereafter neither the Contracting Body nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Call-Off Services without that other Party's prior written consent.

B13.2 The Contractor shall notify the Contracting Body within seven (7) days of any Participant or Completer becoming a Non Qualifying Participant.

B13.3 Failure by the Contractor to notify the Contracting Body in accordance clause B13.2 will constitute a Non-Service Failure Default and the provisions of clause F7 will apply.

B14 Employee Provisions and TUPE

The provisions of Schedule 19 (Employee Provisions and TUPE) shall apply on the commencement, during and on termination (or expiry) of this Call-Off Contract.

Sub-contractors

B14.1 In the event that the Contractor enters into any Sub-contract in connection with this Call-Off Contract, it shall:

(a) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause B14 and shall ensure that each Sub-contractor complies with such terms. The Contractor shall indemnify the Contracting Body and keep the Contracting Body indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Contracting Body as a result of or in connection with any failure on the part of a Sub-contractor to comply with such terms; and

(b) comply with the provisions of Schedule 15 (Sub-Contractors).

B15 Minimum Performance Levels and Customer Service Standards

B15.1 The Contractor shall ensure that the Call-Off Services are supplied in such a manner as to meet or exceed the Minimum Performance Levels and the Customer Service Standards at all times from the Call-Off Commencement Date.

B15.2 The Contracting Body shall monitor the Contractor's performance in respect of each of the Minimum Performance Levels and the Customer Service Standards in accordance with the provisions of this clause B, the Call-Off Specification, Schedule 2 (Minimum Performance Levels and Customer Service Standards) and any other requirements as notified by the Contracting Body to the Contractor from time to time.

B15.3 The Performance Managers shall have regular meetings to monitor and review the performance of the Call-Off Contract, the achievement of the Minimum Performance Levels, the achievement of the Customer Service Standards, the Performance Indicators and the supply of the Call-Off Services. The Contractor shall comply with:

(a) the provisions of Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance) in relation to the monitoring and reporting of its performance against the Minimum Performance Levels and the Customer Service Standards; and

(b) the provisions of Part C of Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance) in relation to the Performance Indicators.

B15.4 The Contracting Body shall review the Minimum Performance Levels and/or the Customer Service Standards from the Call-Off Service Start Date until the end of the Call-Off Services Cessation Date or the Payment Tail Period, whichever shall be the later. The Contracting Body may, at its sole discretion, elect to make changes to the Minimum Performance Levels and/or the Customer Service Standards from time to time. If the Contracting Body elects to make changes to the Minimum Performance Levels and/or the Customer Service Standards, the Contracting Body shall propose such changes by serving a Change Control Notice on the Contractor, and the Contractor shall promptly comply with the Change Control procedure as detailed at clause F3 (Changes to the Call-Off Contract) and Schedule 13 (Change Control Procedure).

[DN: Schedule 2 to be completed at the time of issue of the invite to the Mini-Competition for the relevant Call-Off Contract.]

B16 Performance Improvement Process

B16.1 Where the Contracting Body believes that a Service Failure has occurred, the Contracting Body may at any time (in its absolute discretion) elect to give a Performance Improvement Notice to the Contractor in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this clause B16.

B16.2 A Performance Improvement Notice given in accordance with this clause B16 shall indicate:

(a) that it is a Performance Improvement Notice;

(b) the Service Failure;

(c) the actions the Contracting Body in its absolute discretion requires the Contractor to take to satisfy the Contracting Body that the Contractor can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure where it is capable of remedy; and

(d) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice; and

(e) that the Contracting Body shall be entitled to withhold payment of [the Delivery Fee] in accordance with its right under clause C6 from the date on which a Performance Improvement Notice is given under this clause B16.2 until such time as the Service Failure is rectified.

B16.3 For the avoidance of doubt, the Contracting Body may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Contracting Body's right to do so.

B16.4 For the avoidance of doubt, the Contracting Body shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the Call-Off Contract pursuant to any other termination rights under the Call-Off Contract.

B16.5 Within such timescales as notified by the Contracting Body to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall either:

(a) submit a draft Performance Improvement Plan; or

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

B16.6 The Contracting Body shall either approve the draft Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of its receipt pursuant to clause B16.5(a), or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Contracting Body within a period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of its receipt of the Contracting Body's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.

B16.7 Once agreed the Contractor shall immediately implement the Performance Improvement Plan.

B16.8 If, despite the measures taken under clause B16.6 a revised Performance Improvement Plan cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of receipt by the Contractor of the Contracting Body's comments in respect of the Contractor's draft Performance Improvement Plan then the Contracting Body may elect to end the Performance Improvement Process and (a) refer the matter for resolution by the dispute resolution procedure set out in clause I1 (Disputes and Law); or (b) to consider that a Serious Breach by the Contractor for the purposes of clause H2 (Termination on Default) has occurred entitling the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

B16.9 If a Performance Improvement Plan is agreed between the Parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Contractor fails to rectify the Service Failure and/or undertake all the actions specified by the Contracting Body in the Performance Improvement Notice by the Performance Improvement End Date (a "**Performance Improvement Plan Failure**"), this shall be a Serious Breach by the Contractor for the purposes of clause H2 (Termination on Default) and the Contracting Body may (at its absolute discretion):

(a) exercise its rights under the corresponding provisions of clause H2 (Termination on Default); and/or

(b) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Contractor's commercial director (or equivalent) under the dispute resolution procedure set out in clause I1 (Disputes and Law).

B16.10 Any subsequent Service Failure, which the Contracting Body regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this clause B16, which occurs not less than six (6) Months of the Performance Improvement End Date shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

B17 Universal Credit

B17.1 The Contractor acknowledges that the Contracting Body has altered the benefit system such that Universal Credit replaces a number of existing benefits.

B17.2 The Contractor is required to support the ongoing implementation of the Universal Credit insofar as it may impact on the Call-Off Services, including (without limitation):

(a) assisting in notifying Participants for which it is responsible how the change to Universal Credit will impact the Call-Off Services as applicable to those Participants; and/or

(b) notification to the Contracting Body of the data relevant to the impact of Universal Credit on the Call-Off Services.

B17.3 At any time, as a consequence of, or in connection with the implementation of Universal Credit, the Contracting Body reserves the right to:

(a) review all systems and processes used and implemented by the Contractor in connection with delivery of the Call-Off Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Contracting Body's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or

(b) require the Contractor to make such changes to the Contractor's systems and processes as the Contracting Body may determine.

B18 Call-Off Services Improvement

B18.1 The Contractor shall have an ongoing obligation throughout the Call-Off Contract Period to identify new or potential improvements to the Call-Off Services in accordance with this clause B18. As part of this obligation the Contractor shall identify and report to the Contracting Body in accordance with Schedule 3:

(a) the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Call-Off Services, and those technological advances potentially available to the Contractor and the Contracting Body which the Parties may wish to adopt;

(b) new or potential improvements to the Call-Off Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Call-Off Services;

(c) new or potential improvements to the interfaces or integration of the Call-Off Services with other services provided by third parties or the Contracting Body which might result in efficiency or productivity gains or in reduction of operational risk;

(d) changes in business processes and ways of working that would enable the Call-Off Services to be delivered at lower cost and/or with greater benefits to the Contracting Body; and/or

(e) changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Call-Off Services.

B18.2 The Contractor shall ensure that the information that it provides to the Contracting Body shall be sufficient for the Contracting Body to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Contracting Body requests.

B18.3 If the Contracting Body wishes to incorporate any improvement identified by the Contractor the Contracting Body shall send the Contractor a Change Request in accordance with the Change Control Procedure.

B19 Benchmarking

B19.1 The Parties shall comply with the provisions of Schedule 20 (Continuous Improvement and Benchmarking) in relation to the benchmarking of any or all of the Call-Off Services.

C PAYMENT AND FEES

[DN: Clause C is subject to change. Specific provisions in Clause C for each Call-Off Contract will be published, and Schedule 4 will be completed, for each Call-Off Contract at the time of Mini-Competition.]

C1 Fees

C1.1 In consideration of the Contractor carrying out its obligations under this Call-Off Contract, including the provision of the Call-Off Services, the Contracting Body shall pay the Fees to the Contractor in accordance with the provisions of this clause C and Schedule 4 (Fees and Payment) (and for the avoidance of doubt where there is any conflict and/or ambiguity between the two the provisions of this clause C shall prevail). If the Contracting Body fails to pay any undisputed Fees properly invoiced under this Call-Off Contract, the Contractor shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

C2 Delivery Fee

C2.1 Subject to clause B16.2, clause C6 and clause F9.6 and provided that the requirements of schedule 4 (Fees and Payment) are met the Contracting Body shall pay the Delivery Fee.

C3 Outcome Payments

C3.1 The Contractor shall input such information as specified by the Contracting Body in the Call-Off Specification and/or the Provider Guidance onto the Contracting Body ICT System in the format also specified by the Contracting Body in the Provider Guidance. Contracting Body Determined Outcomes will be identified by the Contracting Body using HMRC RTI. Contractor Claimed Outcomes will be notified to the Contracting Body by the Contractor. The Contractor

shall use its best endeavours to notify the Contracting Body of a Contractor Claimed Outcome within [eight (8)] weeks of the date when the qualifying criteria for such Contractor Claimed Outcome have been met. Subject to the Contractor notifying the Contracting Body of each Contractor Claimed Outcome (and inputting such information onto the Contracting Body ICT System as the Contracting Body specifies in the Provider Guidance (and in the format specified)) and to the provisions of clause C4, Contractor Claimed Outcome Payments will be generated in accordance with this clause C and the provisions of Schedule 4.

C3.2 In the event that the Contractor, or any Sub-contractor, or any Group Company of the Contractor or any Sub-contractor, employs any Participant or any Completer whether directly as an employee under a contract of service or on a self-employed basis under a contract for services, such Participant or Completer will thereby become a "**Non Qualifying Participant**". Notwithstanding anything contained elsewhere in this Call-Off Contract, the Contractor specifically acknowledges that an Outcome cannot be generated in respect of a Non Qualifying Participant(s) and no Outcome Payment will be payable in respect of a Non Qualifying Participant(s).

C3.3 Without prejudice to anything else in this clause C, the Contracting Body shall have no obligation to make any Outcome Payments to the Contractor:

(a) where an Contracting Body Determined Outcome Payment is identified by the Contracting Body, using HMRC RTI, after the end of the Payment Tail Period; or

(b) where a Contractor Claimed Outcome Payment is claimed by the Contractor after the end of the Payment Tail Period; or

(c) where the Participant to whom the Outcome Payment relates is a Non Qualifying Participant.

C3.3A Contracting Body Determined Outcomes may be identified on a monthly basis by the Contracting Body using the HMRC RTI. Such information will specify [the number of Contracting Body Determined Outcomes that have satisfied the relevant qualifying requirements] and the Contracting Body's determination in this regard will be final and conclusive (except in the case of manifest error).

C3.3B The Contractor shall only notify the Contracting Body of a Contractor Claimed Outcome and submit a claim for payment in respect of a Contractor Claimed Outcome where it has carried out sufficient checks to ensure that such Contractor Claimed Outcome meets all of the relevant qualifying criteria and requirements as detailed in the Call-Off Specification.

C3.4 Subject always to clause C4, the Contracting Body shall pay Outcome Payments no later than a period of thirty (30) calendar days from the date on which the Contracting Body has determined that the qualifying criteria and requirments for an Outcome have been met. Payment will be made at the rate(s) set out in Schedule 4. The Contracting Body may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.

C3.5 A Contractor Claimed Outcome shall only be deemed to have been notified where the Contractor inputs information onto the Contracting Body ICT System or (in the event that no Contracting Body ICT System is available) as otherwise determined by the Contracting Body in the prescribed manner and submits the appropriate supporting information in accordance with clause C3. For the avoidance of doubt, the Contracting Body shall not be in a position to consider and verify eligibility of any Contractor Claimed Outcome until the Contractor has input information onto the Contracting Body ICT System in the prescribed manner, submitted

the appropriate supporting information in accordance and notified the Contracting Body of an Contractor Claimed Outcome in accordance with clause C3.

C3.6 The Contractor shall notify details of the Contractor's bank account and address to the Contracting Body via the Contracting Body ICT System. The Contracting Body shall send notifications of payments to that address.

C3.7 At any time (including, for the avoidance of doubt, at any time before and/or after payment by the Contracting Body to the Contractor) the Contracting Body shall be entitled to validate any payment made by the Contracting Body to the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Contracting Body (including, without limitation, procuring the consent of the Participant for the Contracting Body to contact the Participant's employer) to enable the Contracting Body to validate any payment made by the Contracting Body to the Contractor.

C3.8 When the Contracting Body has made an Outcome Payment to the Contractor in respect of an Outcome, the Contracting Body shall refuse any requests of the Contractor to remove the claim for any such Outcome Payments from the Contracting Body ICT System, except in exceptional cases where the Contracting Body determines, in its sole discretion, are appropriate circumstances to permit such a request.

C3.9 The Contractor hereby agrees to use its best endeavours to procure, if required by the Contracting Body at any time, the written consent of the Participant for the Contracting Body to contact the Participant's employer and the Contractor shall retain copies of such written consent or, where it has been unable to obtain such consent, detailed records of the steps it has taken to attempt to procure such consent as part of the Contractor's record keeping obligations under the Call-Off Contract including, without limitation, clauses A9 (ESF Funding) and E9 (Audit and the National Audit Office and Open Book Data). The Contracting Body reserves the right to inspect such written consent or such detailed records from time to time.

C4 Validation & Extrapolation of Outcomes

C4.1 Before payment of any Outcome Payment by the Contracting Body to the Contractor, in respect of each Outcome Payment, the Contracting Body may undertake a check(s) to verify the validity of such Outcome. For the avoidance of doubt, where the Contracting Body has undertaken checks pursuant to this clause C4.1 it reserves the right to include such Outcome Payment in the relevant Outcomes Sample for the Payment Validation Period in which it falls.

C4.2 The Contracting Body shall be entitled to reject any claims for payment made by the Contractor which fail any check(s) undertaken by the Contracting Body pursuant to clause C4.1 without undertaking any further check(s).

C4.3 Following the last Working Day of each Month (or other such period as may be notified by the Contracting Body to the Contractor), the Contracting Body shall carry out a check of the Outcome Payments which have been made under Programme Call-Off Contracts during the Payment Validation Period as follows:

(a) Where there are [♦] or fewer Outcome Payments (i) under this Call-Off Contract only; or (ii) under all Programme Call-Off Contracts, in respect of the relevant Payment Validation Period, the Contracting Body shall check each of the [♦] or fewer Outcome Payments in respect of the relevant Payment Validation Period;

(b) Where there are more than [♦] claims for Outcome Payments (i) under this Call-Off Contract only; or (ii) under all Programme Call-Off Contracts, in respect of the

relevant Payment Validation Period, the Contracting Body may, in its absolute discretion, choose to select a sample (the size and/or composition of which shall be determined and/or vary at the sole discretion of the Contracting Body) of the Outcome Payments which have been paid by the Contracting Body to the Contractor (i) under this Call-Off Contract only; or (ii) under all Programme Call-Off Contracts, in respect of that Payment Validation Period (each such sample hereinafter being referred to as a "**Outcomes Sample**") and to check only the Outcome Payments in the Outcomes Sample;

(c) For the avoidance of doubt, notwithstanding the Contracting Body's right to select an Outcomes Sample in accordance with (b) above, the Contracting Body reserves the right at any time to check 100% of Outcome Payments in respect of the relevant Payment Validation Period regardless of the number of Outcome Payments (i) under this Call-Off Contract; or (ii) under all Programme Call-Off Contracts, in respect of the relevant Payment Validation Period.

C4.4 For the avoidance of doubt, any sample of claims selected by the Contracting Body pursuant to clause C4.3 shall be selected by the Contracting Body on a random basis.

C4.5 The Contracting Body may at any time check each Outcomes Sample to verify that in respect of each and every Outcome Payment in the Outcomes Sample the relevant qualifying criteria and requirements have been satisfied.

C4.6 In checking an Outcomes Sample pursuant to clause C4.5, the Contracting Body may (but shall not be obliged to):

(a) carry out checks of data pertaining to the Participant arising out of or in connection with the Call-Off Contract against HMRC RTI;

(b) carry out checks of data pertaining to the Participant arising out of or in connection with the Call-Off Contract against the Contracting Body's data;

(c) contact the Participant; and/or

(d) treat any Unable To Validate Outcome Payment as an error or over claim for the purposes of clause C4.7.

C4.7 On expiry of each Payment Validation Period, where any error or over-claim has been identified by the Contracting Body (in its sole opinion) in an Outcomes Sample, the Contracting Body shall be entitled to:

(a) recover in full from the Contractor the amount or value of all Outcome Fails and/or Outcome Technical Fails;

(b) determine (in its sole discretion) the Outcome Error Rate;

(c) extrapolate the Outcome Error Rate across all of the Outcome Payments which have been paid by the Contracting Body to the Contractor (in respect of this Call-Off Contract) in that Payment Validation Period to produce an aggregate value of monies overpaid (the "**Outcome Aggregate Error Amount**");

(d) recover in full from the Contractor a sum or sums equal to the Outcome Aggregate Error Amount less the sum of any monies recovered by the Contracting Body pursuant to clause C4.7(a).

C4.8 For the avoidance of doubt, the Contracting Body's rights in this clause C4 shall be without prejudice to any other rights or remedies that the Contracting Body has under the Call-Off Contract (including for the avoidance of doubt any rights of set-off pursuant to clause C5 (Recovery of Sums Due).

C5 Recovery of Sums Due

C5.1 If any Outcome Payment is paid by the Contracting Body but such Outcome Payment or any part of such Outcome Payment is determined by the Contracting Body not to have been eligible for payment (an "**Ineligible Amount**") then the Contractor shall forthwith repay such Ineligible Amount to the Contracting Body.

C5.2 Wherever under the Call-Off Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any default of the Call-Off Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Call-Off Contract or under any other agreement or contract with the Contracting Body.

C5.3 Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C5.4 The Contractor shall make any payments due to the Contracting Body 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 Contracting Body to the Contractor.

C5.5 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C6 Withholding of Payments

C6.1 Without prejudice to any other right or remedy available to it under this Call-Off Contract (including without limitation any rights it may have under clause H2), provided by Law, in equity, or otherwise, the Contracting Body shall be entitled to withhold payment of any amount otherwise due to the Contractor in the event of Service Failure under this Call-Off Contract until such time as such Service Failure is rectified to the satisfaction of the Contracting Body. For the avoidance of doubt all monies withheld from the Contractor shall be paid by the Contracting Body as soon as reasonably practicable following rectification of the Service Failure to the satisfaction of the Contracting Body provided that no interest shall accrue on any payments that are withheld under this clause C6.

C6.2 For the avoidance of doubt, the rights and remedies under this clause C6 do not exclude any other rights or remedies available to the Contracting Body under this Call-Off Contract, provided by Law, in equity or otherwise.

C6.3 The rights and remedies under this clause C6 may be waived only by notice in accordance with clause A5 and in a manner that expressly states that a waiver is intended. A failure or delay by the Contracting Body in ascertaining or exercising its rights and remedies under this clause C6 shall not constitute a waiver of those rights or remedies, nor shall it prevent or restrict the further exercise of the same.

C7 Euro

C7.1 Any requirement of Law to account for the Call-Off 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 Contracting Body.

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

C8 Third Party Revenue

C8.1 The Contractor may not obtain any third party revenue, income or credit based on the Call-Off Services and/or copyright works delivered under this Call-Off Contract without the Approval of the Contracting Body.

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

C9 VAT

C9.1 The Contractor shall add VAT to the Fees at the prevailing rate as applicable and the Contracting Body shall pay the VAT to the Contractor following an eligible claim for VAT payment being notified by the Contractor.

C9.2 The Contractor shall indemnify the Contracting Body on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Contracting Body 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 Call-Off Contract. Any amounts due under this clause C9.2 shall be paid by the Contractor to the Contracting Body not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Body.

C9.3 Without prejudice to clause C9.2, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to:

(a) assess the VAT rate(s) and tax liability arising out of or in connection with the Call-Off Contract; and

(b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the Call-Off Contract to HMRC.

C9.4 The Contracting Body shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Contracting Body) in relation to VAT, including without limit:

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

(b) where the Contractor has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;

(c) where the Contractor's treatment of VAT in respect of any claim for payment made under the Call-Off Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or

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

C9.5 The Contractor acknowledges that the Contracting Body has advised the Contractor that the Contractor should seek specialist VAT advice in relation to the Call-Off Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Call-Off Contract's VAT status with HMRC.

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

(a) prior to the Referral Start Date, confirm the rate(s) of VAT that the Contracting Body should apply to each part of the funding model used in the Call-Off Contract on the Call-Off Commencement Date and on each anniversary thereof;

(b) enter into an annual self-billing agreement with the Contracting Body on or around the Call-Off Commencement Date and on each anniversary thereof, for the duration of the Call-Off Contract (a template of the current version of which is set out in Appendix 2 to Schedule 4 (Fees and Payment); and

(c) complete the VAT confirmation documentation as required by the Contracting Body (a template of the current version of which is set out in Appendix 2 to Schedule 4 (Fees and Payment)).

C10 Methods of Payment

C10.1 The Contracting Body reserves the right to set and/or alter, at its absolute discretion, the method of payment. All payments of Fees are conditional upon the Contractor providing the Call-Off Services in accordance with the terms of the Call-Off Contract.

C10.2 Without prejudice to the rest of this clause C, Outcome Payments are made on the condition that the Contractor's entitlement to such payments can be verified on request by the production of the records required under this Call-Off Contract (including as specified in the Call-Off Specification and/or the Provider Guidance). The Contracting Body shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Contracting Body may reasonably decide to accept in substitution, that no delivery of Call-Off Services has taken place and that any such purported delivery of Call-Off Services constitutes "Unsupported Call-Off Services". The Contracting Body shall be entitled to recover any and all sums paid in respect of such Unsupported Call-Off Services from the Contractor and the Contractor shall repay such sums on demand.

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1. For the purposes of this clause D1, a prohibited act is committed when the Contractor or any Staff:

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

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Call-Off Contract;

(c) commits any offence:

(i) under the Bribery Act 2010;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to the Call-Off Contract or any other contract with the Contracting Body; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Contracting Body.

D1.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Contracting Body, or that an agreement has been reached to that effect, in connection with the execution of the Call-Off Contract.

D1.3 The Contractor shall if requested, provide the Contracting Body with any reasonable assistance, to enable the Contracting Body to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

D1.4 The Contractor shall establish, maintain and enforce and require that its sub-contractors establish, maintain and enforce an anti-bribery policy and procedures which are adequate to prevent any Staff from committing any prohibited acts as set out in clause D1.1 and shall keep appropriate records of its compliance with its obligations and make such records available to the Contracting Body upon request.

D1.5 The Contractor shall immediately notify the Contracting Body in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any Staff has:

(a) been subject to an investigation or prosecution which relates to an alleged prohibited act in clauses D1.1 or D1.2;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a prohibited act as set out in clause D1.1 or D1.2; or

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

D1.6 If the Contractor notifies the Contracting Body that it suspects or knows that there may be a Default of clauses D1.1 or D1.2, the Contractor must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documentation.

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

(a) consider this a Serious Breach for the purposes of clause H2 (Termination on Default) entitling the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default) and recover from the Contractor the amount of any Loss suffered by the Contracting Body resulting from the termination, including the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the Call-Off Services and any additional expenditure incurred by the Contracting Body throughout the remainder of the Call-Off Contract Period; and

(b) recover in full from the Contractor any other Loss sustained by the Contracting Body in consequence of any Default of those clauses.

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

(a) the interpretation of clause D1; or

(b) the amount or value of any gift, consideration or commission,

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

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

D1.10 In exercising its rights or remedies under clause D1.7, the Contracting Body shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by clauses D1.1 or D1.2 and the identity of, the person performing that prohibited conduct.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.

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

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 Subject to clause E4.13, a person who is not a party to the Call-Off Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

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

D4 Environmental Requirements

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

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

(a) any purchase of products or goods listed in Schedule 1 to the Energy Information Regulations 2011 (products with energy labels) has the highest energy efficiency class possible;

(b) any purchase of products listed in Schedule 1 to the Energy Information Regulations 2011, which is not a product with energy labels within the meaning of clause D4.2(a), complies with the relevant energy efficiency benchmark for that product in paragraph 4 to Schedule 1 of the Eco-Design for Energy-Related Products Regulations 2010;

(c) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and

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

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

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

D5 Health and Safety

D5.1 The Contractor shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract.

D5.2 The Contracting Body shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Contracting Body's Premises and which may affect the Contractor in the performance of its obligations under the Call-Off Contract.

D5.3 While on the Contracting Body's Premises, the Contractor shall comply with any health and safety measures implemented by the Contracting Body in respect of Staff and other persons working there.

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

D5.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc. 1974 and any other Laws relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Call-Off Contract.

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

D6 Tax Compliance

D6.1 The Contractor represents and warrants that as at the Call-Off Commencement Date, it has notified the Contracting Body in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

D6.2 If at any point during the Call-Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

(a) notify the Contracting Body in writing of such fact within five (5) Working Days of its occurrence; and

(b) promptly provide to the Contracting Body:

(i) details of the steps taken by the Contractor and any steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Contracting Body may require.

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

D7.1 The Contracting Body shall be entitled to terminate the Call-Off Contract in the event that:

(a) the warranty given by the Contractor pursuant to clause D6.1 is false;

(b) the Contractor commits a Serious Breach of its obligations to notify the Contracting Body of any Occasion of Tax Non-Compliance as required by clause D6.2; or

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

E PROTECTION OF INFORMATION

E1 Contracting Body Data

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

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

E1.3 To the extent that Contracting Body Data is held and/or processed by the Contractor, the Contractor shall supply that data to the Contracting Body as requested.

E1.4 The Contractor shall take responsibility for preserving the integrity of Contracting Body Data and preventing the corruption or loss of that data.

E1.5 The Contractor shall perform secure back-ups of all Contracting Body Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Contractor's Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Contracting Body at all times upon request and are delivered to the Contracting Body at no less than three (3) Monthly intervals.

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

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

(a) require the Contractor (at the Contractor's expense) to restore or provide for the restoration of the Contracting Body Data or Personal Data and the Contractor shall do so as soon as practicable but not later than ten (10) calendar days following the Contracting Body giving notice to the Contractor; and/or

(b) itself restore or provide for the restoration of the Contracting Body Data or Personal Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

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

E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Call-Off Contract, the Contractor and any of its Sub-contractors, shall not offshore Contracting Body Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Contracting Body, and where the

Contracting Body gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Contracting Body in relation to the Contracting Body Data in question.

E1.10 Where the Contracting Body has given its prior written consent to the Contractor to process, host or access Contracting Body Data from premises outside the United Kingdom (in accordance with E1.9 of the Call-Off Contract):

(a) the Contractor must notify the Contracting Body (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Contracting Body Data;

(b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Contracting Body Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

E1.11 Any breach by the Contractor of this clause E1 shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E1.12 In the event the Contractor and/or the Guarantor is put into Liquidation in any of the ways outlined in clause H1.1(b) and H1.1(c) or otherwise or the Call-Off Contract is terminated by the Contracting Body pursuant to the provisions of the Call-Off Contract relating to termination on insolvency in accordance with clause H1.1, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Contracting Body;

(a) conduct a full and thorough search for any electronic and paper records held by the Contractor which contain Contracting Body Data/Information and Participant Personal Data/Information; in accordance with the Contracting Body instructions;

(b) return all such records to the Contracting Body in accordance with their instructions;

(c) permanently destroy all copies of any relevant electronic records; and

(d) provide written confirmation to the Contracting Body that the actions outlined above in this paragraph have been completed.

E1.13 In the event of a Sub-contractor of the Contractor being in Liquidation then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Contracting Body that they have been recovered.

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

E1.15 Whilst in Administration the duty of the Administrator is to help the Contractor trade. This may involve the Administrator seeking an organisation to buy up the Contractor. The assignment or novation of this Call-Off Contract to new ownership is not automatic and the Contracting Body must be consulted (in accordance with clause F1.1) and Approval obtained. Where the

Call-Off Contract is assigned or novated with the Contracting Body's Approval, the contractor must provide the Contracting Body with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

E1.16 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data. The Contractor shall reimburse the Contracting Body in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

E2 Protection of Personal Data

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

(a) the Contracting Body shall be a Data Controller of the Personal Data relating to the Participants where such data is being Processed for purposes not directly connected with the Call-Off Services and/or this Call-Off Contract;

(b) the Contractor shall be a Data Controller of the Personal Data relating to the Contractor's Staff whether or not such Personal Data is Processed pursuant to this Call-Off Contract;

(c) the Contracting Body and the Contractor shall each be a joint Data Controller where they Process (or procure the Processing of) the Personal Data in relation to the Call-Off Services and/or otherwise perform their respective obligations and/or receive the benefit of their respective rights under this Call-Off Contract. Such Personal Data provided by the Contracting Body, and collected and held by the Contractor in performing the Call-Off Services, shall form part of the Contracting Body Data.

(d) the Contractor shall have no right or authority to Process the Personal Data other than under, or in connection with, this Call-Off Contract, save in respect of Personal Data relating to the Contractor's Staff; and

(e) the Parties do not anticipate that the Contractor will Process Personal Data as Data Processor on behalf of the Contracting Body. Notwithstanding the foregoing, if and to the extent that the Contractor is Processing Personal Data on behalf of the Contracting Body, clause 32.6 shall apply to such Processing.

E2.2 Where the Parties are Processing (or procuring the Processing of) the Personal Data as joint Data Controllers, the Parties agree that they shall each be responsible for the compliance obligations imposed on a Data Controller by DPA, as follows:

(a) in respect of any Personal Data Processed prior to the Call-Off Commencement Date, the Contracting Body shall be responsible for compliance with Data Protection Principles 1, 2 and 3;

(b) in respect of any Personal Data Processed by either Party on and from the Call-Off Commencement Date, the Contractor shall be responsible for compliance with Data Protection Principles 1, 2, 3, 4, 5, 6 and 8 (where applicable), including, in particular, responding to Subject Access Requests pursuant to clauses E2.5(b) and (c); and

(c) each Party shall be responsible for compliance with Data Protection Principle 7 where the Participant Personal Data has been transmitted by it, or while Participant Personal Data is in its possession or control.

E2.3 The Parties shall at all times comply with their respective obligations under DPA.

E2.4 Each Party shall:

(a) ensure it is not subject to any prohibition or restriction which would:

(i) prevent or restrict it from disclosing or transferring the Participant Personal Data to the other Party, as required under this Call-Off Contract;

(ii) prevent or restrict it from granting the other Party access to the Participant Personal Data, as required under this Call-Off Contract; or

(iii) prevent or restrict either party from Processing the Participant Personal Data, as envisaged under this Call-Off Contract;

(b) ensure that all fair processing notices have been given (and/or, as applicable, explicit consents obtained) and are sufficient in scope to enable each party to Process the Participant Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Call-Off Contract in accordance with the DPA, which shall include notification to the Participants that Participant Personal Data may be shared with the Contracting Body and with any other third party organisations envisaged within the Call-Off Contract; and

(c) ensure that all Participant Personal Data disclosed or transferred to, or accessed by, the other Party is accurate and up-to-date, as well as adequate. relevant and not excessive to enable either Party to Process the Participant Personal Data, as envisaged under this Call-Off Contract.

E2.5 The Contractor shall:

(a) maintain technical and organisational measures sufficient to comply at least with the obligations imposed on a Data Controller by Data Protection Principle 7, and shall take reasonable steps to ensure the reliability of its personnel who shall have access to the Participant Personal Data;

(b) notify the Contracting Body (within two (2) Working Days) if it receives:

(i) a request from a Participant making a Subject Access Request; and/ or

(ii) a complaint or request relating to the Contracting Body's obligations under the DPA;

(c) provide the Contracting Body with full cooperation and assistance in relation to any complaint or Subject Access Request or other Data Subject request made, including by:

(i) providing the Contracting Body with full details of the complaint or request;

(ii) complying with a Subject Access Request within the relevant timescales set out in the DPA and in accordance with the Contracting Body's instructions;

(iii) providing the Contracting Body with any Participant Personal Data it holds in relation to the requesting Participant within the timescales required by the Contracting Body; and

(iv) providing the Contracting Body with any information requested by the Contracting Body;

(d) immediately, and in any event within twenty-four (24) hours, notify the Contracting Body where it believes that any instruction given under this Call-Off Contract is contrary to the DPA;

(e) permit the Contracting Body or the Contracting Body's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Contracting Body to enable the Contracting Body to verify and/or procure that the Contractor is in full compliance with its obligations under this clause E2;

(f) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data within the timescales required by the Contracting Body;

(g) without prejudice to the generality of clause E1, without undue delay, and in any event within twenty-four (24) hours, notify the Contracting Body about any actual or suspected breach of clause E2.5(a) and shall, within such timescale to be agreed by the parties (acting reasonably and good faith):

(i) implement any measures necessary to restore the security of compromised Participant Personal Data; and

(ii) support the Contracting Body to make any required notifications to the UK Information Commissioner and affected Participants.

E2.6 Notwithstanding clause E2.1(e), if and to the extent that the Contractor is acting as Data Processor for and on behalf of the Contracting Body, then, in addition to meeting its obligations set out in clause 32.5, it shall:

(a) Process the Personal Data only in accordance with instructions from the Contracting Body (which may be specific instructions or instructions of a general nature as set out in this Call-Off Contract as otherwise notified by the Contracting Body to the Contractor during the Call-Off Contract Period);

(b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Call-Off Services or as is required by Law (including the DPA) or any Regulatory Body (including the UK Information Commissioner);

(c) take reasonable steps to ensure the competence of any Staff who have access to the Personal Data and restrict the disclosure of the Participant Personal Data to those of its Staff who may be required by it to assist it in meeting its obligations under this Call-Off Contract, and shall ensure that no other Staff shall have access to such Participant Personal Data. Such Staff used by the Contractor to Process the Participant Personal Data to provide the Call-Off Services as they relate to Participant Personal Data shall have:

(i) undergone reasonable levels of training in DPA and in the care and handling of Personal Data; and

(ii) are informed of the confidential nature of, and have entered into appropriate contractually binding confidentiality undertakings in relation to, the Processing of Personal Data;

(d) not transfer any Participant Personal Data outside the European Economic Area without the Contracting Body's prior written consent and procuring compliance with Data Protection Principle 8;

(e) hold the Participant Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Contractor;

(f) obtain prior written consent from the Contracting Body in order to transfer the Participant Personal Data to any Sub-contractors or agents for the provision of the Call-Off Services. Such consent shall be conditional upon the Contractor undertaking thorough due diligence on the proposed Sub-contractor, including a risk assessment of the information governance related practices and processes of the subcontractor, which shall be used by the Contractor to inform any decision on appointing the proposed sub-contractor. Where requested, the Contractor shall provide to the Contracting Body the results of any such due diligence;

(g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Contracting Body; and

(h) without prejudice to the generality of clause H4.2(b) (Consequences of Expiry or Termination), on expiry or termination of this Call-Off Contract, howsoever caused, the Contractor shall immediately cease Processing the Participant Personal Data and, at the Contracting Body's option or direction, arrange for the prompt and safe return and/or secure and permanent destruction of all Participant Personal Data, together with all copies in its possession or control and, where requested by the Contracting Body, certify that such destruction has taken place. The provisions of this clause E2 shall survive termination of this Call-Off Contract.

E2.7 The Contractor shall indemnify on demand and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever caused, which the Contracting Body may suffer or incur arising out of, in respect of, or in connection with, any breach by the Contractor (or any Sub-contractor) of this clause E2.

E2.8 The Parties acknowledge and agree that Schedule 1 (The Call-Off Services) is an accurate statement of:

(a) the subject matter and duration of the Processing;

(b) the nature and purpose of the Processing;

(c) the type of Personal Data being Processed; and

(d) categories of Data Subjects.

E2.9 The Contractor shall be responsible for, and bear the risk and cost of, compliance with any change in any DPA affecting this Call-Off Contract (a "**Data Protection Change**"), and shall

seek to implement all necessary changes required to this Call-Off Contract to address a Data Protection Change, as shall be agreed between the Parties in accordance with the Change Control Procedure (for the purposes of which, a Data Protection Change shall constitute a Contract Change).

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

E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) Section 182 of the Finance Act 1989.

E3.2 Any breach by the Contractor of this clause E3 shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Call-Off Contract, each Party shall:

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E4.2 This Clause E4 shall not apply to the extent that;

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call-Off Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E4.3 The Contractor may only disclose the Contracting Body's Confidential Information to the Staff who are directly involved in the provision of the Call-Off Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Contracting Body's Confidential Information received otherwise than for the purposes of this Call-Off Contract.

E4.5 At the written request of the Contracting Body, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Contracting Body give a confidentiality undertaking before commencing any work in accordance with this Call-Off Contract.

E4.6 Nothing in this Call-Off Contract shall prevent the Contracting Body from disclosing the Contractor's Confidential Information:

(a) to any government department, any part of the Crown, or any other Contracting Authority. All government departments, any part of the Crown or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting 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, the Crown or any Contracting Authority;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(c) to the extent that the Contracting Body (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Contracting Body or any person conducting a Cabinet Office gateway review;

(e) on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Call-Off Contract (clause F1.7), to a replacement Contractor and for the purpose of the examination and certification of the Contracting Body's accounts; or

(f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Body has used its resources;

(g) the Confidential Information:

(i) was public knowledge at the time of disclosure (otherwise than by breach of this clause E4 (Confidential Information));

(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; or

(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure.

E4.7 The Contracting Body shall use reasonable endeavours to ensure that any government department, part of the Crown, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Contracting Body's obligations of confidentiality.

E4.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.9 Any breach by the Contractor of clauses E4.1 to E4.4 (inclusive) shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E4.10 Clauses E4.1 to E4.6 (inclusive) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Contract is not Confidential Information. The Contracting Body shall be responsible for determining in its absolute discretion whether any of the content of the Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.12 Notwithstanding any other term of this Call-Off Contract, the Contractor hereby gives consent for the Contracting Body to publish the Call-Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Call-Off Contract, to the general public. The Contractor shall assist and cooperate with the Contracting Body to enable the Contracting Body to publish the Call-Off Contract.

E4.13 The Contractor waives any contractual right or other confidentiality obligation in connection with the customers mentioned in the list of contracts provided by the Contractor as set out in the Invitation to Tender to demonstrate evidence of past performance. The Contractor agrees that these customers may provide information to the Contracting Body in the form of certificates of performance and answer any clarifications that the Contracting Body or anyone acting on behalf of the Contracting Body in connection with this procurement may have. The Contractor confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification from the Contracting Body the customer will not owe the Contractor any duty of care for or otherwise have any legal liability to the Contractor in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the customer. This provision is for the benefit of each customer and may be relied on with the express authority of the Contracting Body by them for the purposes of the Contracts (Rights of Third Parties) Act 1999.

E4.14 The Contracting Body confirms that it will keep confidential and will not disclose to any third parties other than the Cabinet Office and other government departments, for the purposes of verification, the content of any certificates of performance from a customer.

E4.15 If in breach of clause E4.13 the Contractor commences legal proceedings against a customer in relation to any certificate of performance or subsequent clarification provided by it to the Contracting Body the Contractor agrees that the customer shall be entitled to bring proceedings against the Contractor in the English Courts to enforce the terms of this provision (regardless of whether it is enforceable in the jurisdiction where the proceedings are brought) and to be indemnified in full for any legal costs incurred in defending such proceedings and indemnified in respect of any compensation that the customer is ordered to pay to the Contractor as a result of such proceedings. This provision will not relate to any proceedings commenced in good faith for any liability that falls outside the scope of this provision.

E4.16 The Contractor waives any contractual right or other confidentiality agreement in connection with its performance of this Call-Off Contract and agrees that the Contracting Body may provide information to the Cabinet Office, other government departments or any other contracting authority for the purposes of the Public Contracts Regulations 2015 in the form of certificates of performance and answer any clarifications that such entity or anyone acting on

behalf of such entity in connection with a procurement may have. The Contractor confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification from the Contracting Body the Contracting Body will not owe the Contractor any duty of care for or otherwise have any legal liability to the Contractor in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the Contracting Body.

E5 Freedom of Information

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

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

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

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

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

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

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

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

(a) in certain circumstances without consulting the Contractor; or

(b) following consultation with the Contractor and having taken their views into account;

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

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

E5.8 The Contractor acknowledges that the Call-Off Commercially Sensitive Information listed in the Call-Off Commercially Sensitive Information Schedule is of indicative value only and that the Contracting Body may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

E6.1 The Contractor shall not:

(a) make any press announcements or publicise this Call-Off Contract or its contents in any way; or

(b) use the Contracting Body's name or brand in any promotion or marketing or announcement of orders,

without the Approval of the Contracting Body.

E6.2 The Contracting Body shall be entitled to publicise the Call-Off Contract in accordance with any legal obligation upon the Contracting Body including any examination of the Call-Off Contract by Audit Agents or otherwise.

E6.3 The Contractor shall ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E6.4 The Contractor shall pay the utmost regard to the standing and reputation of the Contracting Body and shall ensure that neither it, nor any of its Affiliates or Staff does anything (by act or omission) which causes material adverse publicity for the Contracting Body, brings the Contracting Body into disrepute, damages the reputation of the Contracting Body or harms the confidence of the public in the Contracting Body, regardless of whether or not such act or omission is related to the Contractor's obligations under the Call-Off Contract.

E6.5 The Contractor shall at all times supply the Call-Off Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

E6.6 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its Sub-contractors.

E6.7 If so requested by the Contracting Body the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the Call-Off Services(s) shall carry only logos and markings approved by the Contracting Body. This may include, but shall not be limited to, such banner or logo as the Contracting Body shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this Call-Off Contract shall be submitted to the Contracting Body for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

E6.8 Without prejudice to its obligations under clause A9, the Contractor shall observe the European Commission's and the Contracting Body's publicity requirements and regulations regarding ESF projects, as amended from time to time. The Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general

public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Contracting Body, the Contractor shall provide a copy of its formal marketing and publicity plan clearly setting out the publicity arrangements used by the Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing plan is requested by the Contracting Body, the Contractor shall retain copies of its plan (as revised from time to time) as part of the Contractor's record keeping obligations under this Call-Off Contract.

E7 Security

E7.1 The Contracting Body shall be responsible for maintaining the security of the Contracting Body premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Contracting Body while on the Contracting Body premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E7.3 The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Plan and the Security Policy.

E7.4 The Contracting Body shall notify the Contractor of any changes or proposed changes to the Security Policy. Any changes must be agreed in accordance with the procedure in clause F3.

E7.5 Until and/or unless a change to the Security Policy is agreed by the Contracting Body pursuant to clause E7.4 the Contractor shall continue to perform the Call-Off Services in accordance with its existing obligations.

E7.6 The Contractor shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out in Schedule 6 (Security Requirements and Plan).

E8 Intellectual Property Rights

E8.1 Save as granted under the Call-Off Contract, neither the Contracting Body nor the Contractor shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Contractor acknowledges that the Contracting Body Data is the property of the Contracting Body and the Contracting Body hereby reserves all Intellectual Property Rights which may exist in the Contracting Body Data.

E8.2 The Contracting Body shall grant the Contractor a non-exclusive, revocable, free licence for the Call-Off Contract Period to use the Contracting Body's Intellectual Property Rights where it is necessary for the Contractor to supply the Call-Off Services. The Contractor shall have the right to sub license the Sub-contractor's use of the Contracting Body's Intellectual Property Rights. At the end of the Call-Off Contract Period the Contractor shall cease use, and shall ensure that any Sub-contractor ceases use of the Contracting Body's Intellectual Property Rights.

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

E8.4 The Parties agree that:

(a) all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by or on behalf of the Contracting Body shall remain the property of the Contracting Body; and

(b) any Project Specific Intellectual Property Rights arising shall belong to the Contracting Body and in such regard, the Contractor hereby assigns with full title guarantee and free from all third party rights, any project Specific Intellectual Property Rights to the Contracting Body,

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Call-Off Contract) without Approval, use or disclose any such Contracting Body Intellectual Property Rights (including any Project Specific Intellectual Property Rights).

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

E8.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Call-Off Services. The Contractor shall, during and after the Call-Off Contract Period, indemnify and keep indemnified and hold the Contracting Body and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Body or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from;

(a) items or materials based upon designs supplied by the Contracting Body; or

(b) the use of data supplied by the Contracting Body which is not required to be verified by the Contractor under any provision of the Call-Off Contract.

E8.7 The Contracting Body shall notify the Contractor in writing of any claim or demand brought against the Contracting Body for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Contracting Body on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Contracting Body; and

(c) shall not settle or compromise any claim without the Contracting Body's prior written consent (not to be unreasonably withheld or delayed).

E8.8 The Contracting Body shall at the request of the Contractor provide to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Contracting Body or the Contractor for infringement or alleged

infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the Call-Off Contract. The Contractor shall indemnify the Contracting Body for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.4(a) or (b).

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

E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Call-Off Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Contracting Body and, at its own expense and subject to the consent of the Contracting Body (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Call-Off Services without reducing the performance or functionality, or substitute alternative Call-Off Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Call-Off Services or to the substitute Call-Off Services; or

(b) procure a licence to use and supply the Call-Off Services, which are the subject of the alleged infringement, on terms which are acceptable to the Contracting Body,

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

E9 Audit and the National Audit Office and Open Book Data

[DN: Clause E9 is subject to change. Specific provisions in clause E9 re Audit and the National Audit Office and Open Book Data for each Call-Off Contract will be published at the time of Mini Competition.]

E9.1 The Contractor shall at all times keep and maintain the Open Book Data.

E9.2 Without prejudice to clauses A9 and E9.1, as the delivery of this Call-Off Contract may be funded by, and/or may be used as match for contracts funded by the Contracting Body using ESF monies the Contractor and any Sub-contractors appointed by it shall be bound by the additional ESF Requirements, including but not limited to the requirement to maintain the Open Book Data until at least the Document Retention End Date.

E9.3 Without prejudice to the generality of clauses E9.1 and E9.2, the Contractor shall, at all times, upon written request by the Contracting Body, provide written confirmation of a summary of any of the Open Book Data, including details of any funds held by the Contractor specifically to cover its on-going costs, in such other form and detail as the Contracting Body may reasonably require, to enable the Contracting Body to monitor the performance by the Contractor of its obligations under the Call-Off Contract, its solvency and the level of profit the Contractor is making from the supply of the Call-Off Services.

E9.4 The Contractor shall provide (or procure provision of) access at all reasonable times to the Contracting Body, its duly authorised staff or agents and any Audit Agents to inspect the

Open Book Data and such records and accounts (including those of Sub-contractors) as the Contracting Body may require from time to time. The Contracting Body shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Contracting Body to do so.

E9.5 Duly authorised staff or agents of the Contracting Body shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to Participants during the hours when the Contractor is supplying the Call-Off Services with a view to verifying that the Contractor is supplying the Call-Off Services in accordance with the Call-Off Contract.

E9.6 The Contractor shall provide the Open Book Data and all records and accounts referred to in this clause E9 (together with copies of the Contractor's published accounts) until the end of the Payment Tail Period, and shall provide such records and accounts on request until the Document Retention End Date, to the Contracting Body and the Audit Agents.

E9.7 The Contracting Body shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the Call-Off Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Audit Agents is outside of the control of the Contracting Body.

E9.8 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Authority under this clause E9.

E9.9 The Contractor shall provide the rights set out in this clause E9 to any duly authorised staff or agents of the Contracting Body, the National Audit Office, the European Court of Auditors, the European Commission, the Audit Agents and any third parties as notified by the Contracting Body to the Contractor from time to time.

E9.10 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to supply of the Call-Off Services, the Contracting Body reserves for itself and any Audit Agents or any government department the right of immediate access to the Open Book Data and all records and accounts referred to in this clause E9 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Call-Off Contract or at any time thereafter.

E9.11 The Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor (or any Sub-contractor) of this clause E9.

E10 Exceptional Audits

E10.1 The Contractor shall permit the Contracting Body and/or its appointed representatives access to conduct an audit (an **"Exceptional Audit"**) of the Contractor in any of the following circumstances:

(a) actual or suspected impropriety or Fraud;

(b) there are reasonable grounds to suspect that:

(i) the Contractor is in Default under the Call-Off Contract;

(ii) the Guarantor may be in default of the Guarantee;

(iii) the Contractor and/or the Guarantor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or

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

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

E10.2 Subject to the provisions of clause E10.3, if the Contracting Body notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.4 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours.

E10.3 Without prejudice to clause E10.2, if the Contracting Body notifies the Contractor of an Exceptional Circumstance to which the provisions of clause E9.10 also apply and that it wishes to conduct an Exceptional Audit, the Contractor shall provide immediate access in accordance with clause E9.10.

E11 Audit Costs

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

(a) the Contractor shall reimburse the Contracting Body for all the Contracting Body's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

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

E12 Malicious Software

E12.1 The Contractor shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

E12.2 Notwithstanding clause E12.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Contracting Body Data, assist each other to mitigate any losses and to restore the Call-Off Services to their desired operating efficiency.

E12.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.2 shall be borne by the Parties as follows:

(a) by the Contractor where the Malicious Software originates from the Contractor Software, Third Party Software licenced to the Contractor (and/or any Sub-contractor) or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contractor); and

(b) by the Contracting Body if the Malicious Software originates from the Contracting Body Software, Third Party Software licenced to the Contracting Body or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contracting Body).

E13 Provision of Management Information

The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Contracting Body in accordance with the provisions of this clause E13 and Schedule 21 (Management Information).

E14 Records Relating to the Provision of the Call-Off Services

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

F CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without Approval. Sub-contracting any part of the Call-Off Contract shall not relieve the Contractor of any of its obligations or duties under the Call-Off Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

F1.3 Where the Contracting Body has consented to the Contractor entering into a sub-contract, a copy of each sub-contract shall, at the request of the Contracting Body, be sent by the Contractor to the Contracting Body within ten (10) Working Days of the Contracting Body's request.

F1.4 The Contractor shall ensure that each Sub-contract shall include:

(a) provisions which will enable the Contractor to discharge its obligations under the Call-Off Contract, including but not limited to adherence to the Minimum Performance Levels and the Customer Service Standards;

(b) a right under the Contracts (Rights of Third Parties) Act 1999 for the Contracting Body to enforce any provisions under each Sub-contract which are capable of conferring a benefit on the Contracting Body;

(c) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under each Sub-contract to the Contracting Body or any Replacement Contractor without restriction (which for the avoidance of doubt shall

mean without any need to obtain any consent or approval from any Sub-contractor) or payment by the Contracting Body;

(d) obligations no less onerous on each Sub-contractor than those imposed on the Contractor under this Call-Off Contract in respect of

(i) data protection requirements set out in clause E;

(ii) FOIA requirements set out in clause E;

(iii) the obligation not to cause material adverse publicity or damage the reputation of the Contracting Body set out in clause E;

(iv) the keeping of records in respect of the services being provided under the Sub-contract; and

(v) the conduct of audits set out in clause E

(e) provisions enabling the Contractor to terminate each Sub-contract on terms no more onerous on the Contractor than those imposed on the Contracting Body under clause H of the Call-Off Contract;

(f) a provision restricting the ability of the Sub-contractor to sub-contract all or any part of the services supplied under each Sub-contract without first seeking Approval

(g) a provision enabling the Contractor, the Contracting Body or any other person on behalf of the Contracting Body to itself supply or procure the supply or all or part of the services being supplied under each Sub-contract on substantially the same terms as are set out in clause F5.3; and

(h) all such other provisions as may be required to be set out elsewhere in this Call-Off Contract.

F1.5 The Contractor shall not terminate or materially amend the terms of any Sub-contract without Approval.

F1.6 Notwithstanding clause F1.1, the Contractor may assign to a third party (**"the Assignee"**) the right to receive payment of the Fees or any part thereof due to the Contractor under this Call-Off Contract. Any assignment under this clause F1 shall be subject to:

(a) reduction of any sums in respect of which the Contracting Body exercises its right of recovery under clause C5;

(b) withholding of any sums in respect of which the Contracting Body exercises its right under clause C6;

(c) all related rights of the Contracting Body under the Call-Off Contract in relation to the recovery of sums due but unpaid; and

(d) the Contracting Body receiving notification under both clauses F1.7 and F1.8.

F1.7 In the event that the Contractor assigns the right to receive the Fees under clause F1.6, the Contractor or the Assignee shall notify the Contracting Body in writing of the assignment and the date upon which the assignment becomes effective.

F1.8 The Contractor shall ensure that the Assignee notifies the Contracting Body, at least five (5) Working Days prior to submission of any invoice, of the Assignee's contact information and bank account details to which the Contracting Body is requested to make payment.

F1.9 The provisions of clause C3 shall continue to apply in all other respects after any such assignment and shall not be amended without Approval.

F1.10 Subject to clause F1.11, the Contracting Body may assign, novate or otherwise dispose of its rights and obligations under the Call-Off 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 Contracting Body; or

(c) any private sector body which substantially performs the functions of the Contracting Body,

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

F1.11 Any change in the legal status of the Contracting Body such that it ceases to be a Contracting Authority shall not, subject to clause F1.10, affect the validity of the Call-Off Contract. In such circumstances, the Call-Off Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Contracting Body.

F1.12 If the rights and obligations under the Call-Off Contract are assigned, novated or otherwise disposed of pursuant to clause F1.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Contracting Body 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 Contracting Body in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof with the prior consent in writing of the Contractor.

F1.13 The Contracting Body may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Call-Off Contract. In such circumstances the Contracting Body shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Call-Off Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure it carries out whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Call-Off Contract.

F1.15 The Contractor shall:

(a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days from the receipt of a valid invoice;

(b) include within the Management Information a summary of its compliance with clause F1.15(a), such data to be certified each quarter by a director of the Contractor as being accurate and not misleading.

F1.16 The Contractor shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call-Off Contract) contain provisions:

(a) giving the Contractor a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;

(b) requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

(c) that if the Contractor or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;

(d) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

(e) giving the Contracting Body a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and

(f) requiring the Sub-contractor to include a clause to the same effect as this clause F1.16 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call-Off Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Call-Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy under this Call-Off Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of the same.

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

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

F3 Changes to the Call-Off Contract

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

F3.2 Save as provided in clause F3.3 below, the Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Call-Off Contract which has the effect of:

(a) rendering this Call-Off Contract materially different in character from this Call-Off Contract as at the date of this Call-Off Contract;

(b) changing the economic balance of this Call-Off Contract in favour of the Contractor in a manner which is not provided for in this Call-Off Contract as at the date of this Call-Off Contract; or

(c) extending the scope of this Call-Off Contract considerably.

F3.3 The Parties may agree to make a Contract Change or Operational Change or Substantial Change to this Call-Off Contract where such change is provided for in the Call-Off Contract and/or in the ITT.

F4 Severability

If any provision of the Call-Off Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Call-Off Contract shall continue in full force and effect as if the Call-Off Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Step-In Rights

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

(a) the action the Contracting Body wishes to take and in particular the Call-Off Services that it wishes to control (the "**Required Action**");

(b) the Step-In Trigger Event that has occurred and whether the Contracting Body believes that the Required Action is due to the Contractor's Default;

(c) the date on which it wishes to commence the Required Action;

(d) the time period which it believes will be necessary for the Required Action;

(e) whether the Contracting Body will require access to the Contractor's premises and/or the Premises; and

(f) to the extent practicable, the impact that the Contracting Body anticipates the Required Action will have on the Contractor's obligations to supply the Call-Off Services during the period that the Required Action is being taken.

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

(a) may take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

(b) shall keep records of the Required Action taken and provide information about the Required Action to the Contractor;

(c) shall co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to supply the Call-Off Services in relation to which the Contracting Body is not assuming control; and

(d) shall act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Contracting Body's rights under this clause F5.

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

(a) the Contractor shall not be obliged to supply the Call-Off Services to the extent that they are the subject of the Required Action;

(b) the Contractor shall not be entitled to any Fees which, in the Contracting Body's reasonable opinion, directly derive from the Contracting Body taking the Required Action; and

(c) where the Contracting Body has served a Step-In Notice as a result of any Default by the Contractor, the Contractor shall pay to the Contracting Body on demand, and on an indemnity basis, all costs, fees and expenses properly incurred by the Contracting Body in taking the Required Action to the extent that such costs, fees and expenses exceed the Fees that would otherwise have been payable to the Contractor under this Call-Off Contract in relation to the Call-Off Services that are subject to the Required Action.

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

(a) the degradation of any Call-Off Services not subject to the Required Action; or

(b) the non-achievement of a Minimum Performance Level or a Customer Service Standard that which would have been achieved had the Contracting Body not taken the Required Action,

then the Contractor shall be entitled to an agreed adjustment of the Fees.

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

(a) the Required Action it has actually taken; and

(b) the date on which the Contracting Body plans to end the Required Action (the "**Step-Out Date**") subject to the Contracting Body being satisfied with the Contractor's ability to resume the provision of the Call-Off Services and the Contractor's plan developed in accordance with clause F5.6.

F5.6 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Contracting Body's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Contractor of the Call-Off Services,

including any action the Contractor proposes to take to ensure that the affected Call-Off Services satisfy the requirements of this Call-Off Contract.

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

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

(a) limb (c) of the definition of a Step-In Trigger Event; or

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

F6 Partial Termination

F6.1 In the event that the Contracting Body considers that there has been a Default by the Contractor, then the Contracting Body may, at its sole discretion, and without prejudice to its other rights and remedies under the Call-Off Contract including under clause H2 (Termination on Default), without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Call-Off Services only (whereupon a corresponding reduction in the Fees shall be made) and thereafter itself supply or procure a third party to supply such part of the Call-Off Services.

F7 Formal Warning Notice

F7.1 Where the Contracting Body considers that there has been Non Service Failure Default by the Contractor and that such Non Service Failure Default is capable of remedy by the Contractor, then the Contracting Body may issue a Formal Warning Notice to the Contractor specifying the Non Service Failure Default and requiring that it be remedied by the Contractor at the Contractor's cost within ten (10) Working Days or such other period of time as the Contracting Body may specify in the Formal Warning Notice. In the event that the Contractor fails to remedy the Non Service Failure Default in accordance with the Formal Warning Notice, this will constitute a Serious Breach for the purposes of clause H2 (Termination on Default) entitling the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

F7.2 The Contracting Body reserves the right to recover all Losses connected with any or all Non-Service Failure Defaults.

F8 Remedies Cumulative

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

F9 Monitoring of Call-Off Contract Performance

F9.1 The Contracting Body (including any representative of the Contracting Body) shall monitor the Contractor's performance in supplying the Call-Off Services in accordance with the provisions of Schedule 3 (Contract Performance Reviews & Contractors Systems Assurance) and the Provider Guidance or such other requirements as notified by the Contracting Body to the Contractor from time to time.

F9.2 The Performance Managers shall have regular meetings to monitor and review:

(a) the performance of the Call-Off Contract;

(b) the achievement of the Minimum Performance Level;

(c) the achievement of the Customer Service Standards;

(d) the supply of the Call-Off Services; and

(e) any other matter the Parties consider appropriate,

and the Contractor shall comply with the provisions of Schedule 3 (Contract Performance Reviews & Contractors Systems Assurance) in relation to the monitoring and reporting of its performance. The Contracting Body may organise regular monitoring and spot checks of the Premises at any time to ensure the Contractor is complying with its obligations under the Call-Off Contract and the Contractor shall co-operate fully, at its own cost, with the Contracting Body. The Contracting Body shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the supply of the Call-Off Services by the Contractor.

F9.3 The Contracting Body may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Contractor's performance in supplying the Call-Off Services and the Contractor will co-operate with the assessor and take all necessary steps to implement recommendations made. Any changes to any Call-Off Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with the Change Control Procedure.

F9.4 The Contractor shall ensure that the Contracting Body (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in clause F9 including putting in place arrangements to permit legal access to information as may be required.

F9.5 With effect from the Call-Off Commencement Date, the Contracting Body and the Contractor shall meet at the times and with such frequency as specified in Schedule 3 (Contract Performance Reviews & Contractor Systems Assurance) or as notified by the Contracting Body to the Contractor from time to time. Such meetings shall be convened by the Contracting Body upon the Contracting Body giving written notice to the Contractor.

F9.6 Following any review under clause F9.5 (or otherwise in accordance with the provisions of this Call-Off Contract) if the Contracting Body considers, in its sole discretion that the Contractor is not complying with its obligations under the Call-Off Contract the Contracting Body shall notify the Contractor of such non-compliance. The Contractor shall, in the absence of any other longer time period specified in the notice have twenty-eight (28) days in which to

rectify such non-compliance and demonstrate to the satisfaction of the Contracting Body acting reasonably that it is compliant with the terms of the Call-Off Contract. In the event that the Contractor is not able to demonstrate its compliance in the time period specified then the Contracting Body shall be entitled to withhold payment of all payments which would otherwise be due and payable to the Contractor in accordance with clause [C6] until such time as the non-compliance is rectified. For the avoidance of doubt no interest shall accrue on any payments that are withheld under this clause.

F9.7 The Contracting Body shall monitor the Contractor's (and any Sub-contractor's) performance in supplying the Call-Off Services to assess, amongst other things, compliance with Competition Law. Where (in the opinion of the Contracting Body), the Contractor (or any Affiliate or any of the Contractor's Group) has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law, without prejudice to any other rights or remedies that the Contracting Body has under the Call-Off Contract the Contracting Body shall be entitled to consider this as a Serious Breach for the purposes of clause H2 (Termination on Default) entitling the Contracting Body (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

F9.8 Where (in the opinion of the Contracting Body), any Sub-contractor has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of competition law, the Contracting Body may require the Contractor to terminate the Sub-contract with immediate effect. For the avoidance of doubt, the Contracting Body shall not be liable for any costs incurred by the Contractor (or the Sub-contractor) in connection with the termination of such Sub-contract.

F10 Financial Assurance

F10.1 The Contractor is required to disclose immediately to the Contracting Body any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F10.2 The Contractor is required to notify the Contracting Body immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.

F10.3 Without prejudice to any other provision in this Call-Off Contract, where requested by the Contracting Body, the Contractor is required to provide any financial information which could include but is not limited to a copy of its Annual Accounts, Annual Returns, management accounts, evidence to the Contracting Body's satisfaction of its assets, liabilities and funding position, and copies of its board papers and board minutes.

F10.4 If requested by the Contracting Body, where a Guarantee has been provided in accordance with clause G4, the Contractor is required to provide the documents detailed in clause F10.3 for the Guarantor, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into pounds sterling, stating the conversion rate used.

F11 Extension of Call-Off Contract

[DN: Extension of the Call-Off Contract is subject to change. Specific provisions re Extension of Call-Off Contract for each Call-Off Contract will be published at the time of Mini-Competition.]

F11.1 The Contracting Body may, by giving written notice to the Contractor not less than [one (1)/six (6) Month[s]] (or on such shorter notice period as may be agreed by the Parties) prior to the Call-Off Services Cessation Date, extend the period by which Referrals of Participants can be made by the Contracting Body by one (1) or more extensions up to a maximum of twenty-four (24) Months in total. The provisions of this Call-Off Contract shall continue to apply (subject to any Variation or adjustment to the Fees pursuant to clause F3) throughout any such extended period.

F12 Entire Agreement

F12.1 This Call-Off Contract, together with the Umbrella Agreement, constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Call-Off Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F12.2 Each of the Parties acknowledges and agrees that in entering into this Call-Off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call-Off Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Call-Off Contract.

F12.3 In the event of, and only to the extent of, any conflict between the clauses of this Call-Off 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 Call-Off Contract;

(b) the Schedules and any Appendices or Annexes;

(c) the Call-Off Specification;

(d) the Tender;

(e) the Provider Guidance; and

(f) any other document referred to in the clauses of this Call-Off Contract.

F12.4 In the event that the Contractor becomes aware of any inconsistency between the requirements contained in the above documents, the Contractor shall immediately notify the Contracting Body's Representative in writing of such inconsistency and the Contracting Body's Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

F13 Counterparts

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

F14 Further Assurance

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

G LIABILITIES

G1 Liability and Indemnity

G1.1 Neither Party excludes or limits liability to the other Party for:

(a) death or personal injury caused by its negligence;

(b) Fraud;

(c) fraudulent misrepresentation; or

(d) any Default of any obligations implied by Section 2 of the Supply of Goods and Call-Off Services Act 1982.

G1.2 Subject to clause G1.3, the Contractor shall indemnify the Contracting Body and keep the Contracting Body indemnified fully:

(a) in respect of any personal injury or loss of or damage to tangible property incurred by the Contracting Body or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Call-Off Contract; and

(b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Call-Off Services by any Participant; and

(c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of:

(i) the supply (or the late or purported supply), of the Call-Off Services;

(ii) the performance or non-performance by the Contractor of its obligations under the Call-Off Contract;

(iii) the presence of the Contractor or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Contractor; or

(iv) any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Body or by Default by the Contracting Body of its obligations under the Call-Off Contract.

G1.4 Subject to clause G1.3 responsibility for the control, management and supervision of all Participants shall rest entirely with the Contractor subject to the Participant complying with all reasonable instructions and directions which the Contractor may issue to the Participant from time to time. The Contracting Body shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant.

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

(a) the aggregate liability of either Party for Defaults that result in direct loss of or damage to the property of the other under or in connection with the Call-Off Contract [(including the Contracting Body Premises unless a higher limit has been agreed in a separate document)] shall in no event exceed [♦] pounds sterling (£[♦]); and

(b) the annual aggregate liability under the Call-Off Contract of either Party for all Defaults (including any liability incurred under G1.5(a) but excluding any liability under G1.5(c) shall in no event exceed the greater of [♦] or [♦] per cent. ([♦]%) of the Fees paid and payable by the Contracting Body to the Contractor in the year in which the liability arises,

provided that:

(c) the liability of the Contractor under clause E8.33 (Intellectual Property Rights), clause E1 (Contracting Body Data) or clause E2 (Protection of Personal Data) shall not be limited or capped.

[DN: Limits to liability and caps for each Call-Off Contract will be inserted at the time of issue fo the Invitation to participate in Mini Competition in respect of the relevant Call-Off Contract.]

G1.6 Subject always to clause 32.7, G1.1, G1.3 and G2 and other than as expressly set out in this Call-Off Contract, in no event shall either Party be liable to the other for any:

(a) loss of profits, business, revenue or goodwill; and

(b) indirect or consequential loss or damage.

G1.7 The Contractor shall indemnify and keep indemnified the Contracting Body against all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any Default by the Contractor of clause A9 which, for the avoidance of doubt, include any claims, demands, actions, costs (including legal costs and disbursements) and losses which relate to the Contracting Body's obligations as on an ESF Co-Financing Organisation or connected with the ESF Requirements. The Contractor's liability under this indemnity is not limited under clauses G1.5 and G1.6.

G1.8 Each Party shall use reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Call-Off Contract, including any Loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Call-Off Contract.

G2 Insurance

[DN: Insurance provisions are subject to change. Specific provisions re insurance (including Schedule 22 (Insurance Requirements)) for each Call-Off Contract will be published at the time of Mini-Competition.]

The Contractor shall comply with the provisions of Schedule 22 (Insurance Requirements) in relation to obtaining and maintaining insurance.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:

(a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Call-Off Contract and that the Call-Off Contract is executed by a duly authorised representative of the Contractor;

(b) in entering the Call-Off Contract it has not committed any Fraud;

(c) as at the Call-Off Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Contracting Body prior to execution of the Call-Off Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Call-Off 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 Call-Off Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract;

(h) in the three (3) years prior to the date of the Call-Off 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 Call-Off Contract.

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

G3.3 For the avoidance of doubt, the fact that any provision within this Call-Off Contract is expressed as a warranty shall not preclude any right of termination which the Contracting Body may have in respect of breach of that provision by the Contractor.

G4 Deed of Guarantee

G4.1 Unless otherwise agreed by the Contracting Body in writing, this Call-Off Contract is conditional upon the Contractor procuring that the Guarantor shall:

(a) execute and deliver to the Contracting Body the Guarantee; and

(b) deliver to the Contracting Body a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee in accordance with the provisions of Schedule 21 (Management Information).

G4.2 On satisfaction of clause G4.1, the Contracting Body shall promptly notify the Contractor that those conditions have been satisfied.

G4.3 The conditions specified in this clause G4 are inserted solely for the Contracting Body's benefit. The Contracting Body may waive them, in whole or in part and with or without conditions, without prejudicing the Contracting Body's right to require subsequent fulfilment of such conditions.

G4.4 Subject to clause G4.5, and for the avoidance of doubt, if clause G4.1 has not been satisfied, on or before **[Insert date]** this Call-Off Contract shall not take effect.

G4.5 Notwithstanding clauses G4.1 to G4.4, the Contracting Body reserves the right (in its absolute discretion) to waive the requirement for a Guarantee in its entirety.

H DEFAULT, DISRUPTION AND TERMINATION

[DN: Termination provisions in this clause H are subject to change. Specific Termination provisions for each Call-Off Contract will be published at the time of Mini-Competition.]

H1 Termination on Insolvency and Change of Control

H1.1 The Contracting Body may terminate the Call-Off Contract with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice), and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination by notice in accordance with clause H3.1), by notice in writing where the **Contractor and Guarantor is a company** and in respect of the Contractor or Guarantor:

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

(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Contracting Body in writing immediately if the Contractor and/or Guarantor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Contracting Body may terminate the Call-Off Contract by notice in writing with immediate effect (or with the effect from the date specified by the Contracting Body in the termination notice) and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H3.1) within six (6) Months of:

(a) receipt of notice that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Contracting Body becomes aware of the Change of Control,

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

H1.3 The Contracting Body may terminate the Call-Off Contract with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice), and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H3.1), by notice in writing where the **Contractor is an individual** and:

(a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;

(b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;

(c) a receiver, or similar officer, is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of his assets;

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, seizure or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the business.

H1.4 The Contracting Body may terminate the Call-Off Contract with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice), and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination, as referred to in clause H3.1), by notice in writing where the **Contractor or Guarantor is a partnership** and in respect of the Contractor and/or Guarantor:

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

(b) it is for any reason dissolved;

(c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;

(d) a receiver, or similar officer, is appointed over the whole or any part of its assets;

(e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

(f) any of the following occurs in relation to any of its partners:

(i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;

(ii) a petition is presented for his bankruptcy; or

(iii) a receiver, or similar officer, is appointed over the whole or any part of his assets.

H1.5 The Contracting Body may terminate the Call-Off Contract with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice), and without liability (including for the avoidance of doubt, without liability for any payment in respect of termination as referred to in clause H3.1), by notice in writing where the **Contractor and/or Guarantor is a limited liability partnership** and in respect of the Contractor and/or Guarantor:

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

(b) it is for any reason dissolved;

(c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

(d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

(e) a petition is presented for its winding up (which is not dismissed within fourteen (14) days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

(f) a receiver, or similar officer, is appointed over the whole of any part of its assets;

(g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

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

H2 Termination on Default

[DN: Termination on Default is subject to change. Specific provisions re Termination on Default for each Call-Of Contract will be published at time of Mini-Competition.]

H2.1 The Contracting Body may terminate the Call-Off Contract by written notice to the Contractor with immediate effect (or with effect from the date specified by the Contracting Body in the termination notice) and without liability if:

(a) the Contracting Body considers in its sole discretion that the Contractor has not complied to the satisfaction of the Contracting Body with a Formal Warning Notice issued by the Contracting Body under clause F7; and/or

(b) the Contracting Body considers in its sole discretion that a Default which is not capable of remedy has been committed; and/or

(c) the Contracting Body considers in its sole discretion that a Default which constitutes a Serious Breach of the Call-Off Contract has been committed; and/or

(d) and to the extent that clause B16 entitles the Contracting Body to terminate the Call-Off Contract in accordance with this clause H2; and/or

(e) if a Contractor Termination Event occurs; and/or

(f) if the Call-Off Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure; and/or

(g) the Contracting Body has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Call-Off Contract.

H2.2 If the Contracting Body fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Contracting Body in writing of such failure to pay. If the Contracting Body fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Call-Off Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Contracting Body exercising its rights under clause C5.

H2.3 Costs arising in respect of termination under this clause H2 shall be allocated between the Parties in accordance with Part A of Schedule 11 (Allocation of Costs on Termination).

H3 Termination on Notice

H3.1 Without affecting any other right or remedy available to it, the Contracting Body may terminate the Call-Off Contract by written notice to the Contractor. The length of the notice period for such termination shall be set out in such termination notice.

[DN: Termination on Notice is subject to change. Specific Termination on Notice provisions for each Call-Off Contract will be published at time of Mini-Competition.]

H3.2 Costs arising in respect of any termination under this clause H3 shall be allocated between the Parties in accordance with Part B of Schedule 11 (Allocation of Costs on Termination).

H4 Termination under Regulation 73(1)

H4.1 Without affecting any other right or remedy available to it, the Contracting Body may terminate the Call-Off Contract with immediate effect on giving written notice if any provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

H5 Consequences of Expiry or Termination

H5.1 Where the Contracting Body is entitled to terminate the Call-Off Contract (howsoever arising) the Contracting Body shall also be entitled to terminate any other Call-Offf Contract entered into between the Parties procured under the same Mini Competion.

H5.2 Where the Contracting Body terminates the Call-Off Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Call-Off Services ("Other Arrangments") , the Contracting Body may recover from the Contractor the cost of making such Other Arrangements and any expenditure incurred (including but not limited to legal costs) by the Contracting Body in connection with such Other Arrangements in accordance with Part A of Schedule 11 (Allocation of Costs on Termination). The Contracting Body shall take all reasonable steps to mitigate such cost and expenditure. Where a Call-Off Contract is terminated under clause H2, the Contracting Body shall be entitled to withhold payment of any amount otherwise due to the Contractor under this Call-Off Contract until such time as the Contracting Body has been able to establish the cost of making such Other Arrangements. For the avoidance of doubt, no interest shall accrue on any payments that are withheld under this clause H5.2.

H5.3 On the expiry or termination of the Call-Off Contract for any reason (or in advance if stated as such), the Contractor shall:

(a) if requested by the Contracting Body, immediately return to the Contracting Body all Confidential Information, Personal Data and the Contracting Body's Intellectual Property Rights 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 supplying the Call-Off Services;

(b) without prejudice to clause H5.3(a), if requested by the Contracting Body, transfer to the Contracting Body (or such other person as the Contracting Body may direct) all Participants' records (or specific Participants' records as identified by the Contracting Body). Where ownership of such records is not vested in the Contracting Body, the Contractor shall transfer, or procure the transfer of, all rights, title and interest in and to such records to the Contracting Body (or such other person as the Contracting Body may direct) at no cost to the Contracting Body (or the third person as the case may be);

(c) if requested by the Contracting Body, promptly deliver to the Contracting Body all Property (including materials, documents, information and access keys) provided to the Contractor by the Contracting Body. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(d) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Call-Off Services to the Replacement Contractor and/or the completion of any work in progress in accordance with the provisions of Schedule 10 (Arrangements Leading up to and Following Expiry or Termination);

(e) no later than either:

(i) [♦ (♦)] Month(s) in advance of expiry; or

(ii) upon notice of termination of this Call-Off Contract,

promptly provide all information concerning the supply of the Call-Off Services which may reasonably be requested by the Contracting Body for the purposes of adequately understanding the manner in which the Call-Off Services have been supplied or for the purpose of allowing the Contracting Body or the Replacement Contractor to conduct due diligence in accordance with the provisions of Schedule 10 (Arrangements Leading up to and Following Expiry or Termination);

(f) if requested by the Contracting Body, use all reasonable endeavours to promptly procure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Contracting Body or the Replacement Contractor of any third party Intellectual Property Rights that are necessary for the continued supply of the Call-Off Services following termination or expiry of the Call-Off Contract. Where the owner of the third party Intellectual Property Rights requires payment in consideration for transferring or granting such licence or sub-licence (the "**Transfer Fee**") the Contractor shall first notify the Contracting Body. If the Contracting Body informs the Contractor that the transfer/granting of a licence should proceed, the Contracting Body shall (unless the end of the Call-Off Contract Period arises due to the Contractor's Default) be responsible for paying the Transfer Fee. For the avoidance of doubt, the Contracting Body shall have no liability for any Transfer Fee that the Contractor has incurred without obtaining Approval; and

(g) repay to the Contracting Body the Fees (or any part(s) thereof) the Contractor has been paid in advance in respect of Call-Off Services not provided by the Contractor as at the date of expiry or termination.

H5.4 If the Contractor fails to comply with clauses H5.3(a) and (c), the Contracting Body may recover possession thereof and the Contractor grants a licence to the Contracting Body 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.

H5.5 Where the end of the Call-Off Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H5.3(d) and (e) free of charge. Otherwise, the Contracting Body shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H5.6 At the end of the Call-Off Contract Period (howsoever arising) the licence granted pursuant to clause E8.2 shall automatically terminate without the need to serve notice.

H5.7 Unless otherwise expressly provided in the Call-Off Contract:

(a) termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration. Nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Contracting Body or the Contractor under clauses A7 (Conflicts of Interest), C3 (Payment and Fees), C5 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Contracting Body Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F8 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), I1 (Governing Law and Jurisdiction) and Schedule 10 (Arrangements Leading up to and Following Expiry or Termination).

H6 Disruption

[DN: Disruption provisions are subject to change. Specific Disruption provisions for each Call-Off Contract will be published at the time of Mini Competition.]

H6.1 The Contractor shall take all reasonable care to ensure that in performing of its obligations under the Call-Off Contract it does not disrupt the operations of the Contracting Body, its employees or any other contractor employed by the Contracting Body.

H6.2 The Contractor shall immediately notify the Contracting Body of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.

H6.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Call-Off Contract.

H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Contracting Body (acting reasonably), the Contracting Body may terminate the Call-Off Contract with immediate effect by notice in writing.

H6.5 If the Contractor is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6.6 The Contractor shall have a Business Continuity and Disaster Recovery Plan in place, prepared by the Contractor and agreed with the Contracting Body in accordance with Schedule 18 (Business Continuity and Disaster Recovery), to ensure that the Call-Off Services to the Contracting Body will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor's operations, and those of Sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Contracting Body to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Call-Off Contract Period.

H6.7 The Contractor and the Contracting Body shall at all times comply with the provisions in Schedule 18 (Business Continuity and Disaster Recovery).

I Disputes and Law

I1 Governing Law and Jurisdiction

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

I2 Dispute Resolution

I2.1 Subject to clause B6 and clause D1.8, the Parties shall resolve Disputes arising out of or in connection with this Call-Off Contract in accordance with the Dispute Resolution Procedure.

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

Schedule 1

The Call-Off Services

Description of the Call-Off Services

The Contractor will comply with the detail set out within the following additional documents which shall be deemed to be incorporated into this Call-Off Contract;

Document	Dated
Call-Off Specification	Vxxx [insert version number as issued on Bravo] Issued on Bravo as part of the ITT on xx [insert date and time of issue on Bravo] a copy of which is attached at the Appendix to this Schedule 1.
Contractors Tender	Received through Bravo on [insert date and time of issue on Bravo].
Question & Answers Log (Q&A)	Response to the Q&A Log during the bidding period, as posted on Bravo on xx [insert date and time of issue on Bravo].
Tender Clarification	Responses to clarification questions received through Bravo on xx [insert date and time of issue on Bravo]. Further responses to Clarification questions received through Bravo on xx [insert date and time of issue on Bravo]. Financial Clarification information received through Bravo on xx [insert date and time of issue on Bravo].Further Financial Clarification information received through Bravo on xx [insert date and time of issue on Bravo].
Provider Guidance	Available at https://www.gov.uk/government/collections/dwp-provider-guidance [Insert links to the additional Provider Guidance for ESF at contact award stage]
Baseline personnel security standard	Available at https://www.gov.uk/government/publications/guide-for-dwp-contractors-hmg-baseline-personnel-security-standard

The Contractor will implement the Implementation Plan in accordance with clause B1.4 of the Call-Off Contract.

Appendix: Copy of Call-Off Specification

[Copy of Call-Off Specification to be inserted]

[*The copy of the Call-Off Specification should also include any area-specific requirements as part of the Call-Off Services*]

Schedule 1A – Implementation Plan

[Detailed Implementation Plan including specified timescales to be inserted here at contract award stage]

Schedule 2

Minimum Performance Levels and Customer Service Standards

[DN: Detailed Requirements of this Sched 2 will be inserted at time of issue of Order for the relevant Call-Off Contract]

1.1 **Minimum Performance Levels**

MINIMUM PERFORMANCE LEVELS
1

2 Customer Service Standards

CUSTOMER SERVICE STANDARDS

Schedule 3

Contract Performance Reviews & Contractor Systems Assurance

[DN: This Schedule 3 (Contract Performance Reviews & Contractor Systems Assurance) is a DWP-specific Schedule and is subject to change. This Schedule will be confirmed in respect of each Call-Off Contract at the time of issue of Invitation to Participate in Mini Competition for the relevant Call-off Contract.]

Part A – Contract Performance Reviews

1.1 The Contracting Body will regularly monitor Contractor performance utilising the Contracting Body's Performance Management and Intervention Regime ("PMIR") as set out in the Provider Guidance. The Contracting Body's performance managers ("Performance Managers") will carry out Contract Performance Reviews.

1.2 The purpose of Contract Performance Reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Services are being supplied in accordance with the Minimum Performance Levels and the Customer Service Standards.. The Contract Performance Reviews will allow the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Call-Off Contract. Contract Performance Reviews will be formally undertaken and documented.

1.3 The Contractor agrees (i) to provide any information; and (ii) to arrange all necessary access to Premises required by the Contracting Body for the purpose of carrying out Contract Performance Reviews

Part B - Contractor Systems Assurance

2.1 The Contractor must comply with the Contracting Body's requirements for Contractor Systems Assurance as described in this section and notified to the Contractor by the Contracting Body from time to time.

2.2 The primary purpose of the Contracted Employment Programmes (CEP).Provider Assurance Team (PAT) is to provide the Contracting Body with an assurance that payments to contracted employment provision contractors are in accordance with DWP and Treasury, that public funds and DWP data are protected and that value for money has been obtained.

2.3 The Contracting Body's Provider Assurance Team ("PAT") and the Security and Business Continuity Team ("**S&BCT**") will carry out review(s) ("PAT Reviews") of the Contractors' internal control systems to assess the Contractors' ability to manage risk across four key areas:

a) Governance Arrangements – covering the Provider's governance arrangements, systems for tracking and reporting performance and their anti-fraud measures;

b) Service Delivery – includes the Provider's systems for starting, ending and moving Participants through Provision and generally looks to ensure that DWP is getting the service it is paying for. This section also covers management of the supply chain;

c) Claim Procedures and Payments – looks to ensure that Providers have in place effective systems to support their claims for payment, including appropriate segregation of duties; and

d) Data Security – looks to ensure that Providers have in place adequate systems to safeguard DWP data whilst it is being stored and/or transmitted around their organisations.

2.4 On completion of each review by the Contracting Body, the Contractor will be awarded an assurance rating from PAT in one of the following four categories – (i) weak: (ii) limited; (iii) reasonable; or (iv) strong, and will also receive an assurance rating from S&BCT regarding data security. The Contracting Body shall also send a formal report to the Contractor which details the review findings including key strengths and areas for improvement; where

weaknesses have been identified the Contractor will be asked to complete an action plan setting out appropriate steps for improvement and this is followed up at an agreed point.

2.5 The timescale for a subsequent review is determined at the sole discretion of the Contracting Body.

2.6 If the Contractor is attributed a "Weak" or "Limited" Provider Assurance Rating and/or an equivalent rating from S&BCT, as notified to the Contractor by the Contracting Body from time to time, the Contractor shall deploy all additional resources and take all remedial action that is necessary to remedy the "Weak" or "Limited" Provider Assurance Rating or to prevent the "Weak" or "Limited" Provider Assurance Rating from recurring by a date specified by the Contracting Body.

2.7 If in the opinion of the Contracting Body, the Contractor has failed to deploy the additional resources and to take the remedial action referred to in paragraph 2.6 of this Schedule 3 by the date specified by the Contracting Body may treat such failure as a Non Service Failure Default and issue a Formal Warning Notice in accordance with Clause F7.

2.8 The Contracting Body is entitled to regard the following circumstances, without limitation, to be a Material Breach of the Contract which shall entitle it to terminate in accordance with Clause H2:

(a) where the Contractor has been awarded a Provider Assurance Rating of "Weak" or "Limited" and/or an equivalent rating from S&BCT, as notified to the Contractor by the Contracting Body from time to time, in two (2) separate consecutive Provider Assurance Reviews for reasons which the Contracting Body regards, at its sole discretion, as similar reasons; or

(b) where the Contractor has been awarded a Provider Assurance Rating of "Weak" or "Limited" and/or an equivalent rating from S&BCT as notified to the Contractor by the Contracting Body from time to time, in three (3) separate consecutive Provider Assurance Reviews regardless of the reasons for such award; or

(c) on-going or repeated failures on the part of the Contractor to comply with and implement the Contracting Body's reasonable requirements as set out in an action plan issued by PAT and/or S&BCT.

2.9 Notwithstanding any other term of this Contract the Contractor hereby gives its consent for the Contracting Body to publish from time to time any of the Contractor's Provider Assurance Ratings and/or equivalent rating from S&BCT to the general public and to provide the Contractor's Assurance Ratings to any person as the Contracting Body deems appropriate. The Contractor shall assist and cooperate with the Contracting Body to enable the Contracting Body to publish and provide the Contractor's Provider Assurance ratings to any person the Contracting Body deems appropriate in accordance with this paragraph.

2.10 The Contracting Body will from time to time publish the Contractor's assurance levels and names and the Contractor hereby consents to such publication.

2.11 Further information as regards to the Provider Assurance processes and reviews can be found in the Provider Guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446788/pg-chapter-6-v3.pdf

Part C - Performance Indicators

3.1 Where as a result of the Performance Indicator Review the Contracting Body believes that:

3.1.1 the Performance Indicators fall below the required standard; or

3.1.2 the Contracting Body, acting reasonably, believes that without intervention the Performance Indicators will fall below the required standard,

then, without prejudice to any other right or remedy it may have under this Call-Off Contract, the Contracting Body may issue a Performance Indicator Course of Action Notice requiring

the Contractor to implement a Performance Indicator Course of Action in accordance with this Schedule 3, Part C.

3.2 A Performance Indicator Course of Action Notice given, in accordance with this Schedule 3 Part C, to the Contractor by the Contracting Body may include:

3.2.1 confirmation as to how the Performance Indicators fall below or are anticipated to fall below the required standard;

3.2.2 the actions the Contracting Body in its absolute discretion requires the Contractor to take to satisfy the Contracting Body that the Contractor can ensure compliance with its contractual obligations in relation to Performance Indicators; and

3.2.3 the time period during which the Contractor is expected to follow the Performance Indicator Course of Action to achieve improvement of the Performance Indicators.

3.3 For the avoidance of doubt, the Contracting Body may initiate the Performance Indicator Course of Action at any time after a Performance Indicator Review and any delay in exercising its right to initiate the Performance Indicator Course of Action shall not constitute a waiver or cause of diminution of the Contracting Body's right to do so.

3.4 For the avoidance of doubt, the Contracting Body shall be under no obligation to initiate the Performance Indicator Course of Action and it may choose in its absolute discretion to exercise any other right or remedy available to it under this Call-Off Contract instead of or running in parallel with such right.

3.5 The Contractor shall have the right to respond in relation to the Performance Indicator Course of Action within ten (10) Working Days following notification under paragraph 3.2 and either confirm its acceptance or following discussions with the Contracting Body submit its revised plan. If such revised plan is agreed by the Contracting Body it shall be the revised Performance Indicator Course of Action.

3.6 Once agreed the Contractor shall immediately implement the Performance Indicator Course of Action. For the avoidance of doubt, any agreement between the Parties in relation to the Performance Indicator Course of Action shall not relieve the Contractor of any of its liabilities and obligations under this Call-Off Contract.

3.7 If a revised Performance Indicator Course of Action cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) then the Contracting Body may elect to refer the matter for resolution by the dispute resolution procedure set out in clause I2.

3.8 Performance Indicators

PERFORMANCE INDICATORS

[DN: Performance Indicators for each Call-Off Contract to be inserted at time of Mini Competition.]

Schedule 4

Fees and Payment

[DN: This Schedule is subject to change. Specific Schedule of Fees and Payment for each Call-Off Contract which will be published at time of Mini-Competition]

1 Fees

1.1 The Contracting Body shall pay the Contractor the Fees for the Call-Off Services in accordance with the amounts set out in this Schedule 4 (Fees & Payments).

1.2 The Fees shall comprise a Delivery Fee, Contracting Body Determined Outcome Payments and Contractor Claimed Outcome Payment.

1.3 The payment rates set out in this Schedule 4 (Fees & Payments) will not be amended or adjusted if volumes change.

2 Value Added Tax

2.1 Payment from the Contracting Body to the Contractor shall be by a HMRC approved self-billing process. The Contractor hereby agrees that for the duration of the Call-Off Contract the Contracting Body will be self-billing producing the invoices on the Contractors behalf. The Contracting Body will issue VAT invoices and the Contractor shall confirm, on an annual basis, the rate of VAT that should be applied to self-billing invoices. It remains the responsibility of the Contractor to accurately account for and pay any VAT included in the payments received from the Contracting Body to HMRC.

2.2 If the VAT status of the Contractor changes at any time during the delivery of the Call-Off Services the Contractor shall notify the Contracting Body immediately and in any case within twenty-four (24) hours. If the Contractor intends to outsource the self-billing process to any third party it shall not do so without first having obtained the Contracting Body's prior approval, such approval not to be unreasonably withheld or delayed.

2.3 The Parties acknowledge and agree that an appropriate self-billing agreement is required to be in place and signed by the Parties throughout the Call-Off Contract Period to reflect the required self-billing treatment. ***[DN: This paragraph will only apply to self-billing arrangements. At the time of issue of the invite to the Mini-Competition for any Call-Off Contract, it will be confirmed whether the relevant Call-Off Contract is a self-billing arrangement. In these circumstances, a self-billing agreement will be required to be executed at the same time as signature of the Call-Off Contract.]***

3 Additional Costs

3.1 Subject to the provisions of this Call-Off Contract (including without limitation this Schedule 4 (Fees & Payment)), the Fees are fixed and unless otherwise agreed between the Parties in accordance with clause F3 (Changes to the Call-Off Contract) and Schedule 13 (Change Control Procedure) any additional or unforeseen costs incurred by the Contractor in delivering the Call-Off Services shall be borne solely by the Contractor.

4 Types of Payment

4.1 Outcome Payments

(a) Outcome Payments will be paid on a unit price basis at the rate set out in the table below based on the price in force at the date of the referral:

	Amount per Outcome exc. VAT
Contracting Body Determined Outcome Payments	£[♦]
Contractor Claimed Outcome Payment	£[♦]

(b) For the avoidance of doubt the Contractor shall only be eligible to receive one Contractor Claimed Outcome Payment or one Contracting Body Determined Outcome Payment for each Participant.

4.2 Delivery Fee

(a) A total Delivery Fee will be paid at the rate and in the manner set out below:

Delivery Fee	Amount per [♦](£)
[DN: Table to be populated by the Parties before the Contracting Body places an Order for the Call-Off Services under clause 8 of the Umbrella Agreement]	£[♦]

5 Methods of payment

[DN: To be inserted in accordance with the requirements of each Call-Off Contract and published at Mini Completion stage]

5.1 The Contracting Body and the Contractor shall make payments using [♦].

5.2 All invoices must include [♦] and sent to the following address: [♦]

5.3 The Contracting Body reserves the right to set and / or alter, at its absolute discretion, the method of payment.

6 Payment rates

6.1 For the performance of the Call-Off Services by the Contractor the Delivery Fee and Outcome Payments shall be paid at the prices and rates entered in this Appendix. These rates are fixed and not subject to amendment or alteration over the Call-Off Contract Period, save where an amendment or alteration is made in accordance with the Change Control Procedure.

6.2 All payments will be subject to the provisions of the Schedule 4 and clause C (Payment and Fees). The payment of any Delivery Fee or Outcome Payments shall not constitute acceptance and the Contracting Body reserves the right to validate claims at any time in accordance with clause C4 Validation and Extrapolation.

Schedule 5

Call-Off Commercially Sensitive Information

[Note: Bidders to populate]

1 The Contracting Body acknowledges that the Contractor has requested that the following information be treated as Call-Off Commercially Sensitive Information:

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.

2 The Contracting Body will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.

3 The Contracting Body reserves the right to disclose any Call-Off Commercially Sensitive Information held within this Call-Off Contract in response to a request under the FOIA as set out at clause E5 of this Call-Off Contract.

4 The Contracting Body will automatically publish all information provided by the Contractor not identified in this Schedule as constituting Call-Off Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.

5 The Contracting Body reserves the right to determine whether any information provided in this Schedule does constitute Call-Off Commercially Sensitive Information prior to publication.

Schedule 6

Security Requirements and Plan

1 Introduction

1.1 This Schedule covers:

(a) Principles of security for the Contractor ICT System, derived from the Security Policy, including without limitation principles of physical and information security;

(b) The creation of the Security Plan;

(c) Audit and testing of the Security Plan;

(d) Conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and

(e) Breaches of Security.

(f) Security provisions with which the Contractor shall comply in providing the services relevant to this Contract.

2 Principles of Security

2.1 The Contractor acknowledges that the Contracting Body 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 the Contracting Body's Data.

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

(a) is in accordance with Good Industry Practice and Law;

(b) complies with the Security Policy;

(c) meets any specific security threats to the Contractor System; and

(d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule;

(e) meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

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

(a) loss of integrity of Contracting Body Data;

(b) loss of confidentiality of Contracting Body Data;

(c) unauthorised access to, use of, or interference with Contracting Body Data by any person or organisation;

(d) unauthorised access to network elements and buildings;

(e) use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Contracting Body Data; and

(f) loss of availability of Contracting Body Data due to any failure or compromise of the Services.

(g) Loss of confidentiality, integrity and availability of Contracting Body Data through Cyber/internet threats

3 Security Plan

Introduction

3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period and after the end of the Contract Period in accordance with the Exit Management Strategy, which will be approved by the Contracting Body, tested, periodically updated and audited in accordance with this Schedule.

3.2 A draft Security Plan provided by the Contractor as part of its bid is set out in Appendix B.

Development

3.3 Within twenty (20) Working Days after the Call-Off Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Contractor will prepare and deliver to the Contracting Body for approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix B.

3.4 If the Security Plan is approved by the Contracting Body it will be adopted immediately. If the Security Plan is not approved by the Contracting Body the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Contracting Body and re-submit to the Contracting Body 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 Contracting Body. If the Contracting Body does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause I2 Dispute Resolution. No approval to be given by the Contracting Body pursuant to this paragraph 3.4 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

Content

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

(a) the provisions of this contract; this Schedule (including the principles set out in paragraph 2);

(b) the provisions of Schedule 1 relating to security;

(c) ISO/IEC27002 and ISO/IEC27001;

(d) the data protection compliance guidance produced by the Contracting Body.

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

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

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

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

Amendment and Revision

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

(a) emerging changes in Good Industry Practice;

(b) any change or proposed change to the Contractor ICT System, the Services and/or associated processes; and

(c) any new perceived or changed threats to the Contractor ICT System.

(d) a reasonable request by the Contracting Body.

3.11 The Contractor will provide the Contracting Body 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 Contracting Body.

3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Contracting Body request or change to Schedule 1 or otherwise shall be subject to the change control procedure and shall not be implemented until approved in writing by the Contracting Body.

4 Audit and Testing

4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contracting Body.

4.2 The Contracting Body shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Contracting Body with the results of such tests (in a form approved by the Contracting Body in advance) as soon as practicable after completion of each Security Test.

4.3 Without prejudice to any other right of audit or access granted to the Contracting Body pursuant to this Contract, the Contracting Body 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 Contracting Body may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.

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

5 Compliance with ISO/IEC 27001

5.1 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Contracting Body any associated security audit reports and shall otherwise notify the Contracting Body of the results of such security audits.

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

5.3 If, as a result of any such independent audit as described in paragraph 5.2 the Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Contracting Body in obtaining such audit.

6 Breach of Security

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

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

(a) immediately take all reasonable steps necessary to:

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

(ii) prevent an equivalent breach in the future.

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

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

7 Contracting Body Data relevant to the Contract

7.1 The Contract specification will outline the services to be provided by the Contractor, including the type of Contracting Body Data involved.

7.2 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media.

8 Accreditation

8.1 Where a system is being used to deliver the Services it may be appropriate to conduct security accreditation.

8.2 The DWP Security Accreditation Team may undertake an accreditation of the service where the contractor shall provide appropriate accreditation evidence to DWP upon request throughout the lifecycle of the contract.

8.3 Where security accreditation is required the Contractor must ensure that the service in scope remains accredited throughout the lifecycle of the contract and that there is an agreed accreditation assurance plan in place supporting the DWP deployed service.

Appendix A – DWP Security Policies and Standards

1 The Department for Work and Pensions (DWP) treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which DWP is the Data Controller.

2 In order to protect DWP information appropriately, our Contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All Contractors of services to DWP must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.

3 The main DWP policies include:

- Information Security Policy
- Physical Security Policy
- Acceptable Use Policy
- Continuity and Resilience Policy

The above policies are attached as Appendices C, D, E and F to this Schedule.

4 Each Contractor must appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Contractor and where relevant Sub-contractors, with access to DWP IT Systems, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.

5 The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.

6 Whilst Departmental policies are written for internal Departmental requirements all Contractors must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.

7 It is the Contractor's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP as requested.

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

9 The following are some key basic requirements that all Contractors must apply:

(a) **Personnel Security**

(i) Staff recruitment in accordance with government requirements for pre-employment checks; including Baseline Personnel Security Standard.

(ii) Staff training and awareness of DWP security and any specific contract requirements.

(b) **Secure Information Handling and Transfers**

Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.

(c) **Portable Media**

The use of only encrypted laptops, encrypted storage devices and other protected removable media when handling DWP information.

(d) **Offshoring**

DWP data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

(e) **Physical Security**

Security of premises and control of access.

(f) **Security Incidents**

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

~~Appendix B – Draft Security Plan~~

~~[*DN: Security Plan to be inserted*]~~

Schedule 7

Sustainable Development Requirements

This Schedule sets out the Sustainable Development Requirements which are applicable to the provision of the Call-Off Services.

1 General

1.1 The Contractor acknowledges that the Contracting Body must at all times be seen to be actively promoting Sustainable Development through its environmental, social and economic responsibilities.

1.2 In delivering the Call-Off Services, the Contractor shall and shall ensure that its Sub-contractors assist and cooperate with the Contracting Body, by fully complying with the requirements of this Schedule.

2 Compliance

2.1 The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Schedule, within three (3) Months of the Call-Off Commencement Date and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Call-Off Contract and include all Sub-contractors involved in delivery of the Call-Off Contract. The Contractor must obtain the required information from Sub-contractors and then collate and submit as stated above.

2.2 In delivering the Call-Off Services, the Contractor shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the Call-Off Contract an overarching commitment to:

(a) dispose of contract waste in a legal manner (i.e. waste is disposed of via a registered waste collector, the Waste Electrical and Electronic Equipment (WEEE) regulations are adhered to where relevant);

(b) reduce energy consumption;

(c) promote waste management including recycling;

(d) promote green or public transport;

(e) promote Corporate Social Responsibility (CSR);

(f) the Sustainable Development Policy and that of continuous improvement which should be signed and dated by senior management.

2.3 In delivering the Call-Off Services, the Contractor shall prepare and deliver a Sustainable Development Plan which should be used to turn the commitment shown in the Sustainable Development Policy into action and which as a minimum, detail how each organisation involved in delivery of the Call-Off Contract will:

(a) reduce their **Environmental** footprint of this Call-Off Contract through:

(i) minimising the use of energy, water and materials;

(ii) minimising waste and increasing recycling levels;

(iii) utilising recycled goods within operations;

(iv) providing efficient low carbon delivery methods;

(v) promoting the use of green or public transport.

(b) contribute to **Social** sustainability of this Call-Off Contract through:

(i) purchasing goods and services that are produced and delivered in line with International Labour Organisation principles in respect to human rights and conditions of employment;

(ii) supporting a diverse supply chain by cultivating opportunities for Minority Owned Businesses;

(iii) providing adequate training opportunities for all employees.

(c) drive **Economic** sustainability of this Call-Off Contract through:

(i) supporting job creation both locally and nationally;

(ii) facilitating opportunities for Minority Owned Businesses and Small and Medium-sized Enterprises.

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

(a) a baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations);

(b) annual estimates of the progress of Sustainable Development actions;

(c) details of how Staff awareness of Sustainability will be increased in line with the Sustainable Development Plan.

Schedule 8

Welsh Language Scheme

[DN: Optional - To be included where Call-Off Services are delivered on behalf of DWP to Participants in Wales]

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

1 General

1.1 The Contractor acknowledges that in relation to the operation of its Call-Off Services which are delivered in Wales, the Contracting Body must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.

1.2 In the performance of the Call-Off Contract, the Contractor shall ensure that it cooperates with the Contracting Body in satisfying this duty, by fully complying with the requirements of this Schedule.

2 The DWP Welsh Language Scheme

2.1 The DWP Welsh Language Scheme can be found at:

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

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

3 Delivery of Call-Off Services Through the Medium of Welsh

3.1 The Contractor undertakes that those who have dealings with them are able to do so in English or Welsh, whichever is their preference.

3.2 The Contractor will ensure that:

(a) those who want, or are required, to correspond with the Contractor will be able to do so in English or Welsh;

(b) those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;

(c) any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;

(d) staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;

(e) any help lines set up to deliver the service must offer a Welsh or English option and sufficient Welsh language speakers must be available to deal with callers through the medium of Welsh, if they select the Welsh option;

(f) any answer phones in the Contractor's offices in Wales will have a pre-recorded bilingual message;

(g) all people who participate in the Call-Off Services are able to contribute through the medium of English or Welsh;

(h) all material published and printed for use in Wales shall be available in English and Welsh, and available for use within the same timescales. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;

(i) all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and

(j) any complaints or grievance procedure should be provided in both English and Welsh.

(k) any websites, including any interactive pages, set up to support the delivery of the service must be available in both Welsh and English;

(l) where DWP has notified the contractor or the participant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that participant will be in Welsh.

Schedule 9

Parent Company Guarantee

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

[INSERT NAME OF PARENT COMPANY]

THIS DEED is dated [DATE]

PARTIES

(1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA ("the **Contracting Body**"); and

(2) **[INSERT NAME OF PARENT COMPANY]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** ("the **Guarantor**").

BACKGROUND

(1) By an agreement dated on or about the date of this guarantee ("the **Call-Off Contract**", which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Contracting Body has agreed to engage **[INSERT NAME]** ("the **Contractor**") to deliver **[INSERT DETAILS]**.

(2) It is a condition of the Call-Off Contract **[being awarded to the Contractor]** that the Contractor ensures the execution and delivery to the Contracting Body of a parent company guarantee substantially in the form of this guarantee.

(3) The Guarantor has agreed to guarantee the due performance of the Call-Off Contract by the Contractor.

(4) It is the intention of the Parties that this document be executed as a deed.

AGREED TERMS

1 Interpretation

1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Call-Off Contract shall apply in this guarantee.

1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

2 Obligations of The Guarantor

2.1 In consideration of the Contracting Body entering into the Call-Off Contract with the Contractor, the Guarantor agrees:

2.1.1 as primary obligor, to guarantee to the Contracting Body the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the Call-Off Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Call-Off Contract;

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

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

liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Liability

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

3.1.1 any arrangement made between the Contractor and the Contracting Body;

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

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

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

3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Call-Off Contract or any of the Contractor's obligations under the Call-Off Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;

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

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

4 Addendum Or Variation

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

5 Guarantee

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

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

6 Outstanding Payments

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

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

6.2 The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in default of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Contracting Body.

6.3 Until all amounts which may be or become payable under the Call-Off Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a Liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Contracting Body.

7 Change of Control

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

8 Payment And Expenses

8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Contracting Body receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

8.3 The Guarantor shall reimburse the Contracting Body for all legal and other costs (including VAT) incurred by the Contracting Body in connection with the enforcement of this guarantee.

9 Settlement

Any settlement or discharge between the Contracting Body and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Contracting Body by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or law relating to bankruptcy, insolvency or Liquidation for the time being in force and accordingly (but without limiting the Contracting Body's other rights hereunder) the Contracting Body shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Contracting Body has placed upon such settlement or security or the amount of any such payment.

10 Warranties

10.1 The Guarantor warrants and confirms to the Contracting Body that:

10.1.1 it is duly incorporated with limited liability and validly existing under the laws of England;

10.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;

10.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;

10.1.4 it has been duly authorised to enter into this guarantee;

10.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;

10.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

10.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and

10.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

10.2 The Guarantor warrants and undertakes to the Contracting Body that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

10.3 The Guarantor warrants and confirms to the Contracting Body that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Contracting Body (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11 Assignment

The Contracting Body shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

12 Notices

12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Contracting Body in accordance with this clause 12.

12.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

13 Waiver

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

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

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

14 Severability

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

15 Contracts (Rights of Third Parties) Act 1999

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

16 Governing Law

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

16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) [and the Guarantor irrevocably appoints [INSERT NAME] as its agent for service of process.

17 Entire Agreement

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

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

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

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

EXECUTED as a deed by **[**INSERT **NAME OF GUARANTOR]** acting by two directors or by one director and the secretary or one director and a witness:

Director

Signature .....

Name .....

Director/Secretary/Witness
(*delete as appropriate*)

Signature .....

Name .....

AND

EXECUTED as a Deed by affixing the Common Seal of the Secretary of State for Work and Pensions acting as part of the Crown in the presence of:

Affix seal here

Name of Authorised Officer:

Signature

Schedule 10

Arrangements Leading up to and Following Expiry or Termination

[DN: This Schedule is subject to change. Specific Arrangements leading up and following expiry or Termination for each Call-Off Contract will be published at time of Mini-Competition]

1 The Contractor acknowledges that on termination (for any reason) or expiry of the Call-Off Contract or on change or variation of the Call-Off Contract pursuant to F3 (Changes to the Call-Off Contract) which constitutes a cessation of all (or part) of the Call-Off Services, the continuity of the Call-Off Services is of paramount importance. Accordingly the Contractor acknowledges that the Contracting Body may, amongst other reasonable actions, suspend referral of Participants to the Call-Off Services within the stated notice period given to terminate the Call-Off Contract or, in the case of Variation of the Call-Off Contract pursuant to F3 which constitutes a cessation of all (or part) of the Call-Off Services, upon the Contracting Body confirming in writing that it wishes to proceed with the Variation pursuant to clause F3. In relation to any Participants referred to the Contractor prior to the stated notice period or the Effective Variation Date whose participation in the relevant part of the Call-Off Services has not completed on or prior to the date of termination or expiry, the Contractor will comply with its obligations pursuant to paragraph 2.

2 Both before and for a reasonable time after termination or expiry of the Call-Off Contract the Contractor shall promptly provide assistance at no extra cost to the Contracting Body save that in the event of termination by the Contracting Body pursuant to clause H2.2) (Termination on Notice) or a change or variation of the Call-Off Contract pursuant to F3 (Changes to the Call-Off Contract) which constitutes a cessation of all (or part) of the Call-Off Services, such reasonable costs shall, subject to the Approval of any such costs, be for the account of the Contracting Body; for the avoidance of doubt, such approval shall not be unreasonably withheld or delayed. The Contractor shall do its utmost to minimise disruption caused to Participants and assist with the implementation of any contingency plan proposed by the Contracting Body to deal with the effects of such termination or expiry in so far as it is practicable to do so. At the option of the Contracting Body, the Contractor may, pursuant to this paragraph 2 of Schedule 10, be required:

2.1 to continue to deliver or procure the supply of the Call-Off Services until Participants have completed their participation on the Call-Off Services in accordance with the Call-Off Specification and where relevant the Contracting Body shall continue to pay the Fees in accordance with the Call-Off Contract; or

2.2 to transfer the Contractor's obligations in respect of Participants whose participation on the Call-Off Services has not been or will not be completed in accordance with the Call-Off Specification to an alternative contractor designated by the Contracting Authority.

3 The Contractor shall comply with such timetable as the Contracting Body may reasonably require, for the purpose of ensuring an orderly transfer of responsibility for supply of the Call-Off Services (or their equivalent) or remaining Call-Off Services (or their equivalent) upon the expiry or other termination of the Call-Off Contract or the variation of the Call-Off Contract pursuant to clause F3 which constitutes a cessation of all (or part) of the Call-Off Services. The Contractor shall ensure that its employees and its Sub contractors are under a similar obligation.

4 In order to facilitate a smooth and orderly transfer of responsibility on the expiry or termination of the Call-Off Contract:

4.1 the Contractor undertakes to:-

(a) act fairly and in good faith at all times in connection with any re-tender process for supply of the Call-Off Services (or their equivalent) conducted by the Contracting Body;

(b) comply with the Contracting Body's reasonable requests in connection with any re-tender process so as to enable the Contracting Body to facilitate a fair and open competitive re-tender of the supply of the Call-Off Services (or their equivalent);

(c) comply with the Contracting Body's reasonable requests in preparing, agreeing and implementing an exit plan setting out the duties and responsibilities of the Contractor, the Contracting Body and any Replacement Contractor, leading up to and covering the expiry or termination of the Call-Off Contract and the transition process for the transfer of the supply of the Call-Off Services (or their equivalent);

(d) co-operate and liaise with any Replacement Contractor appointed by the Contracting Body to supply the Call-Off Services (or their equivalent);

(e) do or perform such other acts and things as may reasonably be required in order to facilitate the re-tender or transition process;

(f) save for any Commercially Sensitive Information deliver any documents, information, manuals and data (in any form whatsoever but for the avoidance of doubt, any machine readable or electronic data shall be provided in a readily readable form) in the possession or control of the Contractor which relate to:

(i) the performance, monitoring, management and reporting of the Call-Off Services; and

(ii) subject always to clause ♦ (Employee Provisions on Expiry or Termination), the terms and conditions of employment and the employment records of those of the Contractor's employees who may be affected by the TUPE Regulations upon any transfer of responsibility for the supply of the Call-Off Services (or their equivalent).

4.2 the Contractor agrees to provide such information and data as is reasonably required by the Contracting Body for the purpose of any re-tender or transition process, such information and data to be provided to such timetable or deadlines as the Contracting Body reasonably requires; and

4.3 the Contractor shall ensure that all information and data provided to the Contracting Body in connection with any re-tender or transition process is accurate and complete in all material respects, to the best of the Contractor's knowledge (having made due enquiry). This requirement shall apply to all the information that may be requested by the Contracting Body and supplied by the Contractor in connection with the re-tender or transition process.

5 The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Contracting Body to ensure an orderly transfer of responsibility for the supply of the Call-Off Services (or their equivalent) to any Replacement Contractor.

6 The Contractor is referred to the ESF Requirements in Schedule 12 which may arise on expiry or termination of the Call-Off Contract.

Schedule 11

Allocation of Costs on Termination

[DN: This Schedule will be completed in respect of each Call-Off Contract at the time of issue of Invitation to Participate in Mini Competition for the relevant Call-off Contract.]

Part A – Allocation of Costs on Termination for Default

Part B – Allocation of Costs on Termination on Notice by the Contracting Body

Schedule 12

ESF Requirements

A Evaluation Requirements

1 Because the Contracting Body may fund this Call-Off Contract using ESF monies, or use this Call-Off Contract as match for contracts funded using ESF monies, the Contractor shall within four (4) weeks of expiry or termination of this Call-Off Contract provide evaluation information to the Contracting Body which:

(a) summarises the project, focusing on how it has helped to achieve the project objectives set out in the specification;

(b) is concise, being no more than one A4 page in length; and

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

2 The Contractor acknowledges the obligation the Contracting Body has to evaluate all ESF projects by ESF priorities and to submit, within strict timescales, a final claim to the Managing Authority including an assessment of performance in each of the priorities.

3 The Contractor understands and shall comply with the regular ESF MI reporting obligations set out in Schedule 21 (Management Information). The Contractor acknowledges that the Contracting Body depends on timely provision of this information in order to claim and receive ESF funds from the Managing Authority.

B Records

The Contractor and any Sub-contractors appointed by it shall maintain the Open Book Data and any other records referred to in clause E9.1, any documents and records referred to in the Call-Off Specification and such other documents as the Contracting Body may reasonably require throughout the period of this Call-Off Contract; and the Contractor and any Sub-contractors appointed by it shall maintain such Open Book Data and other records and documents until at least the Document Retention End Date in accordance with clause F1.

C EU and National Requirements

1 The Contractor must comply with the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements, including without limitation:

(a) the European Social Fund (ESF) Programme for England 2014-2020 National Eligibility Rules;

(b) Selection Criteria: 2014-2020 European Regional Development Fund and European Social Fund; and

(c) issued by the ESF Managing Authority and published on www.gov.uk/european-growth-funding.

2 The following Regulations set out in this section (d) are particularly relevant. Regulation (EU) No 1303/2013 of 17 December 2013 defines common principles, rules and standards for the implementation of the five European Structural and Investment Funds (ESIF): the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund,

the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) and replaces Council Regulation (EC) No 1083/2006.

3 Regulation (EU) No 1304/2013 of 17 December 2013 establishes the missions of the European Social Fund (ESF), including scope of its support, specific provisions and the types of expenditure eligible for assistance and replaces Council regulation (EC) 1081/2006.

4 Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

5 Where applicable, Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements.

6 European Community State Aid rules applicable at the date that the Aid is granted to the recipients of the Aid.

7 If there are areas of doubt, the interpretation of the Contracting Body shall prevail.

8 The Contracting Body acting in its capacity as ESF Co-Financing Organisation will publish DWP Generic Provider Guidance on ESF requirements via the GOV.UK website.

9 The Contracting Body acting in its capacity as Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

10 The Contractor will:

(a) comply with all DWP Generic Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this Call-Off Contract.

(b) ensure that the Subcontractors from time to time are fully aware of, and procure that the Subcontractors at all times comply with, all DWP Generic Provider Guidance on ESF requirements, European Union (EU) Structural Fund Regulations, State Aid requirements, public procurement requirements (where applicable) and ESF guidance and rules produced by the MA in performing its obligations under this Call-Off Contract the requirements of the EU Structural Fund Regulations, procurement and State Aid requirements for ESF and match funding.

(c) repay any ESF expenditure that is deemed ineligible in accordance with EU law or the MA's guidance or National Eligibility Rules.

(d) seek to minimise and recover expenditure which is ineligible by virtue of EU law or the MA's guidance or National Eligibility Rules.

D Changes to Guidance and Rules

1 All amendments, variations or additions made to guidance or the National Eligibility Rules by the MA from time to time, for the distribution and / or payment of monies and / or administration of any ESF provision or programme will be notified to the Contractor via the

GOV.UK website (ESF pages). Changes will be effective from the date they are placed on the website unless stated otherwise.

E Financial Accountability

1 The Contractor must ensure compliance with the conditions set out in this Call-Off Contract in particular they must:

(a) establish effective procurement (if applicable), monitoring and financial systems, so that the cost of activities, and the results, outputs and indicators generated can be clearly identified and the reliability of profiled payments and handling of ESF can be ensured; this includes the establishment of appropriate document retention systems to ensure and evidence the requirements of the EU Structural Funds Regulations, State Aid and public procurement requirements (where applicable). The Contractor must retain and be in a position to provide all appropriate data as required by the regulations governing structural fund support. They must also ensure that such data is both accurate and reliable;

(b) apply appropriate terms and conditions to Sub-contracts to ensure that the Sub-contracts comply with all the terms of this Call-Off Contract and associated guidance and National Eligibility Rules;

(c) immediately notify the Contracting Body if any financial irregularity in the use of ESF is suspected and indicate the steps being taken in response. (Irregularity means: infringement of a provision of Community law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the Communities by charging an unjustified item of expenditure to the Community budget); and

(d) make documents available and provide reasonable access for:

(i) inspection visits and scrutiny of files by, but not limited to, representatives of the Contracting Body, the DWP Audit Contracting Body, the MA, the Certifying Contracting Body, Government Departments, the European Commission National Audit Office (NAO), the European Court of Auditors or European Commission;

(ii) external audits and reviews of activity and of financial, appraisal and monitoring systems; and

(iii) the Contracting Body, the European Commission, the European Court of Auditors, NAO, DWP Audit Contracting Body and other regulatory bodies as required by or on behalf of the Contracting Body will have right of access to the Contractor and the Sub-contractors for audit and inspection purposes. Auditors may wish to visit the Contractor and the Sub-contractors to verify that participant results claimed have actually been achieved.

F Audit Arrangements

1 Without prejudice to any other provision of this Call-Off Contract, the Contractor will ensure that all documents the relating to the Call-Off Contract including without limitation its implementation and financing are retained until the Document Retention End Date, in order that these may be made available to the European Commission and European Court of Auditors upon request in accordance with Article 140 of Regulation 1303.

2 Further to clause F1, the Contractor shall make available all such documents if and when required to do so by the Contracting Body, Secretary of State for Work and Pensions, the European Court of Auditors, the European Commission auditors, the National Audit Office (and also their respective auditors).

3 The Contractor shall keep such documents referred to in clause F1 and shall make such documents available either in the form of the originals or certified true copies of the originals or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only in accordance with guidance published by the ESF Managing Authority from time to time.

4 Where documents exist in electronic form only, the computer systems used shall meet accepted security standards. These standards will be provided by the Managing Authority. Documents and records must be maintained for the purpose of:

(a) the examination and certification of the accounts of the Organisation referred to in F2;

(b) any examination pursuant to the Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Organisation named at 1.2 above has used its resources; and

(c) any form of investigation or audit by the bodies referred to in paragraph F3.

5 The Contracting Body, the ESF Managing Authority, the Certifying Contracting Body and DWP Audit Contracting Body acting on its own or others behalf and those acting on its behalf may examine such documents connected with European Structural Funds as may reasonably be required which are owned, held or otherwise in the control of the Contractor and the Sub-contractors, and to require the Sub-contractors to produce oral or written explanations as considered necessary for the purposes of that examination or that certification.

6 The Contractor shall provide (and shall require the Sub-contractors to provide) access to premises where the relevant documentation is held and all reasonable assistance (including the provision of onsite, photocopying, facsimile, and telecommunications facilities) at all times during the term of the Call-Off Contract and for the period until the Document Retention End Date.

G Marketing and Publicity

1 The Contractor and the Sub-contractors must comply with the Contracting Body's, the European Commission's and the ESF Managing Authority marketing and publicity requirements specified in the Provider Guidance, the England 2014-2020 European Structural and Investment Funds Growth Programme Branding and Publicity Requirements (for beneficiaries) published on Gov.uk. The Contractor shall publicise EU funding from ESF to the Sub-contractors, the Participants and to the general public.

H Cross Cutting Themes

1 The Contractor must comply with the EU and the ESF Managing Authority's requirements on gender equality, equal opportunities and sustainable development as specified in guidance and rules produced by the ESF Managing Authority for the 2014 - 2020 ESF Programme for England.

I Indemnity

1 The Contractor shall indemnify and keep indemnified the Contracting Body against:

(a) all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any Default by the Contractor in respect of complying with its obligations under this Schedule 12. The Contractor's liability under this indemnity is not limited under clauses G1.5 and G1.6 of the Call-Off Contract; and

(b) all claims, demands, actions, costs (including legal costs and disbursements) and losses howsoever incurred resulting from any liabilities imposed on the Contracting Body by the European Court of Auditors, the European Commission auditors or any successor or substitute person which may include any clawback of monies, repayment of funds or fines as a result of or related to verification of the eligibility of Participants by the Contractor and/or failure by the Contractor to comply with or causing the Contracting Body to comply with any of the ESF requirements. The Contractor's liability under this indemnity is not limited under clauses G1.5 and G1.6 of the Call-Off Contract.

Schedule 13

Change Control Procedure

1 General Principles Of Change Control Procedure

1.1 This Schedule sets out the procedure for dealing with Contract Changes and Operational Changes and Substantial Changes.

1.2 If either Party is in doubt about whether a change falls within the definition of an Operational Change or a Substantial Change, it must be processed as a Contract Change.

1.3 For any Change Communication to be valid under this Schedule, it must be sent in accordance with the provisions of clause A5 (Notices) as if it were a notice.

2 Costs

2.1 The Contractor shall be entitled to increase the Fees only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources.

2.2 The Contractor shall decrease the Fees if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Call-Off Services after that Contract Change is implemented than before that Contract Change is implemented.

2.3 Any change to the Fees resulting from a Contract Change, whether the change will cause an increase or a decrease in the Fees, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Call-Off Services affected by the change.

2.4 Both Parties costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Substantial Change Procedure

3.1 Subject to the Parties following the dispute resolution procedure set out at Schedule 16 (Dispute Resolution Procedure), any Substantial Change which is identified within a settlement and/or compromise agreement that is entered into by the Parties under or in connection with this Call-Off Contract shall constitute a binding change to this Call-Off Contract and may be implemented by the Parties without following the Change Control Procedure provided that:

(a) the Substantial Change relates to:

(i) [the scope of the Call-Off Services (including any change which limits, amends or extends the Call-Off Services to be provided by the Contractor); and/or]

(ii) [an agreement between the Parties to waive the application of remedies for breach of this Call-Off Contract; and/or]

(iii) [the standards by which the Call-Off Services must be performed by the Contractor (including any change that limits, amends or extends the Customer Service Standards and/or Minimum Performance Levels); and/or]

(iv) [an agreement by the Parties to change the amounts payable by the Contracting Body to the Contractor under or in connection with this Call-Off Contract (including any change to the manner in which the Delivery Fee, Contracting Body Determined Outcome Payments or Contractor Claimed Outcome Payments are calculated),]

provided always that such Substantial Change would not alter the overall nature of the Call-Off Contract.

[***DN: The provisions at this paragraph 3.1 are subject to change and will be confirmed at the time of issue of the invite to the Mini-Competition for the relevant Call-Off Contract.***]

4 Operational Change Procedure

4.1 Any Operational Changes identified by either Party to improve operational efficiency of the Call-Off Services may be implemented by the Contractor without following the Change Control Procedure provided they do not:

(a) involve the Contracting Body in paying any additional Fees or other costs;

(b) have an impact on the business of the Contracting Body;

(c) require a change to this Call-Off Contract; or

(d) have a direct impact on use of the Call-Off Services.

4.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Call-Off Contract Period.

4.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.

4.4 The Contractor shall inform the Contracting Body of any impact on the Call-Off Services that may arise from the proposed Operational Change.

4.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Contracting Body when it is completed.

5 Contract Change Procedure

5.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Appendix 1.

5.2 If the Contracting Body issues a Change Request, then the Contractor shall provide as soon as reasonably practical, and in any event within ten (10) Working Days of the date of receiving the Change Request, an Impact Assessment to the Contracting Body.

5.3 If the Contractor issues the Change Request, then it shall provide an Impact Assessment to the Contracting Body at the same time as the Change Request.

5.4 If the Contractor requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Contracting Body within three (3) Working Days of the date of receiving the Change Request.

5.5 Provided that sufficient information is received by the Contracting Body to fully understand the nature of the request for clarification and the reasonable justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Contracting Body to provide that clarification. The Contracting Body shall respond to the request for clarification as soon as is reasonably practicable.

6 Impact Assessment

6.1 Each Impact Assessment shall be completed in good faith and shall include:

(a) details of the impact the proposed Contract Change will have on the Call-Off Services and the Contractor's ability to meet its other obligations under this Call-Off Contract;

(b) any additional changes to the terms of this Call-Off Contract that will be required as a result of that impact which may include changes to:

(i) the Call-Off Services and/or the Customer Service Standards and/or the Minimum Performance Levels;

(ii) the format of Contracting Body Data, as set out in the Call-Off Services;

(iii) the Implementation Plan and any other timetable previously agreed by the Parties; and

(iv) other services provided by third party contractors to the Contracting Body, including any changes required by the proposed Contract Change to the Contracting Body ICT System;

(c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;

(d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Call-Off Services which comes into force after the Call-Off Commencement Date;

(e) any amendments to the Call-Off Contract wording proposed in the Change Request Form;

(f) such other information as the Contracting Body may reasonably request in (or in response to) the Change Request;

(g) details of the cost of implementing the proposed Contract Change; and

(h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Fees, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

6.2 The calculation of costs for the purposes of paragraphs 6.1(g) and (h) shall:

(a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;

(b) include full disclosure of any assumptions underlying such Impact Assessment;

(c) include evidence of the cost of any assets required for the Change; and

(d) include details of any new Sub-contracts necessary to accomplish the Change.

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

6.4 Subject to the provisions of paragraph 6.5, the Contracting Body shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 7 within fifteen (15) Working Days of receiving the Impact Assessment.

6.5 If the Contracting Body is the Receiving Party and the Contracting Body reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Contracting Body within ten (10) Working Days of receiving such notification.

6.6 At the Contracting Body's discretion, the Parties may repeat the process described in paragraph 6.5 until the Contracting Body is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 7.

7 **Contracting Body's Right of Approval**

7.1 Subject to paragraph 7.5, within fifteen (15) Working Days of receiving the Impact Assessment from the Contractor, the Contracting Body shall do one of the following:

(a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 7.5; or

(b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Contracting Body shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the Call-Off Services to comply with any changes in Law.

7.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Contracting Body in accordance with paragraph 7.5.

7.3 Unless the Contracting Body expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the Call-Off Services in accordance with the existing terms of this Call-Off Contract as if the proposed Contract Change did not apply.

7.4 Any discussions, negotiations or other communications which may take place between the Contracting Body and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Call-Off Contract.

7.5 If the Contracting Body approves the proposed Contract Change pursuant to paragraph 7.1 and it has not been rejected by the Contractor in accordance with paragraph 8, then the Contracting Body shall prepare two copies of a Change Authorisation Note in the form of Appendix 2 and send them to the Contractor, the Contractor shall sign both copies and deliver

both signed copies to the Contracting Body for its signature. Following receipt by the Contracting Body of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Contracting Body's signature the Change Authorisation Note shall constitute a binding change to this Call-Off Contract.

8 Contractor's Right of Rejection

8.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Contracting Body would:

(a) materially and adversely affect the risks to the health and safety of any person; and/or

(b) require the Call-Off Services to be performed in a way that infringes any Law,

then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Contracting Body of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2.

8.2 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 8.1.

9 Contract Management

9.1 The Parties shall update their contracts to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Letter and annotate with a reference to the Change Authorisation Note or Operational Change Letter pursuant to which the relevant Contract Changes or Operational Changes were agreed.

Appendix 1

Change Request Form

(For Completion by Party Requesting Change)

C.R. No:	Call-Off Contract Title & Contract Number:	Contractor Name:
Contract Change Title:	Contract Change Implementation Date:	
Full Description of Requested Contract Change (including proposed changes to wording of the contract):		
Reasons for and Benefits of Requested Contract Change:		
Name of Requesting Change Owner:		
Signature of Requesting Change Owner:		
Date of Request:		
(For Completion by Contractor) Disadvantages of Requested Contract Change, if any:		
Details of any proposed alternative scenarios, if any;		
Assigned for Impact Assessment by (Name?):		
Assigned for Impact Assessment to (Name?):		
Assigned for Impact Assessment (Date?):		

Appendix 2

Change Authorisation Note

(For Completion by the Contracting Body)

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

SIGNED ON BEHALF OF THE CONTACTING BODY:	SIGNED ON BEHALF OF THE CONTRACTOR:
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

Schedule 14

Key Personnel

[Note: Bidders to provide relevant details]

Contractor and Sub-contractor Key Staff

Name	Position Held	Period of involvement in the Contract

* To denote Staff dedicated full time to the project

[DN: Need to insert details of Key Personnel]

Schedule 15

Sub-Contractors

Part A – Supply Chain Rights and Protections

1 Appointment of Sub contractors

1.1 The Contractor shall exercise due skill and care in the selection and appointment of any Sub contractors to ensure that the Contractor is able to:

(a) manage any Sub contractors in accordance with Good Industry Practice;

(b) comply with its obligations under this Call-Off Contract in the delivery of the Services; and

(c) assign, novate or otherwise transfer to the Contracting Body or any Replacement Contractor any of its rights and/or obligations under each Sub contract that relates exclusively to this Call-Off Contract.

1.2 Prior to sub-contracting any of its obligations under this Call-Off Contract, the Contractor shall notify the Contracting Body in writing of:

(a) the proposed Sub-contractor's name, registered office and company registration number;

(b) the scope of any Services to be provided by the proposed Sub contractor; and

(c) where the proposed Sub contractor is an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Contracting Body that the proposed Sub contract has been agreed on "arm's-length" terms.

1.3 If requested by the Contracting Body within 10 Working Days of receipt of the Contractor's notice issued pursuant to paragraph 1.2, the Contractor shall also provide:

(a) a copy of the proposed Sub contract; and

(b) any further information reasonably requested by the Contracting Body.

1.4 The Contracting Body may, within 10 Working Days of receipt of the Contractor's notice issued pursuant to paragraph 1.2 (or, if later, receipt of any further information requested pursuant to paragraph 1.3), object to the appointment of the relevant Sub contractor if it considers that:

(a) the appointment of a proposed Sub contractor may prejudice the provision of the Call-Off Services and/or may be contrary to the interests of the Contracting Body;

(b) the proposed Sub contractor is unreliable and/or has not provided reasonable services to its other customers;

(c) the proposed Sub contractor employs unfit persons; and/or

(d) the proposed Sub-contractor should be excluded in accordance with paragraph 7.1;

in which case, the Contractor shall not proceed with the proposed appointment.

1.5 If:

(a) the Contracting Body has not notified the Contractor that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:

(i) the Contractor's notice issued pursuant to paragraph 1.1; and

(ii) any further information requested by the Contracting Body pursuant to paragraph 1.3; and

(b) the proposed Sub contract is not a Key Sub contract (which shall require the written consent of the Contracting Body in accordance with paragraph 2.1 (Appointment of Key Sub-contractors),

the Contractor may proceed with the proposed appointment. The Contractor shall, as soon as reasonably practicable after appointing such Sub-contractor in accordance with this Schedule, provide to the Contracting Body an up-to-date list of all of the Contractor's Sub-contractors that have been appointed in connection with the performance of the Call-Off Services under this Call-Off Contract, in a form substantially similar to the list annexed to this Schedule (or in such other form as notified to the Contractor by the Contracting Body from time to time).

2 Appointment of Key Sub contractors

2.1 Where the Contractor wishes to enter into a Key Sub contract or replace a Key Sub contractor, it must obtain the prior written consent of the Contracting Body, such consent not to be unreasonably withheld or delayed. For these purposes, the Contracting Body may withhold its consent to the appointment of a Key Sub contractor if it reasonably considers that:

(a) the appointment of a proposed Key Sub contractor may prejudice the provision of the Call-Off Services or may be contrary to the interests of the Contracting Body;

(b) the proposed Key Sub contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

(c) the proposed Key Sub contractor employs unfit persons; and/or

(d) the proposed Key Sub-contractor should be excluded in accordance with paragraph 7.1.

2.2 The Contracting Body consents to the appointment of the Key Sub contractors listed in Schedule 15 (Sub-contractors).

2.3 Except where the Contracting Body has given its prior written consent, the Contractor shall ensure that each Key Sub contract shall include:

(a) provisions which will enable the Contractor to discharge its obligations under this Call-Off Contract;

(b) a right under Contracts (Rights of Third Parties) Act 1999 for the Contracting Body to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Contracting Body;

(c) a provision enabling the Contracting Body to enforce the Key Sub contract as if it were the Contractor;

(d) a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub contract to the Contracting Body or any Replacement Contractor without restriction (including any need to obtain any consent or approval) or payment by the Contracting Body;

(e) obligations no less onerous on the Key Sub contractor than those imposed on the Contractor under this Call-Off Contract in respect of:

(i) data protection requirements set out in clauses [♦] (Contracting Body Data and Security Requirements) and [♦] (Protection of Personal Data);

(ii) FOIA requirements set out in clause [♦] (Freedom of Information);

(iii) the obligation not to embarrass the Contracting Body or otherwise bring the Contracting Body into disrepute; the keeping of records in respect of the services being provided under the Key Sub contract, including the maintenance of Open Book Data; and

(iv) the conduct of Audits set out in [♦] (Financial Reports and Audit Rights);

(f) provisions enabling the Contractor to terminate the Key Sub contract on notice on terms no more onerous on the Contractor than those imposed on the Contracting Body under [clauses [♦] and Schedule [♦] of this Call-Off Contract];

(g) a provision restricting the ability of the Key Sub contractor to sub contract all or any part of the services provided to the Contractor under the Key Sub contract without first seeking the written consent of the Contracting Body;

(h) a provision enabling the Contractor or the Contracting Body to appoint a remedial adviser on such terms as may be determined by the Contracting Body;

(i) a provision enabling the Contractor, the Contracting Body or any other person on behalf of the Contracting Body to step-in on substantially the same terms as are set out in Clause [♦] (Step-in Rights);

(j) a provision requiring the Key Sub contractor to participate in, and if required by the Contracting Body in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub contractors in, the Multi-Party Dispute Resolution Procedure; and

(k) a provision requiring the Key Sub contractor to:

(i) promptly notify the Contractor and the Contracting Body in writing of any of the following of which it is, or ought to be, aware:

(A) the occurrence of a Financial Distress Event in relation to the Key Sub contractor; or

(B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub contractor first becomes aware of such); and

(ii) co-operate with the Contractor and the Contracting Body in order to [comply with the provisions relating to Financial Distress set out in [♦]] including meeting with the Contractor and the Contracting Body to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services.

2.4 The Contractor shall not terminate or materially amend the terms of any Key Sub contract without the Contracting Body's prior written consent, which shall not be unreasonably withheld or delayed.

3 Supply chain protection

3.1 The Contractor shall ensure that all Sub contracts (which in this paragraph includes any contract in the Contractor's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call-Off Contract) contain provisions:

(a) giving the Contractor a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;

(b) requiring the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

(c) that if the Contractor or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;

(d) requiring the Contractor or other party to pay any undisputed sums which are due from it to the Sub contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed; and

(e) giving the Contracting Body a right to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and

(f) requiring the Sub-contractor to include a clause to the same effect as this paragraph 3.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call-Off Contract.

3.2 The Contractor shall:

(a) pay any undisputed sums which are due from it to a Sub contractor within 30 days of verifying that the invoice is valid and undisputed;

(b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2 (Minimum Performance Levels and Customer Service Standards) a summary of its compliance with paragraph 3.2(a), such data to be certified each Quarter by a director of the Contractor as being accurate and not misleading.

3.3 Notwithstanding any provision of Clause [E4] (Confidentiality) if the Contractor notifies the Contracting Body (whether in a Balanced Scorecard Report or otherwise) that the Contractor has failed to pay a Sub contractor's undisputed invoice within 30 days of receipt, or the Contracting Body otherwise discovers the same, the Contracting Body shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

4 **Termination of Sub contracts**

4.1 The Contracting Body may require the Contractor to terminate:

(a) a Sub contract where:

(i) the acts or omissions of the relevant Sub contractor have caused or materially contributed to the Contracting Body's right of termination pursuant to Clause [H2] (Termination on Default);

(ii) the relevant Sub contractor or any of its Affiliates have embarrassed the Contracting Body or otherwise brought the Contracting Body into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Contracting Body, regardless of whether or not such act or omission is related to the Sub contractor's obligations in relation to the Services or otherwise;

(iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or

(iv) the Contracting Body has found grounds for exclusion of the Sub-contractor in accordance with paragraph 7.1; and

(b) a Key Sub contract where there is a Change of Control of the relevant Key Sub contractor, unless:

(i) the Contracting Body has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

(ii) the Contracting Body has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Contracting Body was given notice of the Change of Control.

5 Competitive Terms

5.1 If the Contracting Body is able to obtain from any Sub contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Contractor or the Staff in the supply of the Call-Off Services, then the Contracting Body may:

(a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Contracting Body in respect of the relevant item; or

(b) subject to paragraph 4.1, enter into a direct agreement with that Sub contractor or third party in respect of the relevant item.

5.2 If the Contracting Body exercises either of its options pursuant to paragraph 5.1, then the Fees shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

5.3 The Contracting Body's right to enter into a direct agreement for the supply of the relevant items is subject to:

(a) any reduction in the Fees taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

6 Retention of Legal Obligations

6.1 Notwithstanding the Contractor's right to sub-contract pursuant to this Schedule 15, the Contractor shall remain responsible for all acts and omissions of its Sub contractors and the acts and omissions of those employed or engaged by the Sub contractors as if they were its own.

7 Exclusion of Sub-contractors

7.1 Where the Contracting Body considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

(a) if the Contracting Body finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;

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

[Note: Bidders to provide relevant details]

Name of Sub-contractor & Company Registration Number	Nature, Status and Location of the Call-Off Services being Sub-Contracted	Percentage % Delivery of the Contract

Schedule 16

Dispute Resolution Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"**CEDR**"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"**Counter Notice**"	has the meaning given in paragraph 7.2;
"**Expert**"	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 to act as an expert in relaton to that Dispute;
"**Expert Determination**"	determination by an Expert in accordance with paragraph 6;
"**Mediation Notice**"	has the meaning given in paragraph 4.2;
"**Mediator**"	the independent third party appointed in accordance with paragraph 5.2 to mediate a Dispute;
"**Multi-Party Dispute**"	a Dispute which involves the Parties and one or more Related Third Parties;
"**Multi-Party Dispute Representatives**"	has the meaning given in paragraph 9.6;
"**Multi-Party Dispute Resolution Board**"	has the meaning given in paragraph 9.6;
"**Related Third Party**"	a party to: (a) another contract with the Contracting Body or the Contractor which is relevant to this Call-Off Contract; or (b) a Sub-contract; and
"**Contractor Request**"	a notice served by the Contractor requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Contracting Body's Representative and the Contractor's Representative shall attempt in good faith to resolve the Dispute; and

(b) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

(a) shall set out:

(i) the material particulars of the Dispute;

(ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in paragraph 3, the reason why; and

(b) may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Contracting Body) or considers (in the case of the Contractor) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.2(b), then:

(a) if it is served by the Contracting Body it shall be treated as a Multi-Party Procedure Initiation Notice; and

(b) if it is served by the Contractor it shall be treated as a Contractor Request, and in each case the provisions of paragraph 9 shall apply.

2.4 Subject to paragraphs 2.5 and 3.2 and so long as the Contracting Body has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

(a) first by commercial negotiation (as prescribed in paragraph 4);

(b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and

(c) lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with clause I1 (Governing Law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Call-Off Contract and may also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call-Off Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 8 (Urgent Relief).

3 EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Contracting Body.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Call-Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:

(a) in paragraph 4.2(b), ten (10) Working Days;

(b) in paragraph 5.2, ten (10) Working Days;

(c) in paragraph 6.2, five (5) Working Days; and

(d) in paragraph 7.2, ten (10) Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Contracting Body may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Contracting Body fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

4.1 Following the service of a Dispute Notice, then, so long as the Contracting Body has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Contracting Body and the Contractor shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Contracting Body's [***insert role***] and the Contractor's [***insert role***].

4.2 If either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution:

(a) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 4; or

(b) the Parties have not settled the Dispute in accordance with paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

5 MEDIATION

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Call-Off Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Call-Off Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

(c) if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the law Society on application by either Party.

6.3 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under paragraph 4.1 and to the provisions of paragraph 6, the Contracting Body may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.

7.2 Before the Contractor commences court proceedings or arbitration, it shall serve written notice on the Contracting Body of its intentions and the Contracting Body shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Contractor requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Contractor shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Contracting Body serves a Counter Notice, then:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 7.5 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Contractor shall not commence arbitration proceedings.

7.4 If the Contracting Body does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 7.2, the Contractor may either commence arbitration proceedings in accordance with paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to paragraphs 7.1 to 7.4:

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs 7.5(e), (f) and (g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call-Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the chair of the arbitral tribunal shall be British;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

8 URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

(a) for interim or interlocutory remedies in relation to this Call-Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Contracting Body reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Contracting Body shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Contractor which sets out the Contracting Body's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, the Contractor has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Contractor may serve a Contractor Request on the Contracting Body.

9.4 The Contracting Body shall (acting reasonably) consider each Contractor Request and shall determine within five (5) Working Days whether the Dispute is:

(a) a Multi-Party Dispute, in which case the Contracting Body shall serve a Multi-Party Procedure Initiation Notice on the Contractor; or

(b) not a Multi-Party Dispute, in which case the Contracting Body shall serve written notice of such determination upon the Contractor and the Dispute shall be treated in accordance with paragraphs 3 to 8.

9.5 If the Contracting Body has determined, following a Contractor Request, that a Dispute is not a Multi-Party Dispute, the Contractor may not serve another Contractor Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, at least one of whom from each of the parties shall be of a suitable level of seniority and have full authority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

(a) the Contracting Body;

(b) the Contractor;

(c) each Related Third Party involved in the Multi-Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Contracting Body considers necessary,

(together "**Multi-Party Dispute Representatives**").

9.7 The Parties agree that the Multi -Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

(a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

(b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Contracting Body, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

(c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

(a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;

(b) either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or

(c) subject to paragraph 9.9, paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Contractor" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Contracting Body or the Contractor may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Contractor.

Schedule 17

Life Chances

[DN: This Schedule 17 (Life Chances) is a DWP-specific Schedule and is subject to change. Schedule will be confirmed in respect of each Call-Off Contract at the time of issue of Invitation to Participate in Mini Competition for the relevant Call-off Contract.]

1 General

1.1 The Contractor acknowledges that the Crown is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.

1.2 The Contractor (a) acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and (b) agrees to cooperate with the Authority to improve life chances for those most disadvantaged and furthest from the labour market.

1.3 The Contractor acknowledges that the Authority is supporting the Crown's life chances and social value agendas by aiming to promote opportunities for groups of persons ("**DWP Priority Groups**") which the Authority regards as meriting priority assistance including but not limited to Apprentices, Disabled People, Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic People.

2 Diversity and Equality Delivery Plan

2.1 In addition to complying with its obligations set out in clause D2 and this Schedule 17 (Life Chances), the Authority requires the Contractor to provide such information as the Authority may request on (a) the action(s) the Contractor is taking in the course of supplying the Call-Off Services to comply with its obligations set out in clause D2 and in this Schedule 17 (Life Chances) and (b) the effect such action(s) have on the Staff used in the performance of its obligations under the Call-Off Contract.

2.2 As part of the information to be provided by the Contractor under paragraph 2.1 of this Schedule 17 (Life Chances), the Authority requires the Contractor to provide to the Authority:

(a) a diversity and equality delivery plan ("**Diversity and Equality Delivery Plan**") six (6) Months after the Call-Off Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Call-Off Contract and include details of all Staff including but not limited to all Sub-contractors involved in the performance of the Contractor's obligations under the Call-Off Contract.

(b) details of the action(s) the Contractor is taking to support the Crown's social value agenda including but not limited to the action(s) the Contractor is taking to meet its obligations under paragraph 2.3 of this Schedule.

2.3 The Contractor shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:

(a) **Apprentices**

(i) Ensure that (5) % of the Staff used in the performance of the Contractor's obligations under the Call-Off Contract are Apprentices.

(ii) Make available to potential members of Staff used in the performance of the Contractor's obligations information about the National Apprenticeship Service.

(b) **Disabled People**

(i) Take steps to become a Disability Confident Employer and achieve level 3 within 12 months of the Call-Off Commencement Date and maintain such Disability Confident Employer status at all times thereafter during the Call-Off Contract Period. For the purposes of this Schedule, the term **"Disability Confident Employer"** (including the levels associated with such definition) is more particularly described in the Authority's Disability Confident accreditation publication, as updated and/or replaced by the Authority and notified to the Contractor from time to time. Any breach by the Contractor of this paragraph 2.3(b)(i) shall be a Serious Breach for the purposes of clause H2.1(c) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2.

(ii) Make appropriate use of Access to Work to support recruit and retain disabled workers.

(iii) When recruiting Staff to be used in the performance of the Contractor's obligations under the Call-Off Contract, offer Disabled People interviews under a guaranteed interview scheme for vacancies for Staff where the Disabled People meet the minimum criteria for such vacancies.

(iv) Offer Work Trials to Disabled People to support filling vacancies for Staff.

(v) Provide Employment Experience to Disabled People as members of Staff used in the performance of the Contractor's obligations under the Call-Off Contract to develop their skills and experience and increase their employability.

(c) **Young People – Under 25**

(i) Offer Work Trials to Young People to support filling vacancies for Staff.

(ii) Provide Employment Experience to Young People as members of Staff used in the performance of the Contractor's obligations under the Call-Off Contract to develop their skills and experience and increase their employability.

(d) **Older Workers – Over 50**

(i) Offer Work Trials to Older Workers to support filling vacancies for Staff.

(ii) Provide Employment Experience to Older People as members of Staff used in the performance of the Contractor's obligations under the Call-Off Contract to develop their skills and experience and increase their employability.

(e) **Ex-Offenders**

(i) Offer Work Trials to Ex-Offenders to support filling vacancies for Staff.

(ii) Provide Employment Experience to Ex-Offenders as members of Staff used in the performance of the Contractor's obligations under the Call-Off Contract to develop their skills and experience and increase their employability.

(f) **Black and Minority Ethnic People**

(i) Offer Work Trials to Black and Minority Ethnic people to support filling vacancies for Staff.

(ii) Provide Employment Experience to Black and Minority Ethnic people as members of Staff used in the performance of the Contractor's obligations under the Call-Off Contract to develop their skills and experience and increase their employability.

(g) **Employee Vacancies**

(i) Advertise all vacancies for Staff via Universal Jobmatch in addition to any other recruitment agencies with whom the Contractor advertises such vacancies and any other actions the Contractor takes to recruit Staff.

2.4 The Diversity and Equality Delivery Plan must also include:

(a) an overview of Contractor and any Sub-contractor's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:

(i) age;

(ii) disability;

(iii) gender reassignment;

(iv) marriage and civil partnership;

(v) pregnancy and maternity;

(vi) race;

(vii) religion or belief;

(viii) sex; and

(ix) sexual orientation.

(b) an overview of Contractor and any Sub-contractor's policies and procedures covering:

(i) harassment

(ii) bullying

(iii) victimisation

(iv) Staff training and development

(c) details of the way in which the above policies and procedures are, or will be (and by when), communicated to Staff;

(d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;

(e) details of what structure and resources are currently directed towards active promotion of diversity and equality within the Staff used in the performance of the Contractor's obligations under this Call-Off Contract, or if not currently in place, what will be put in place and by when.

2.5 The Authority will consider and must agree the contents of Diversity and Equality Delivery Plan. Any issues will be raised with the Contractor by the contract manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Contractor must raise and resolve the issue with the Sub-contractor.

Life Chances Workforce Monitoring Template

2.6 The Contractor shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule 17 (Life Chances)), as may be updated and amended by the Authority from time to time, duly completed in full by the Contractor in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six (6) Months after the Call-Off Commencement Date and quarterly thereafter or at such other times as the Authority may reasonably require from time to time. For the avoidance of doubt, if the Contractor provides the information required under this paragraph 2.6 at the times stipulated in this paragraph 2.6 to a Contracting Body under any Call-Off Contract, then the Contractor shall be deemed to have satisfied its obligations to the Authority under this paragraph 2.6.

2.7 The Contractor shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.

2.8 The Contractor will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the "Social Value Guidance for Contractors" provided by the Authority to the Contractor.

2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned, however, the Contractor agrees to provide high level analysis and identification of trends as and when requested by the Authority.

2.10 The Contractor shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s)s undertaken or planned by the Contractor and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 17 (Life Chances)) to the satisfaction of the Authority.

2.11 Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Contractor as an on-going item at Call-Off Contract review meetings. Such meetings will discuss the information provided by the Contractor in accordance with paragraph 2.2 of this Schedule 17 (Life Chances).

APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING

Important – the figures the Contractor provides must relate specifically to the staff used in the performance of the contractor's obligations under the contract only, which for the avoidance of doubt includes any Sub-contractor.

Date of Return Month: Year	
Name of Contract:	
Contract Number:	
Name of Contractor:	
Call-Off Commencement Date:	
Total Number of Staff, which for the avoidance of doubt includes any Sub-contractors	

1 – Number of new Staff posts created in the performance of the Contractor's obligations under the Contract

New Staff Posts	**Number of new Staff posts created in period**	
	1-34 hr per week posts	**35 hr + per week posts**
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		

2 – Number of Apprentices in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Apprentices	**Number of Apprentices in Staff which have been employed for 26 weeks or longer in period**	**% of Apprentices in Staff at the end of the period**	**Number of Apprentices who began apprenticeships as part of the Staff during the period**
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for			

months 31-42)			

3 – Number of Disabled People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Disabled People	Number of Disabled People in Staff which have been employed for 26 weeks or longer in period	% of Disabled People in Staff at end of period	Number of Disabled People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

4 – Number of Disabled People, who had been interviewed by the Contractor under the Guaranteed Interview Scheme (GIS) for Staff posts used in the performance of the Contractor's obligations under the Contract,

DWP Priority Group – Disabled People in the Staff who had been interviewed by the Contractor under the GIS	Number of Disabled People who have been interviewed for Staff posts by the Contractor under the GIS during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

5 – Number of Young People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Young People	Number of Young People in Staff which have been employed for 26 weeks or longer in period	% Young People in Staff at end of period	Number of Young People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			

1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

6 – Number of Older Workers in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Older Workers	Number of Older Workers in Staff which have been employed for 26 weeks or longer in period	% Older Workers in Staff at end of period	Number of Older Workers who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

7 – Number of Ex-Offenders in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number of ex-offenders in Staff which have been employed for 26 weeks or longer in period	% ex-offenders in Staff at end of period	Number of ex-offenders who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

8 – Number of Black or Minority Ethnic (BME) in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number BME in Staff which have been employed for 26 weeks or longer in period	% BME in Staff at end of period	Number of BME who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

9 – Number of Employment Experience placements conducted in the performance of the Contractor's obligations under the Contract

Employment Experience placements	Number of Employment Experience placements conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

10 – Number of Work Trials conducted as part of the recruitment of Staff used in the performance of the Contractor's obligations under the Contract.

Work Trials	Number of Work Trials conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

11 – Number of vacancies for Staff advertised via Universal Jobmatch

Staff vacancies advertised via	Number of vacancies for Staff advertised via	% of all vacancies for Staff advertised via

Universal Jobmatch	**Universal Jobmatch during the period**	**Universal Jobmatch during the period.**
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		

Schedule 18

Business Continuity and Disaster Recovery

[Guidance Note: See Clause H6 of the Call-Off Contract. Switch this Schedule 18 to "Not Used" if not required.]

[OPTION 1]

[Guidance Note: This option is used only where the Contracting Body:

- *is following a Further Competition Procedure and has specified its BCRD requirements from the outset of the Further Competition Procedure; and*
- *has asked Contractors to submit a BCDR Plan as part of the Further Competition Procedure.]*

1. AUTHORITY BCDR REQUIREMENTS

[ ]

[Guidance Note: the Contracting Body to insert the BCDR requirements as set out at the start of the Further Competition Procedure. Authorities may wish to consider the option 2 provisions as a base line for such requirements]

2. CONTRACTOR BCDR PLAN

[ ]

[Guidance Note: the Contracting Body to insert the Contractor's BCDR Plan as submitted during the Further Competition Procedure.

0.
[OPTION 2]

[Guidance Note: This option is to be used by the Contracting Body if it is using the Further Competition Procedure under which the Contracting Body is happy for the Contractor to provide the BCDR Plan after the Call-Off Contract has been signed rather than during the Further Competition Procedure.

1. DEFINITIONS

1.1 In this Schedule 18, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given to it in paragraph 2.2.1(b) of this Schedule 18;
"Contractor's Proposals"	has the meaning given to it in paragraph 6.2.3 of this Schedule 18;
"Disaster"	[means the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof, will be unavailable (or could reasonably be anticipated to be

	unavailable) for the period specified in the Order Form or elsewhere in the Call-Off Contract;]
"Disaster Recovery Plan"	has the meaning given to it in paragraph 2.2.1(c) of this Schedule 18;
" Disaster Recovery Services"	[means the services embodied in the processes and procedures for restoring the provision of Services following the occurrence of a Disaster, as detailed further in this Schedule 18;
"Disaster Recovery System"	means the system embodied in the processes and procedures for restoring the provision of Services following the occurrence of a disaster;
"Related Supplier"	means any person who provides goods and/or services to the Contracting Body which are related to the Services from time to time;
"Review Report"	has the meaning given to it in paragraph 6.2 of this Schedule 18.

2. BCDR PLAN

2.1 Within [thirty] [30] Working Days from the Call-Off Commencement Date the Contractor shall prepare and deliver to the Contracting Body for the Contracting Body's written approval a plan, which shall detail the processes and arrangements that the Contractor shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall:

2.2.1 be divided into three parts:

(a) Part A which shall set out general principles applicable to the BCDR Plan;

(b) Part B which shall relate to business continuity (the **"Business Continuity Plan"**); and

(c) Part C which shall relate to disaster recovery (the **"Disaster Recovery Plan"**); and

2.2.2 unless otherwise required by the Contracting Body in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5.

2.3 Following receipt of the draft BCDR Plan from the Contractor, the Contracting Body shall:

2.3.1 review and comment on the draft BCDR Plan as soon as reasonably practicable; and

2.3.2 notify the Contractor in writing that it approves or rejects the draft BCDR Plan no later than twenty (20) Working Days after the date on which the draft BCDR Plan is first delivered to the Contracting Body.

2.4 If the Contracting Body rejects the draft BCDR Plan:

2.4.1 the Contracting Body shall inform the Contractor in writing of its reasons for its rejection; and

2.4.2 the Contractor shall then revise the draft BCDR Plan (taking reasonable account of the Contracting Body's comments) and shall re-submit a revised draft BCDR Plan to the Contracting Body for Approval within twenty (20) Working Days of the date of the Contracting Body's notice of rejection. The provisions of paragraphs 2.3 and 2.4 of this Schedule 18 shall apply again to any resubmitted draft BCDR Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. PART A OF THE BCDR PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the BCDR Plan shall:

3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;

3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the provision of the Services and any services provided to the Contracting Body by a Related Supplier;

3.1.3 contain an obligation upon the Contractor to liaise with the Contracting Body and (at the Contracting Body's request) any Related Suppliers with respect to issues concerning business continuity and disaster recovery where applicable;

3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Contracting Body and any of its other Related Supplier in each case as notified to the Contractor by the Contracting Body from time to time;

3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Contracting Body;

3.1.6 contain a risk analysis, including:

(a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(b) identification of any single points of failure within the provision of Services and processes for managing the risks arising therefrom;

(c) identification of risks arising from the interaction of the provision of Services and with the services provided by a Related Supplier; and

(d) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

3.1.7 provide for documentation of processes, including business processes, and procedures;

3.1.8 set out key contact details (including roles and responsibilities) for the Contractor (and any Sub-Contractors) and for the Contracting Body;

3.1.9 identify the procedures for reverting to "normal service";

3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

3.1.11 identify the responsibilities (if any) that the Contracting Body has agreed it will assume in the event of the invocation of the BCDR Plan; and

3.1.12 provide for the provision of technical advice and assistance to key contacts at the Contracting Body as notified by the Contracting Body from time to time to inform decisions in support of the Contracting Body's business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

3.2.1 the Services are provided in accordance with this Call-Off Contract at all times during and after the invocation of the BCDR Plan;

3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Contracting Body is minimal as far as reasonably possible;

3.2.3 it complies with the relevant provisions of [ISO22031] and all other industry standards from time to time in force; and

3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.

3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the provision of Services.

3.4 The Contractor shall not be entitled to any relief from its obligations under the Customer Service Standards or Minimum Performance Levels or to any increase in the Fees to the extent that a Disaster occurs as a consequence of any breach by the Contractor of this Call-Off Contract.

4. BUSINESS CONTINUITY PLAN - PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Contracting Body expressly states otherwise in writing:

4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Services; and

4.1.2 the steps to be taken by the Contractor upon resumption of the provision of Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;

4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such goods, services and steps, the "**Business Continuity Services**");

4.2.3 specify any applicable Customer Service Standards or Minimum Performance Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Customer Service Standards or Minimum Performance Levels in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and

4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. DISASTER RECOVERY PLAN - PRINCIPLES AND CONTENTS

5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Contractor ensures continuity of the business operations of the Contracting Body supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

5.3.1 the technical design and build specification of the Disaster Recovery System;

5.3.2 details of the procedures and processes to be put in place by the Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:

(a) [data centre and disaster recovery site audits;

(b) backup methodology and details of the Contractor's approach to data back-up and data verification;

(c) identification of all potential disaster scenarios;

(d) risk analysis;

(e) documentation of processes and procedures;

(f) hardware configuration details;

(g) network planning including details of all relevant data networks and communication links;

(h) invocation rules;

(i) Service recovery procedures; and

(j) steps to be taken upon resumption of the provision of Services to address any prevailing effect of the failure or disruption of the provision of Services;]

5.3.3 any applicable Customer Service Standards or Minimum Performance Levels with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Customer Service Standards or Minimum Performance Levels in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;

5.3.4 details of how the Contractor shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;

5.3.5 access controls to any disaster recovery sites used by the Contractor in relation to its obligations pursuant to this Schedule; and

5.3.6 testing and management arrangements.

6. REVIEW AND AMENDMENT OF THE BCDR PLAN

6.1 The Contractor shall review the BCDR Plan (and the risk analysis on which it is based):

6.1.1 on a regular basis and as a minimum once every six (6) months;

6.1.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 7; and

6.1.3 where the Contracting Body requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule 18) by notifying the Contractor to such effect in writing, whereupon the Contractor shall conduct such reviews in accordance with the Contracting Body's written requirements. Prior to starting its review, the Contractor shall provide an accurate written estimate of the total costs payable by the Contracting Body for the Contracting Body's approval. The costs of both Parties of any such additional reviews shall be met by the Contracting Body except that the Contractor shall not be entitled to charge the Contracting Body for any costs that it may incur above any estimate without the Contracting Body's prior written approval.

6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule 18 shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Contractor within the period required by the BCDR Plan or, if no such period is required, within such period as the Contracting Body shall reasonably require. The Contractor shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Contracting Body a report (a **"Review Report"**) setting out:

6.2.1 the findings of the review;

6.2.2 any changes in the risk profile associated with the provision of Services; and

6.2.3 the Contractor's proposals (the **"Contractor's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Contractor can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any goods, services or systems provided by a third party.

6.3 Following receipt of the Review Report and the Contractor's Proposals, the Contracting Body shall:

6.3.1 review and comment on the Review Report and the Contractor's Proposals as soon as reasonably practicable; and

6.3.2 notify the Contractor in writing that it approves or rejects the Review Report and the Contractor's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Contracting Body.

6.4 If the Contracting Body rejects the Review Report and/or the Contractor's Proposals:

6.4.1 the Contracting Body shall inform the Contractor in writing of its reasons for its rejection; and

6.4.2 the Contractor shall then revise the Review Report and/or the Contractor's Proposals as the case may be (taking reasonable account of the Contracting Body's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Contractor's Proposals to the Contracting Body for the Contracting Body's approval within twenty (20) Working Days of the date of the Contracting Body's notice of rejection. The provisions of paragraphs 6.3 and 6.4 of this Schedule 18 shall apply again to any resubmitted Review Report and Contractor's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

6.5 The Contractor shall as soon as is reasonably practicable after receiving the Contracting Body's approval of the Contractor's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Contractor's Proposals. Any such change shall be at the Contractor's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. TESTING OF THE BCDR PLAN

7.1 The Contractor shall test the BCDR Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to paragraph 7.2 of this Schedule 18, the Contracting Body may require the Contractor to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Contracting Body considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.

7.2 If the Contracting Body requires an additional test of the BCDR Plan, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Contracting Body's requirements and the relevant provisions of the BCDR Plan. The Contractor's costs of the additional test shall be borne by the Contracting Body unless the BCDR Plan fails the additional test in which case the Contractor's costs of that failed test shall be borne by the Contractor.

7.3 The Contractor shall undertake and manage testing of the BCDR Plan in full consultation with the Contracting Body and shall liaise with the Contracting Body in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Contracting Body in this regard. Each test shall be carried out under the supervision of the Contracting Body or its nominee.

7.4 The Contractor shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Contracting Body. Copies of live test data used in any such testing shall be (if so required by the Contracting Body) destroyed or returned to the Contracting Body on completion of the test.

7.5 The Contractor shall, within twenty (20) Working Days of the conclusion of each test, provide to the Contracting Body a report setting out:

7.5.1 the outcome of the test;

7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and

7.5.3 the Contractor's proposals for remedying any such failures.

7.6 Following each test, the Contractor shall take all measures requested by the Contracting Body, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Contractor, at no additional cost to the Contracting Body, by the date reasonably required by the Contracting Body and set out in such notice.

7.7 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Contractor of any of its obligations under this Call-Off Contract.

7.8 The Contractor shall also perform a test of the BCDR Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Contracting Body.

8. INVOCATION OF THE BCDR PLAN

8.1 In the event of a complete loss of service or in the event of a Disaster, the Contractor shall immediately invoke the BCDR Plan (and shall inform the Contracting Body promptly of such invocation). In all other instances the Contractor shall invoke or test the BCDR Plan only with the prior consent of the Contracting Body.

Schedule 19

Employee Provisions and TUPE

1 Definitions

In this Schedule, the following definitions shall apply:

"Admission Agreement"	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Contractor and/or Sub-contractor where the Contractor and/or Sub-contractor agree to participate in the Schemes, as amended form time to time, in respect of the Services;
"Contractor's Final Contractor Personnel List"	a list provided by the Contractor of all Contractor Personnel who will transfer under the TUPE Regulations on the Service Transfer Date;
"Contractor's Provisional Contractor Personnel List"	a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;
"Eligible Employee"	any Fair Deal Employee who at the relevant time remains is an eligible employee as defined in the Admission Agreement;
"Fair Deal Employees"	those Transferring Contracting Body Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the TUPE Regulations (or the predecessor legislation to the TUPE Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
"Former Contractor"	a Contractor supplying services to the Contracting Body before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor);
"New Fair Deal"	the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
"Notified Sub-contractor"	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Contracting Body Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;

"Replacement Sub-contractor"	a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
"Relevant Transfer"	a transfer of employment to which the TUPE Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Schemes"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to the Contracting Body or any third party (whether during or on Expiry, Termination [or after the Call-Off Contract Period]);
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
"Staffing Information"	in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as the Contracting Body may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries, bonuses and profit sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit

	schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other "employee liability information" as such term is defined in regulation 11 of the TUPE Regulations;
"Transferring Contracting Body Employees"	those employees of the Contracting Body to whom the TUPE Regulations will apply on the Relevant Transfer Date;
"Transferring Former Contractor Employees"	in relation to a Former Contractor, those employees of the Former Contractor to whom the TUPE Regulations will apply on the Relevant Transfer Date; and
"Transferring Contractor Employees"	those employees of the Contractor and/or the Contractor's Sub-contractors to whom the TUPE Regulations will apply on the Service Transfer Date.

2 Interpretation

Where a provision in this Schedule imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Contracting Body, Former Contractor, Replacement Contractor or Replacement Sub-contractor, as the case may be.

PART A

Transferring Contracting Body Employees at commencement of Services

1 Relevant Transfers

1.1 The Contracting Body and the Contractor agree that:

(a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Contracting Body Employees; and

(b) as a result of the operation of the TUPE Regulations, the contracts of employment between the Contracting Body and the Transferring Contracting Body Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the TUPE Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or any Notified Sub-contractor and each such Transferring Contracting Body Employee.

1.2 The Contracting Body shall comply with all its obligations under the TUPE Regulations and shall perform and discharge all its obligations in respect of the Transferring Contracting Body Employees in respect of the period arising up to (but not including)the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contracting Body; and (ii) the Contractor and/or any Notified Sub-contractor (as appropriate).

2 Contracting Body Indemnities

2.1 Subject to Paragraph 2.2, the Contracting Body shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Contracting Body in respect of any Transferring Contracting Body Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contracting Body Employee occurring before the Relevant Transfer Date;

(b) the breach or non-observance by the Contracting Body before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Contracting Body Employees; and/or

(ii) any custom or practice in respect of any Transferring Contracting Body Employees which the Contracting Body is contractually bound to honour;

(c) any claim by any trade union or other body or person representing the Transferring Contracting Body Employees arising from or connected with any failure by the Contracting Body to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

(d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contracting Body Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Contracting Body Employee and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Contracting Body to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

(e) a failure of the Contracting Body to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contracting Body Employees arising before the Relevant Transfer Date;

(f) any claim made by or in respect of any person employed or formerly employed by the Contracting Body other than a Transferring Contracting Body Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of the TUPE Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Contracting Body Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contracting Body Employee relating to any act or omission of the Contracting Body in relation to its obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with regulation 13(4) of the TUPE Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Contracting Body Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Contractor or any Sub-contractor to comply with its obligations under the TUPE Regulations.

2.3 If any person who is not identified by the Contracting Body as a Transferring Contracting Body Employee claims, or it is determined in relation to any person who is not identified by the Contracting Body as a Transferring Contracting Body Employee, that his/her contract of employment has been transferred from the Contracting Body to the Contractor and/or any Notified Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then:

(a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Body; and

(b) the Contracting Body may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Contractor and/or any Notified Sub-contractor, or take such other reasonable steps as the Contracting Body considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Contracting Body, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Contracting Body shall indemnify the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Contracting Body within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Contracting Body nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3 Contractor Indemnities and Obligations

3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Contracting Body against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Contracting Body Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contracting Body Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Contracting Body Employees; and/or

(ii) any custom or practice in respect of any Transferring Contracting Body Employees which the Contractor or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Contracting Body Employees arising from or connected with any failure by the Contractor or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Contractor or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Contracting Body Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contracting Body Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the TUPE Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Contractor or any Sub-contractor to, or in respect of, any Transferring Contracting Body Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contracting Body in writing;

(f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contracting Body Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Contracting Body Employee, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Contracting Body to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contracting Body Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Contracting Body Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contracting Body Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to their obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the Contracting Body's failure to comply with its obligations under regulation 13 of the TUPE Regulations; and

(i) a failure by the Contractor or any Sub-contractor to comply with its obligations under Paragraph ♦ above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contracting Body whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Contracting Body's failure to comply with its obligations under the TUPE Regulations.

3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the TUPE Regulations (including its obligation to inform and consult in accordance with regulation 13 of the TUPE Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Contracting Body Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contracting Body and the Contractor.

4 Information

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body in writing such information as is necessary to enable the Contracting Body to carry out its duties under regulation 13 of the TUPE Regulations. The Contracting Body shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the TUPE Regulations.

5 Principles of Good Employment Practice

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Contractor of employees whose employment begins after the Relevant Transfer Date, and the Contractor undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Contracting Body relating to pensions in respect of any Transferring Contracting Body Employee as set down in:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

(b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

(c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

(d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 Pensions

The Contractor shall, and/or shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A PENSIONS

1 Participation

1.1 The Contractor undertakes to enter into the Admission Agreement.

1.2 The Contractor and the Contracting Body undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees

1.3 The Contractor and the Contracting Body agree:

(a) that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Contracting Body if the Contractor breaches any obligations it has under the Admission Agreement;

(b) notwithstanding sub-paragraph 1.3(a) of this Annex, the Contractor shall notify the Contracting Body in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

(c) that the Contracting Body shall be entitled to terminate this Agreement in the event that the Contractor:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Contractor to remedy it

1.4 The Contractor shall bear its own costs and all costs that the Contracting Body reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes including without limitation MyCSP's on-boarding costs.

2 Future Service Benefits

2.1 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

2.2 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Contracting Body, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable

to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 Funding

3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Contractor shall indemnify and keep indemnified the Contracting Body on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

4 Provision of information

The Contractor and the Contracting Body respectively undertake to each other:

(a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

(b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 Indemnity

The Contractor undertakes to the Contracting Body to indemnify and keep indemnified the Contracting Body on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 Employer obligation

The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7 Subsequent transfers

The Contractor shall:

(a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

(b) provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or the Contracting Body may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

(c) for the period either

(i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Contracting Body, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Contracting Body (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 Bulk Transfer

Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Contractor agrees to:

(a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

(b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or the Contracting Body may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

(c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the **Shortfall**"), the Contractor agrees to pay the Shortfall to the Schemes;

indemnify the Contracting Body on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

PART B

Transferring Former Contractor Employees at commencement of Services

1 Relevant transfers

1.1 The Contracting Body and the Contractor agree that:

(a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and

(b) as a result of the operation of the TUPE Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the TUPE Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or Notified Sub-contractor and each such Transferring Former Contractor Employee.

1.2 The Contracting Body shall procure that each Former Contractor shall comply with all its obligations under the TUPE Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including)the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and the Contracting Body shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.

2 Former Contractor Indemnities

2.1 Subject to Paragraph 2.2, the Contracting Body shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Former Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Former Contractor Employee arising before the Relevant Transfer Date;

(b) the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Contractor Employees; and/or

(ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;

(c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

(d) a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;

(e) any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the TUPE Regulations and/or the Acquired Rights Directive; and

(f) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-contractor to comply with regulation 13(4) of the TUPE Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

(a) arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Contractor and/or any Sub-contractor to comply with its obligations under the TUPE Regulations.

2.3 If any person who is not identified by the Contracting Body as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by the Contracting Body as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then:

(a) the Contractor shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, to the Former Contractor; and

(b) the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or the Contracting Body, the Contractor shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Contractor and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Contractor and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Contracting Body shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Contractor and/or any Notified Sub-contractor (as appropriate) to the Contracting Body and, if applicable, the Former Contractor, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-contractor and the Contractor shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3 Contractor indemnities and obligations

3.1 Subject to Paragraph 3.2, the Contractor shall indemnify the Contracting Body and/or the Former Contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Contractor or any Sub-contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Contractor or any Sub-contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Contractor Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Contractor or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the TUPE Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Contractor or a Sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contracting Body and/or the Former Contractor in writing;

(f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(ii) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the TUPE Regulations; and

(i) a failure by the Contractor or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the TUPE Regulations.

3.3 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the TUPE Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the TUPE Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

4 Information

The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and/or at the Contracting Body's direction, the Former Contractor, in writing such information as is necessary to enable the Contracting Body and/or the Former Contractor to carry out their respective duties under regulation 13 of the TUPE Regulations. The Contracting Body shall procure that the Former Contractor shall promptly provide to the Contractor and each Notified Sub-contractor in writing such information as is necessary to enable the Contractor and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the TUPE Regulations.

5 Principles of good employment practice

5.1 The Contractor shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Contracting Body relating to pensions in respect of any Transferring Former Contractor Employee as set down in:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

(b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

(c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

(d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 Procurement obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Contracting Body accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Body's contract with the Former Contractor contains a contractual right in that regard which the Contracting Body may enforce.

7 Pensions

The Contractor shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B PENSIONS

1 Participation

1.1 The Contractor undertakes to enter into the Admission Agreement.

1.2 The Contractor and the Contracting Body undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees

1.3 The Contractor and the Contracting Body agree:

(a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Contracting Body if the Contractor breaches any obligations it has under the Admission Agreement;

(b) notwithstanding sub-paragraph 1.3(a) of this Annex, the Contractor shall notify the Contracting Body in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

(c) that the Contracting Body shall be entitled to terminate this Agreement in the event that the Contractor:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Contractor to remedy it

1.4 The Contractor shall bear its own costs and all costs that the Contracting Body reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes including without limitation MyCSP's on-boarding costs.

2 Future service benefits

2.1 If the Contractor is rejoining the Schemes for the first time, the Contractor shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Contracting Body, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 Funding

3.1 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Contractor shall indemnify and keep indemnified the Contracting Body on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

4 Provision of information

The Contractor and the Contracting Body respectively undertake to each other:

(a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

(b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 Indemnity

The Contractor undertakes to the Contracting Body to indemnify and keep indemnified the Contracting Body on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 Employer obligation

The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7 Subsequent transfers

The Contractor shall:

(a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

(b) provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or the Contracting Body may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

(c) for the period either:

(i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Contracting Body, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Contracting Body (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 Bulk Transfer

Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph ♦ above of this Annex, the Contractor agrees to:

(a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

(b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or the Contracting Body may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

(c) allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than

the amount required by the Schemes to fund day for day service ("the **Shortfall**"), the Contractor agrees to pay the Shortfall to the Schemes;

(d) indemnify the Contracting Body on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

PART C

No transfer of employees at commencement of Services

1 Procedure in the event of Transfer

1.1 The Contracting Body and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Contracting Body and/or any Former Contractor.

1.2 If any employee of the Contracting Body and/or a Former Contractor claims, or it is determined in relation to any employee of the Contracting Body and/or a Former Contractor, that his/her contract of employment has been transferred from the Contracting Body and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive then:

(a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, give notice to the Former Contractor; and

(b) the Contracting Body and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Contracting Body or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in 1.2(b) is accepted (or if the situation has otherwise been resolved by the Contracting Body and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

the Contractor and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2 Indemnities

2.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Contracting Body shall:

(a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Contracting Body referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

(b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Contracting Body and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Contracting Body and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Contracting Body and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Contractor and/or any Sub-contractor to the Contracting Body and, if applicable, Former Contractor within 6 months of the Effective Date.

3 Procurement obligations

Where in this Part C the Contracting Body accepts an obligation to procure that a Former Contractor does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Body's contract with the Former Contractor contains a contractual right in that regard which the Contracting Body may enforce.

PART D

EMPLOYMENT EXIT PROVISIONS

1 Pre-service transfer obligations

1.1 The Contractor agrees that within 20 Working Days of the earliest of:

(a) receipt of a notification from the Contracting Body of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any partial termination of this Agreement;

(c) the date which is 12 months before the end of the Term; and

(d) receipt of a written request of the Contracting Body at any time (provided that the Contracting Body shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by the Contracting Body.

1.2 At least 28 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Contracting Body or at the direction of the Contracting Body to any Replacement Contractor and/or any Replacement Sub-contractor:

(a) the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and

(b) the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

1.3 The Contracting Body shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.

1.4 The Contractor warrants, for the benefit of the Contracting Body, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of the Contracting Body (not to be unreasonably withheld or delayed):

(a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of

equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

(b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;

(e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Contracting Body or, at the direction of the Contracting Body, any Replacement Contractor and any Replacement Sub-contractor of any notice to terminate employment given by the Contractor or relevant Sub-contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body any information the Contracting Body may reasonably require relating to the manner in which the Services are organised, which shall include:

(a) the numbers of employees engaged in providing the Services;

(b) the percentage of time spent by each employee engaged in providing the Services;

(c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and

(d) a description of the nature of the work undertaken by each employee by location.

1.7 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Contracting Body, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all

necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body or, at the direction of the Contracting Body, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:

(a) the most recent month's copy pay slip data;

(b) details of cumulative pay for tax and pension purposes;

(c) details of cumulative tax paid;

(d) tax code;

(e) details of any voluntary deductions from pay; and

(f) bank/building society account details for payroll purposes.

2 TUPE Regulations Exit Provisions

2.1 The Contracting Body and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the TUPE Regulations and/or the Acquired Rights Directive will apply. The Contracting Body and the Contractor further agree that, as a result of the operation of the TUPE Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the TUPE Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.

2.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the TUPE Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Contractor shall indemnify the Contracting Body and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Contractor or any Sub-contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;

(b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Contractor Employees; and/or

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

(d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

(ii) in relation to any employee who is not identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Contractor to the Contracting Body and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for

whom it is alleged the Contracting Body and/or the Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the TUPE Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the failure by the Contracting Body and/or Replacement Contractor to comply with regulation 13(4) of the TUPE Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the TUPE Regulations.

2.5 If any person who is not identified in the Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive, then:

(a) the Contracting Body shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Contractor; and

(b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Contracting Body shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved

the Replacement Contractor and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.

2.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the TUPE Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor

Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Contractor and/or any Sub-contractor; and

(b) the Replacement Contractor and/or the Replacement Sub-contractor.

2.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Contracting Body, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the TUPE Regulations. The Contracting Body shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the TUPE Regulations.

2.13 Subject to Paragraph 2.14, the Contracting Body shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the TUPE Regulations) of any such Transferring Contractor Employee;

(b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or

(ii) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the TUPE Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;

(f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the TUPE Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the TUPE Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the TUPE Regulations.

ANNEX

LIST OF NOTIFIED SUB-CONTRACTORS

Schedule 20

Continuous Improvement and Benchmarking

3 DEFINITIONS

3.1 In this Schedule, the following expressions shall have the following meanings:

"Benchmarked Call-Off Rates"	means the prices for the Benchmarked Call-Off Services
"Benchmark Call-Off Review"	means a review of the Call-Off Services carried out in accordance with this Schedule to determine whether those Call-Off Services represent Good Value
"Benchmarked Call-Off Services"	means any Call-Off Services included within the scope of a Benchmark Call-Off Review pursuant to this Schedule
"Comparable Call-Off Rates"	means rates payable to the Comparison Call-Off Group for Comparable Call-Off Services that can be fairly compared with the prices for the Call-Off Services
"Comparable Call-Off Services"	means Call-Off Services that are identical or materially similar to the Benchmarked Call-Off Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Call-Off Services exist in the market, the Contractor shall propose an approach for developing a comparable Call-Off Services benchmark
"Comparison Call-Off Group"	means a sample group of organisations providing Comparable Call-Off Services which consists of organisations which are either of similar size to the Contractor or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Contractor or which, are best practice organisations
"Equivalent Call-Off Data"	means data derived from an analysis of the Comparable Call-Off Rates and/or the Comparable Call-Off Services (as applicable) provided by the Comparison Call-Off Group
"Good Value"	means that the Benchmarked Call-Off Rates are within the Upper Quartile
"Upper Quartile"	means, in respect of Benchmarked Call-Off Rates, that based on an analysis of Equivalent Call-Off Data, the Benchmarked Call-Off Rates, as compared to the range of prices for Comparable Call-Off Services, are within the top 25% in terms of best value for money for the recipients of

4 BACKGROUND

4.1 The Contractor acknowledges that the Contracting Body wishes to ensure that the Call-Off Services, represent value for money to the taxpayer throughout the Call-Off Contract Period.

4.2 This Schedule sets out the following processes to ensure this Call-Off Contract represents value for money throughout the Call-Off Contract Period:

(a) benchmarking; and

(b) continuous improvement.

5 BENCHMARKING

5.1 Frequency Purpose and Scope of Benchmark Call-Off Review

(a) The Contractor shall carry out Benchmark Call-Off Reviews of the Call-Off Services when so requested by the Contracting Body.

(b) The Contracting Body shall not be entitled to request a Benchmark Call-Off Review during the first six (6) Month period from the Call-Off Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Call-Off Review.

(c) The purpose of a Benchmark Call-Off Review will be to establish whether the Benchmarked Call-Off Services are, individually and/or as a whole, Good Value.

(d) The Call-Off Services that are to be the Benchmarked Call-Off Services will be identified by the Contracting Body in writing.

5.2 Benchmarking Process

(a) The Contractor shall produce and send to the Contracting Body for prior approval in writing, a draft plan for the Benchmark Call-Off Review.

(b) The plan must include:

(i) a proposed timetable for the Benchmark Call-Off Review;

(ii) a description of the benchmarking methodology to be used;

(iii) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and

(iv) a description of how the Contractor will scope and identify the Comparison Call-Off Group.

(c) The Contracting Body must give notice in writing to the Contractor within ten (10) Working Days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Contracting Body may not unreasonably withhold or delay its approval of the draft plan and any suggested amendments must be reasonable.

(d) Where the Contracting Body suggests amendments to the draft plan under paragraph 3.23.2(c), the Contractor must produce an amended draft plan. Paragraph 3.23.2(b) shall apply to any amended draft plan.

(e) Once it has received the Contracting Body's written approval of the draft plan, the Contractor shall:

(i) finalise the Comparison Call-Off Group and collect data relating to Comparable Call-Off Rates. The selection of the Comparable Call-Off Rates (both in terms of number and identity) shall be a matter for the Contractor's professional judgment using:

(A) market intelligence;

(B) the Contractor's own data and experience;

(C) relevant published information; and

(D) pursuant to paragraph 3.23.2(f) below, information from other suppliers or purchasers on Comparable Call-Off Rates;

(ii) by applying the adjustment factors listed in paragraph 3.23.2(g) and from an analysis of the Comparable Call-Off Rates, derive the Equivalent Call-Off Data;

(iii) using the Equivalent Call-Off Data to calculate the Upper Quartile;

(iv) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Call-Off Rates as a whole are, Good Value.

(f) The Contractor agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Call-Off Rates.

(g) In carrying out the benchmarking analysis the Contractor may have regard to the following matters when performing a comparative assessment of the Benchmarked Call-Off Rates and the Comparable Call-Off Rates in order to derive Equivalent Call-Off Data:

(i) the contractual terms and business environment under which the Comparable Call-Off Rates are being provided (including the scale and geographical spread of the customers);

(ii) exchange rates;

(iii) any other factors reasonably identified by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive.

5.3 **Benchmarking Call-Off Report**

(a) For the purposes of this Schedule **"Benchmarking Call-Off Report"** shall mean the report produced by the Contractor following the Benchmark Call-Off Review and as further described in this Schedule.

(b) The Contractor shall prepare a Benchmarking Call-Off Report and deliver it to the Contracting Body, at the time specified in the plan approved pursuant to paragraph 3.2(c) of this Schedule, setting out its findings. Those findings shall be required to:

(i) include a finding as to whether or not a Benchmarked Call-Off Services, as a whole are, Good Value;

(ii) if any of the Benchmarked Call-Off Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Call-Off Services, as a whole, Good Value; and

(iii) include sufficient detail and transparency so that the Contracting Body can interpret and understand how the Contractor has calculated whether or not the Benchmarked Call-Off Services are, individually or as a whole, Good Value.

(c) The Parties agree that any changes required to this Call-Off Contract identified in the Benchmarking Call-Off Report may be implemented at the direction of the Contracting Body in accordance with F3.

(d) The Contracting Body shall be entitled to publish the results of any benchmarking of the prices of the Call-Off Services to Other Contracting Bodies.

6 CONTINUOUS IMPROVEMENT

6.1 The Contractor shall adopt a policy of continuous improvement in relation to the Call-Off Services pursuant to which it will regularly review with the Contracting Body the Call-Off Services and the manner in which it is providing the Call-Off Services with a view to reducing the Contracting Body's costs (including the prices of the Call-Off Services) and/or improving the quality and efficiency of the Call-Off Services. The Contractor and the Contracting Body will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

6.2 Without limiting paragraph 4.1, the Contractor shall produce at the start of each anniversary of the Call-Off Commencement Date a plan for improving the provision of the Call-Off Services under this Call-Off Contract and reducing the prices of the Call-Off Services (without adversely affecting the performance of the Call-Off Contract) during the forthcoming year (**"Continuous Call-Off Improvement Plan"**) for the approval of

the Contracting Body. The Continuous Call-Off Improvement Plan shall include, as a minimum, proposals in respect of the following:

(a) identifying the emergence of new and evolving technologies which could improve the Call-Off Services;

(b) identifying changes in behaviour of the Contracting Body that result in a cost saving and a reduction in the prices of the Call-Off Services;

(c) identifying and implementing efficiencies in the Contractor's internal processes and administration that may lead to cost savings and reductions in the prices of the Call-Off Services;

(d) identifying and implementing efficiencies in the way the Contracting Body interacts with the Contractor that may lead to cost savings and reductions in the prices of the Call-Off Services;

(e) identifying and implementing efficiencies in the Contractor's supply chain that may lead to cost savings and reductions in the prices of the Call-Off Services; and

(f) measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Call-Off Services, and identifying opportunities to assist the Contracting Body in meeting its sustainability objectives.

6.3 The initial Continuous Call-Off Improvement Plan for the first (1st) year of shall be submitted by the Contractor to the Contracting Body for approval within ninety (90) Working Days of the first Order or six (6) Months following the Call-Off Commencement Date, whichever is earlier.

6.4 The Contracting Body shall notify the Contractor of its approval or rejection of the proposed Continuous Call-Off Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Contracting Body's notice of rejection and of the deficiencies of the proposed Continuous Call-Off Improvement Plan, the Contractor shall submit to the Contracting Body a revised Continuous Call-Off Improvement Plan reflecting the changes required. Once approved by the Contracting Body, the programme shall constitute the Continuous Call-Off Improvement Plan for the purposes of this Call-Off Contract.

6.5 Once the first Continuous Call-Off Improvement Plan has been approved in accordance with paragraph 4.4:

(a) the Contractor shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Call-Off Improvement Plan; and

(b) the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Contracting Body and the Contractor) to review the Contractor's progress against the Continuous Call-Off Improvement Plan.

6.6 The Contractor shall update the Continuous Call-Off Improvement Plan as and when required but at least once every year of this Call-Off Contract (after the first (1st) year of this Call-Off Contract) in accordance with the procedure and timescales set out in paragraph 4.2.

6.7 All costs relating to the compilation or updating of the Continuous Call-Off Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the prices of the Call-Off Services.

6.8 Should the Contractor's costs in providing the Call-Off Services to the Contracting Body be reduced as a result of any changes implemented by the Contracting Body, all of the cost savings shall be passed on to the Contracting Body by way of a consequential and immediate reduction in the prices for the Call-Off Services.

Schedule 21

Management Information

1 General

1.1 The Contractor grants the Contracting Body a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to:

(a) use and share with:

(i) any Crown Body;

(ii) any other Contracting Authority; and

(iii) any other third party as may be agreed by the Contracting Body and the Contractor from time to time (such Contractor's agreement not to be unreasonably withheld); and/or

(b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted),

any Management Information supplied to the Contracting Body for the Contracting Body's normal operational activities including but not limited to administering this Call-Off Contract, monitoring public expenditure, identifying savings or potential savings and planning future procurement activity.

2 Management Information and Format

2.1 The Contractor agrees to provide timely, full, accurate and complete MI Reports to the Contracting Body which incorporates the data, in the correct format, required by the MI Reporting Template. The initial MI Reporting Template will be notified to the Contractor by the Contracting Body as soon as reasonably practicable after the Call-Off Commencement Date.

2.2 The Contracting Body may from time to time make changes to the MI Reporting Template including to the data required or format of the report and issue a replacement version of the MI Reporting Template to the Contractor. The Contracting Body shall give notice in writing of any such change to the MI Reporting Template and shall specify the date from which the replacement MI Reporting Template must be used for future MI Reports which date shall be at least thirty (30) calendar days following the date of the notice.

2.3 If the MI Reporting Template is amended by the Contracting Body at any time, then the Contractor agrees to provide all future MI Reports in accordance with the most recent MI Reporting Template issued by the Contracting Body.

2.4 The Contracting Body may provide the Contractor with supplemental guidance for completing the MI Reporting Template or submitting MI Reports from time to time which may for example indicate which fields are mandatory and which are optional. The

Contractor agrees to complete the Monthly MI Report in accordance with any such guidance.

2.5 The Contractor may not make any amendment to the MI Reporting Template without the Contracting Body's prior approval in writing.

2.6 The Contracting Body shall have the right from time to time (on reasonable written notice) to amend the nature of the Management Information which the Contractor is required to supply to the Contracting Body.

3 Frequency and Coverage

3.1 All MI Reports must be completed by the Contractor using the MI Reporting Template and returned to the Contracting Body on or prior to the Reporting Date every Month during the Call-Off Contract Period and thereafter, until all transactions relating to Call-Off Contracts to which the Contractor is a party have permanently ceased.

3.2 The MI Report should be used (among other things) to report activity and transactions occurring during the Month(s) to which the MI Report relates.

3.3 Unless otherwise notified to the Contractor by the Contracting Body, the Contractor must return the MI Report for each Month(s) even where there are no transactions to report in the relevant Month (a "**Nil Return**").

3.4 The Contractor must inform the Contracting Body of any errors or corrections to the Management Information:

(a) in the next MI Report due immediately following discovery of the error by the Contractor; or

(b) as a result of the Contracting Body querying any data contained in an MI Report.

4 Submission of the Monthly MI Report

The completed MI Report shall be completed electronically and returned to the Contracting Body by uploading and/or sending the MI Report in accordance with the instructions notified by the Contracting Body to the Contractor from time to time. The Contractor agrees to comply with any such instructions provided they do not materially increase the burden on the Contractor.

5 Defective Management Information

5.1 The Contractor acknowledges that it is essential that the Contracting Body receives timely and accurate Management Information pursuant to this Call-Off Contract because Management Information is used by the Contracting Body to inform strategic decision making.

5.2 Following an MI Failure the Contracting Body may issue reminders to the Contractor or require the Contractor to rectify defects in the MI Report provided to the Contracting Body. The Contractor shall rectify any deficient or incomplete MI Report as soon as

possible and not more than five (5) Working Days following receipt of any such reminder.

6 Meetings

The Contractor agrees to attend meetings between the Contracting Body and the Contractor in person to discuss the circumstances of any MI Failure(s) at the request of the Contracting Body (without prejudice to any other rights the Contracting Body may have). If the Contracting Body requests such a meeting the Contractor shall propose measures to ensure that the MI Failures are rectified and do not occur in the future. The Contracting Body and the Contractor shall document these measures and continue to monitor the Contractor's performance.

7 Admin Fees

7.1 If, in any rolling three (3) Month period, two (2) or more MI Failures occur, the Contractor acknowledges and agrees that the Contracting Body shall have the right to invoice the Contractor Admin Fees and (subject to paragraph 26.19) in respect of any MI Failures as they arise in subsequent Months.

7.2 If, following activation of the Contracting Body's right to charge Admin Fee(s) in respect of MI Failures pursuant to paragraph 26.18, the Contractor submits the Monthly MI Report for two (2) consecutive Months and no MI Failure occurs then the right to charge the Admin Fee(s) shall lapse. For the avoidance of doubt the Contracting Body shall not be prevented from exercising such right again during the Call-Off Contract Period if the conditions in paragraph 26.18 are met.

7.3 The Contractor acknowledges and agrees that the Admin Fees are a fair reflection of the additional costs incurred by the Contracting Body as a result of the Contractor failing to supply Management Information as required by this Call-Off Contract.

7.4 The Contracting Body shall notify the Contractor if any Admin Fees arise pursuant to paragraph 26.18 above and shall be entitled to invoice the Contractor for such Admin Fees, which shall be payable by the Contractor within thirty (30) days of the date of the relevant invoice. Any exercise by the Contracting Body of its rights under this paragraph 26.21 shall be without prejudice to any other rights that may arise pursuant to the terms of this Call-Off Contract.

Schedule 22

Insurance Requirements

[DN: This Schedule is subject to change. Specific Schedule of Insurance Requirements for each Call-Off Contract which will be published at time of Mini-Competition]

1 OBLIGATION TO MAINTAIN INSURANCES

1.1 Without prejudice to its obligations to the Contracting Body under this Call-Off Contract, including its indemnity obligations, the Contractor shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Contractor shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.

1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

1.3 The Insurances shall be taken out and maintained with insurers who are:

(a) of good financial standing;

(b) appropriately regulated; and

(c) except in the case of any Insurances provided by an Affiliate of the Contractor, of good repute in the international insurance market.

1.4 Where any Insurances are provided by an Affiliate of the Contractor, the Contractor shall provide to the Contracting Body on the Call-Off Commencement Date (or inception of the relevant Insurances if later) and thereafter within 10 Working Days of written request from the Contracting Body evidence of good financial standing of the relevant Affiliate in a form satisfactory to the Contracting Body. In the absence of a Financial Distress Event, the Contracting Body shall not make any such request more than annually.

1.5 The Contractor shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Contracting Body shall be indemnified in respect of claims made against the Contracting Body in respect of death or bodily injury or third party property damage arising out of or in connection with the Call-Off Services and for which the Contractor is legally liable.

2 GENERAL OBLIGATIONS

2.1 Without limiting the other provisions of this Call-Off Contract, the Contractor shall:

(a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Call-Off Services as it would be reasonable to

expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

(b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Contractor is or becomes aware; and

(a) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

3.1 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Contractor has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Contracting Body may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Insurances, and the Contracting Body shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.

4 EVIDENCE OF INSURANCES

The Contractor shall upon the Call-Off Commencement Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Contracting Body, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Contracting Body shall not in itself constitute acceptance by the Contracting Body or relieve the Contractor of any of its liabilities and obligations under this Call-Off Contract.

5 AGGREGATE LIMIT OF INDEMNITY

5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

(a) if a claim or claims which do not relate to this Call-Off Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Contracting Body:

(i) details of the policy concerned; and

(ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

(b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Call-Off Contract are paid by insurers, the Contractor shall:

(i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Call-Off Contract; or

(i) if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Contracting Body full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6 CANCELLATION

6.1 Subject to paragraph 6.2, the Contractor shall notify the Contracting Body in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

6.2 Without prejudice to the Contractor's obligations under paragraph 4, paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

7 INSURANCE CLAIMS

7.1 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Call-Off Services and/or this Call-Off Contract for which it may be entitled to claim under any of the Insurances. In the event that the Contracting Body receives a claim relating to or arising out of the Call-Off Services and/or this Call-Off Contract, the Contractor shall co-operate with the Contracting Body and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

7.2 Except where the Contracting Body is the claimant party, the Contractor shall give the Contracting Body notice within 20 Working Days after any insurance claim in excess of [***to be determined by the Contracting Body relative to its contract management requirement***] relating to or arising out of the provision of the Call-Off Services or this Call-Off Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Contracting Body) full details of the incident giving rise to the claim.

7.3 Where any Insurance requires payment of a premium, the Contractor shall be liable for and shall promptly pay such premium.

7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Contracting Body any sum paid by way of excess or deductible under the Insurances whether under the terms of this Call-Off Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1 Insured

The Contractor

2 Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

(a) death or bodily injury to or sickness, illness or disease contracted by any person;

(b) loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 22 (Insurance Requirements)) and arising out of or in connection with the provision of the Call-Off Services and in connection with this Call-Off Contract.

3 Limit of Indemnity

Not less than **[£sum to be determined by the Contracting Body]** in respect of any one occurrence, the number of occurrences being unlimited, but **[£sum to be determined by the Contracting Body]** in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

[to be determined by the Contracting Body]

5 Period of Insurance

From the Call-Off Commencement Date for the Call-Off Contract Period and renewable on an annual basis unless agreed otherwise by the Contracting Body in writing.

6 Cover Features and Extensions

Indemnity to principals clause.

7 Principal Exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8 Maximum deductible threshold

Not to exceed ***[£ threshold to be agreed with Contractor]*** for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Contractor

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specific in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Call-Off Services.

3 Limit of Indemnity

Not less than ***[£sum to be determined by the Contracting Body]*** in respect of any one claim and in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial Limits

[To be determined by the Contracting Body]

5 Period of Insurance

From the date of this Call-Off Contract and renewable on an annual basis unless agreed otherwise by the Contracting Body in writing (a) throughout the Call-Off Contract Period or until earlier termination of this Call-Off Contract and (b) for a period of six (6) years thereafter.

6 Cover Features and Extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Call-Off Contract or retroactive date to be no later than the Call-Off Commencement Date.

7 Principal Exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

8 Maximum Deductible Threshold

Not to exceed [[***DN: Threshold set out in the Contractor's Tender to be inserted***]] each and every claim.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

The Contractor shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

SCHEDULE 5 - COMMERCIALLY SENSITIVE INFORMATION

Not Used

SCHEDULE 6 - UMBRELLA AGREEMENT VARIATION PROCEDURE

1. Introduction

1.1 This Schedule 6 (Umbrella Agreement Variation Procedure) details the scope of the variations permitted and the process to be followed where the Authority proposes a variation to this Umbrella Agreement.

2. Procedure for proposing a Variation

2.1 Except where paragraph 4 applies, the Authority may propose a variation using the procedure contained in this paragraph 2.

2.2 In order to propose a variation, the Authority shall serve each UA Provider with written notice of the proposal to vary this Umbrella Agreement (**"Notice of Variation"**).

2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each UA Provider to assess the variation.

2.4 Upon receipt of the Notice of Variation, each UA Provider has five (5) days to respond in writing with any objections to the variation.

2.5 Where the Authority does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Authority may then serve each UA Provider with a written agreement detailing the variation to be signed and returned by each UA Provider within five (5) days of receipt.

2.6 Upon receipt of a signed agreement from each UA Provider, the Authority shall notify all UA Providers in writing of the commencement date of the variation.

3. Objections to a Variation

3.1 In the event that the Authority receives one or more written objections to a variation, the Authority may:-

3.1.1 withdraw the proposed variation; or

3.1.2 propose an amendment to the variation.

3.2 In the event that the Contractor is unable to agree to or provide the Variation.

3.2.1 the Authority may:

(a) agree to continue to perform its obligations under this Umbrella Agreement without the variation; or

(b) terminate this Umbrella Agreement with immediate effect.

4. Variations which are not permitted

4.1 The Authority may not propose any variation which:-

4.1.1 may prevent one or more of the UA Providers from performing its obligations in all material respects under this Umbrella Agreement; or

4.1.2 is in contravention of any Law.

SCHEDULE 7 - DIVERSITY AND EQUALITY REQUIREMENTS

1. General

1.1 The Contractor acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief.

1.2 In delivering the Services, the Contractor shall, and shall procure that its Sub-contractors shall, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Schedule.

2. Compliance

2.1 The Contractor acknowledges the provisions of the equality legislation set out in Clause 22 of this Umbrella Agreement ("**Equality Legislation**").

2.2 The Contractor shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Schedule, within six (6) months of the contract start date of the first Call-Off Contract entered into with the Authority.

2.3 The Contractor will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule, within six (6) months of the contract start date of any Call-Off Contract entered into with the Authority.

2.4 The Authority will consider and agree the submissions made by the Contractor when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Schedule. Any issues will be raised with the Contractor by the contract manager acting on behalf of the Authority. Once submissions are agreed by the Authority the Contractor will formally review, revise and resubmit these on an annual basis. Diversity and equality aspects will also be discussed jointly by the Authority and the Contractor as an ongoing item at Call-Off Contract review meetings.

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

a) an overview of the Contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:

i) Race

ii) Gender

iii) Gender reassignment

iv) Disability

v) Age

vi) Sexual orientation

vii) Religion/Belief

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

b) An overview of the Contractor's policy/policies and procedures covering:

i) Harassment

ii) Bullying

iii) Victimisation

iv) Recruitment procedures

v) Staff training and development

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

c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated within the Contractor's organisation

d) Details of what general diversity and equality-related training has been, or will be delivered (and by when), to the Contractor's staff

e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Contractor's organisation; and

f) Details of any diversity and equality cases and tribunals (including volumes and outcomes)

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

a) Where a Contractor is delivering services to customers on behalf of the Authority or Services to the Authority's staff, it must provide written evidence that:

i) Equality Impact Assessments have been carried out prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with Equality Legislation. Equality Impact Assessments should be carried out in conjunction with the Authority so Contractors must consult with the Authority prior to completion.

ii) they are making reasonable adjustments, as required by the Equality Legislation to make those services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards.

iii) all of its employees who are involved have had appropriate training so that they understand the duties

required by Equality Legislation, and where Services are being delivered on behalf of the Authority, the Contractor shall provide evidence that its employees understand the duties not to discriminate and to promote equality, in accordance with Equality Legislation.

3. Monitoring and reporting

3.1 The Contractor shall provide workforce monitoring data as detailed in paragraph 3.2 of this Schedule, within six (6) months of the contract start date of any Call-Off Contract entered into with the Authority. A template for data collected in paragraph 3.2 will be provided by the Authority. Completed templates must then be included within the Diversity and Equality Delivery Plan as well as evidence relating to paragraphs 3.3 and 3.4 of this Schedule.

Contractors are required to provide workforce monitoring data relating to the workforce involved in delivery of any Call-Off Contract entered into with the Authority. Data relating to the wider Contractor workforce would however be well received by the Authority. Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

3.2 The Contractor will provide information detailing:

a) the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who are:

i) female;

ii) disabled; and/or

iii) prefer not to state gender and/or disability

b) the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who in terms of ethnicity are:

<u>White</u>

i) white British;

ii) white Irish;

iii) of any other white background

<u>Mixed</u>

iv) white and black Caribbean;

v) white and black African;

vi) white and Asian;

vii) of any other mixed background

<u>Asian or Asian British</u>

viii) Indian;

ix) Pakistani;

x) Bangladeshi;

xi) of any other Asian background

Black or Black British

xii) Caribbean;

xiii) African;

xiv) of any other Black background

Chinese or other ethnic group

xv) Chinese;

xvi) of any other ethnic group

Prefer not to state

xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each case in respect of the Contractor's employees and each Sub-contractors employees) should total one hundred percent (100%).

c) the proportion of its Sub-contractors that are:

i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds).

ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule.

iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at

categories xii) to xiv) in paragraph 3.2(b) of this Schedule.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule, depending on its composition.

3.3 The Contractor will compare its figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.

3.4 The Contractor will provide evidence of what activities it is undertaking, or plans to undertake, in order to try to improve (where possible and appropriate) its current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule.

3.5 The Contractor will ensure at all times that it complies with the requirements of the DPA in the collection and reporting of the information to the Authority, especially as this is sensitive personal data (as defined in the DPA).

SCHEDULE 8 - WELSH LANGUAGE SCHEME

1 General

1.1 The Contractor acknowledges that in relation to the delivery of any Services in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.

1.2 In delivering the Services, the Contractor shall ensure that it cooperates with the Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule.

2 The DWP Welsh Language Scheme

2.1 The Contractor shall, in the delivery of the Services, ensure that it complies with the DWP Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of Services through the medium of Welsh

3.1 The Contractor undertakes that those who have dealings with them are able to do so in English or Welsh.

3.2 The Contractor will ensure that:

3.2.1 those who want, or are required, to correspond with the Contractor will be able to do so in English or Welsh;

3.2.2 those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;

3.2.3 any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;

3.2.4 staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;

3.2.5 any answer phones in the Contractor's offices in Wales will have a pre-recorded bilingual message;

3.2.6 all people who partake in the Services are able to contribute through the medium of English or Welsh;

3.2.7 all material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;

3.2.8 all forms and explanatory material be available in both English and Welsh; and

3.2.9 any complaints or grievance procedure should be provided in both English and Welsh.

4 Monitoring

4.1 The Authority's authorised representative may from time to time monitor the Contractor in accordance with the provisions of any Call-Off Contract which may be entered into with the Authority to ensure that it is complying with the requirements of this Schedule.

SCHEDULE 9 – SECURITY ASPECTS, REQUIREMENTS AND PLAN

1 Introduction

1.1 This Schedule covers;

a) principles of security for the Contractor System, derived from the Security Policy, including without limitation principles of physical and information security;

b) the creation of the Security Plan;

c) audit and testing of the Security Plan;

d) conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification);

e) breaches of security; and

f) security provisions with which the Contractor shall comply in providing the Services relevant to this Umbrella Agreement.

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 the 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:

a) is in accordance with Good Industry Practice and Law;

b) complies with the Security Policy;

c) meets any specific security threats to the Contractor System;

d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule; and

e) meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

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

a) loss of integrity of Authority Data;

b) loss of confidentiality of Authority Data;

c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;

d) unauthorised access to network elements and buildings;

e) use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data;

f) loss of availability of Authority Data due to any failure or compromise of the Services; and

g) loss of confidentiality, integrity and availability of Authority Data through Cyber/internet threats.

3 Security Plan

Introduction

3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Term and after the end of the Term in accordance with the exit management strategy, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.

3.2 A draft Security Plan provided by the Contractor as part of its bid is set out in Appendix B.

Development

3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Contractor will prepare and deliver to the Authority for approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix B.

3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with Clause 52. 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 3.9 shall be deemed to be reasonable.

Content

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

a) the provisions of this Umbrella Agreement and this Schedule (including the principles set out in paragraph 2);

b) the provisions of Schedule 1 (Services and Contractor's Lot(s)) relating to security;

c) ISO/IEC27002 and ISO/IEC27001; and

d) the data protection compliance guidance produced by the Authority.

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

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

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

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

Amendment and Revision

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

a) emerging changes in Good Industry Practice;

b) any change or proposed change to the Contractor System, the Services and/or associated processes;

c) any new perceived or changed threats to the Contractor System; and

d) any reasonable request by the Authority.

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

3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Authority request or change to the Schedule 1 (Services and Contractor's Lot(s)) or otherwise shall be subject to the Umbrella Agreement Variation Procedure and shall not be implemented until approved in writing by the Authority.

4 Audit and Testing

4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.

4.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

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

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

5 Compliance with ISO/IEC 27001

5.1 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

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

5.3 If, as a result of any such independent audit as described in paragraph 5.2 the Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 Breach of Security

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

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

a) immediately take all reasonable steps necessary to:

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

(ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Umbrella Agreement, then the Contractor shall be entitled to refer the matter to the Umbrella Agreement Variation Procedure.

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

7 Authority Data relevant to the Contract

7.1 The Umbrella Agreement specification will outline the services to be provided by the Contractor, including the type of Authority Data involved.

7.2 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media.

8 Accreditation

8.1 Where a system is being used to deliver the Services it may be appropriate to conduct security accreditation.

8.2 The DWP Security Accreditation Team may undertake an accreditation of the service where the Contractor shall provide appropriate accreditation evidence to DWP upon request throughout the lifecycle of the Umbrella Agreement.

8.3 Where security accreditation is required the Contractor must ensure that the service in scope remains accredited throughout the lifecycle of the Umbrella Agreement and that there is an agreed accreditation assurance plan in place supporting the Authority deployed service.

Appendix A – DWP Security Policies and Standards

1. The Department for Work and Pensions ("**DWP**") treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which DWP is the Data Controller.

2. In order to protect DWP information appropriately, our Contractors must provide the security measures and safeguards appropriate to the nature and use of the information. All Contractors of services to DWP must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.

3. The main DWP policies include:

   - Information Security Policy
   - Physical Security Policy
   - Acceptable Use Policy
   - Continuity and Resilience Policy

   The above policies are attached here:

Information Security AUP policy v1 W&H.doc

V1.0 W&H.docx

DWP Physical Security Policy v 1 W&

Continuity and Resilience Policy Sept

4. Each Contractor must appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Contractor and where relevant Sub-contractors, with access to DWP IT Systems, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.

5. The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.

6. Whilst Departmental policies are written for internal Departmental requirements all Contractors must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.

7. It is the Contractor's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP as requested.

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

9. The following are some key basic requirements that all Contractors must apply:

10. Personnel Security

10.1 Staff recruitment in accordance with government requirements for pre-employment checks, including Baseline Personnel Security Standard.

10.2 Staff training and awareness of DWP security and any specific contract requirements.

11. Secure Information Handling and Transfers

11.1 Physical and electronic handling, processing and transferring of Authority Data, including secure access to systems and the use of encryption where appropriate.

12. Portable Media

12.1 The use of only encrypted laptops, encrypted storage devices and other protected removable media when handling DWP information.

13. Offshoring

13.1 Authority Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

14. Physical Security

14.1 Security of premises and control of access.

15. Security Incidents

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

Appendix B – Draft Security Plan

Security Plan -
Medium-High (2016) -

SCHEDULE 10 - APPRENTICESHIPS AND SKILLS REQUIREMENTS

1. General

1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.

1.2 In order to support and drive economic growth, the Government announced that it has prioritised the key policy agendas to be promoted through public procurement. Supporting apprenticeships, skills and the fight against youth unemployment is one of these 'Policy through Procurement' priorities on which Departments must now focus.

1.3 The Contractor acknowledges that the Authority is required to support the above apprenticeships and skills aims and targets.

1.4 In delivering the Services, the Contractor shall, and shall procure that its Sub-contractors shall, assist and cooperate with the Authority by fully complying with the requirements of this Schedule.

2. Compliance

2.1 The Contractor is required to take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during delivery of the Services.

2.2 The Contractor shall take all reasonable steps to ensure that 5% of the employees delivering each Call-Off Contract (or a similar specified proportion of hours worked in delivering each Call-Off Contract) are employees on a formal apprenticeship programme. This can include administration and support staff and apprenticeships from Sub-contractor workforces.

2.3 The Contractor is required to make available to its employees working on delivery of each Call-Off Contract, information about the Government's Apprenticeship Programme and wider skills opportunities.

2.4 The Contractor will provide any appropriate further skills training opportunities for employees involved in delivery of each Call-Off Contract.

2.5 The Contractor will produce a written report in accordance with paragraph 3 (and sub-paragraphs) of this Schedule, within three (3) months of the contract start date of any Call-Off Contract entered into with the Authority. Written updates will then be required on a quarterly basis thereafter.

3. Monitoring and reporting

3.1 The Contractor shall provide a written report in accordance with paragraph 2.5 of this Schedule which includes:

a) the number of people during the reporting period involved in delivery of the Call-Off Contract, including administration and support staff and Sub-contractor's staff;

b) the number of existing apprentices involved in the delivery of the Call-Off Contract;

c) the number of new starts on apprenticeships initiated as a result of delivery of the Call-Off Contract;

d) if applicable, a robust explanation as to why it is not possible to meet the 5% target in each Call-Off Contract, as it may be that use of apprentices is not possible or appropriate in delivery of the Call-Off Contract;

e) actions being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service;

f) other training/skills development being undertaken by employees involved in delivery of the Call-Off Contract including:

i) Work experience placements for 14 to 16 year olds

ii) Work experience/work trial placements for other ages

iii) Student sandwich/gap year placements

iv) Graduate placements

v) Vocational training

vi) Basic skills training

vii) On site training provision/facilities; and

3.2 The Contractor will ensure at all times that it complies with the requirements of the DPA in the collection and reporting of the information to the Authority.

SCHEDULE 11 - SUSTAINABLE DEVELOPMENT REQUIREMENTS

1. General

1.1 The Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.

1.2 In delivering the Services, the Contractor shall, and shall procure that its Sub-contractors shall, assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule.

2. Compliance

2.1 The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with DWP guidance and paragraphs 2.2 and 2.3 of this Schedule, within 6 (six) months of the contract start date of any Call-Off Contract entered into with the Authority.

2.2 In delivering the Services, the Contractor shall prepare a Sustainable Development Policy Statement giving:

a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and

b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.

2.3 In delivering the Services, the Contractor shall prepare a Sustainable Development Plan, in accordance with DWP guidance which as a minimum includes:

a) details of how they will minimise waste produced and how recycling will be promoted within their business;

b) details of how they will minimise energy consumption within their business;

c) details of consideration of how they will minimise transport use and details of how the use of public transport will be promoted within their business, both to staff and customers where appropriate;

d) details of a baseline assessment of their current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available);

e) annual estimates of the progress of their Sustainable Development actions in accordance with DWP guidance;

f) details of how staff awareness of Sustainability will be increased in line with their Sustainable Development Plan.

SCHEDULE 12 - THE MERLIN STANDARD

The Merlin Standard is a standard providers must comply with in order to demonstrate excellent supply chain management, further details of which can be found at:

(a) http://www.merlinstandard.co.uk/;

(b) http://www.dwp.gov.uk/docs/merlin-standard.pdf; and

(c) http://www.dwp.gov.uk/docs/sub-contracting-merlin-guidance.pdf,

as may be updated and amended from time to time.

SCHEDULE 13 - DISPUTE RESOLUTION PROCEDURE

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"Counter Notice"	has the meaning given in paragraph 7.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with paragraph 6.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with paragraph 6;
"Mediation Notice"	has the meaning given in paragraph 4.2;
"Mediator"	the independent third party appointed in accordance with paragraph 5.2 to mediate a Dispute;
"Multi-Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"Multi-Party Dispute Representatives"	has the meaning given in paragraph 9.6;
"Multi-Party Dispute Resolution Board"	has the meaning given in paragraph 9.6;
"Related Third Party"	a party to: (a) another contract with the Authority or the Contractor which is relevant to this Contract; or (b) a Sub-contract; and
"Contractor Request"	a notice served by the Contractor requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Authority's Representative and the Contractor's Representative shall attempt in good faith to resolve the Dispute; and

(b) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

(a) shall set out:

(i) the material particulars of the Dispute;

(ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

(b) may specify in accordance with the requirements of paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Contractor) that the Dispute is a Multi-Party Dispute, in which case paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to paragraph 2.2(b), then:

(a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

(b) if it is served by the Contractor it shall be treated as a Contractor Request, and in each case the provisions of paragraph 9 shall apply.

2.4 Subject to paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

(a) first by commercial negotiation (as prescribed in paragraph 4);

(b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in paragraph 5); and

(c) lastly by recourse to arbitration (as prescribed in paragraph 7) or litigation (in accordance with Clause 53 (Governing law and Jurisdiction)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in paragraph 6) where specified under the provisions of this Contract and may

also be referred to Expert Determination where otherwise appropriate as specified in paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under paragraph 8 (Urgent Relief).

3 EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:

(a) in paragraph 4.2(b), ten (10) Working Days;

(b) in paragraph 5.2, ten (10) Working Days;

(c) in paragraph 6.2, five (5) Working Days; and

(d) in paragraph 7.2, ten (10) Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable paragraphs (or two (2) Working Days in the case of paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4 COMMERCIAL NEGOTIATION

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Contractor shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Category Manager and the Contractor's [REDACTED].

4.2 If either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution:

(a) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this paragraph 4; or

(b) the Parties have not settled the Dispute in accordance with paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with paragraph 5 (a "**Mediation Notice**").

5 MEDIATION

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with paragraph 4 or, if applicable, mediation in accordance with paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

(c) if the Dispute relates to a matter of a technical nature not falling within paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to paragraph 6.1, such body as may be specified by the President of the law Society on application by either Party.

6.3 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and

provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under paragraph 4.1 and to the provisions of paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 7.5.

7.2 Before the Contractor commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Contractor requiring the Dispute to be referred to and resolved by arbitration in accordance with paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Contractor shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Authority serves a Counter Notice, then:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of paragraph 7.5 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Contractor shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in paragraph 7.2, the Contractor may either commence arbitration proceedings in accordance with paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to paragraphs 7.1 to 7.4:

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("LCIA") (subject to paragraphs 7.5(e), (f) and (g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the chair of the arbitral tribunal shall be British;

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

8 URGENT RELIEF

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

(a) for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Contractor which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to

be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with paragraph 7, the Contractor has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Contractor may serve a Contractor Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Contractor Request and shall determine within five (5) Working Days whether the Dispute is:

(a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Contractor; or

(b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Contractor and the Dispute shall be treated in accordance with paragraphs 3 to 8.

9.5 If the Authority has determined, following a Contractor Request, that a Dispute is not a Multi-Party Dispute, the Contractor may not serve another Contractor Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**Multi-Party Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, at least one of whom from each of the parties shall be of a suitable level of seniority and have full authority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

(a) the Authority;

(b) the Contractor;

(c) each Related Third Party involved in the Multi-Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together "**Multi-Party Dispute Representatives**").

9.7 The Parties agree that the Multi -Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

(a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to

procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

(b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

(c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within twenty-five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

(a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case paragraph 5 shall apply;

(b) either Party may request that the Multi-Party Dispute is referred to an expert in which case paragraph 6 shall apply; and/or

(c) subject to paragraph 9.9, paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to the "Contractor" or the "Parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Contractor may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Contractor.

SCHEDULE 14 - LIFE CHANCES

1 General

1.1 The Contractor acknowledges that the Crown is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.

1.2 The Contractor (a) acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society; and (b) agrees to cooperate with the Authority to improve life chances for those most disadvantaged and furthest from the labour market.

1.3 The Contractor acknowledges that the Authority is supporting the Crown's life chances and social value agendas by aiming to promote opportunities for groups of persons ("**DWP Priority Groups**") which the Authority regards as meriting priority assistance including but not limited to Apprentices, Disabled People, Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic People.

2 Diversity and Equality Delivery Plan

2.1 In addition to complying with its obligations set out in Clause 22 and this Schedule 14 (Life Chances), the Authority requires the Contractor to provide such information as the Authority may request on (a) the action(s) the Contractor is taking in the course of supplying the Services to comply with its obligations set out in Clause 22 and in this Schedule 14 (Life Chances) and (b) the effect such action(s) have on the Staff used in the performance of its obligations under the Contract.

2.2 As part of the information to be provided by the Contractor under paragraph 2.1 of this Schedule 14 (Life Chances), the Authority requires the Contractor to provide to the Authority:

(a) a diversity and equality delivery plan ("**Diversity and Equality Delivery Plan**") six (6) Months after the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details of all Staff including but not limited to all Sub-contractors involved in the performance of the Contractors obligations under the Contract.

(b) details of the action(s) the Contractor is taking to support the Crown's social value agenda including but not limited to the action(s) the Contractor is taking to meet its obligations under paragraph 2.3 of this Schedule.

2.3 The Contractor shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:

(a) **Apprentices**

(i) Ensure that (5) % of the Staff used in the performance of the Contractor's obligations under the Contract are Apprentices.

(ii) Make available to potential members of Staff used in the performance of the Contractor's obligations information about the National Apprenticeship Service.

(b) **Disabled People**

(i) Take steps to become a Disability Confident Employer and achieve level 3 within 12 months of the Commencement Date and maintain such Disability Confident Employer status at all times thereafter during the Term. For the purposes of this Schedule, the term **"Disability Confident Employer"** (including the levels associated with such definition) is more particularly described in the Authority's Disability Confident accreditation publication, as updated and/or replaced by the Authority and notified to the Contractor from time to time. Any breach by the Contractor of this paragraph 2.3(b)(i) shall be a Serious Breach for the purposes of Clause 36.1 and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause 36.1.

(ii) Make appropriate use of Access to Work to support recruit and retain disabled workers.

(iii) When recruiting Staff to be used in the performance of the Contractor's obligations under the Contract, offer Disabled People interviews under a guaranteed interview scheme for vacancies for Staff where the Disabled People meet the minimum criteria for such vacancies.

(iv) Offer Work Trials to Disabled People to support filling vacancies for Staff.

(v) Provide Employment Experience to Disabled People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

(c) **Young People – Under 25**

(i) Offer Work Trials to Young People to support filling vacancies for Staff.

(ii) Provide Employment Experience to Young People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

(d) **Older Workers – Over 50**

(i) Offer Work Trials to Older Workers to support filling vacancies for Staff.

(ii) Provide Employment Experience to Older People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

(e) **Ex-Offenders**

(i) Offer Work Trials to Ex-Offenders to support filling vacancies for Staff.

(ii) Provide Employment Experience to Ex-Offenders as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

(f) **Black and Minority Ethnic People**

(i) Offer Work Trials to Black and Minority Ethnic people to support filling vacancies for Staff.

(ii) Provide Employment Experience to Black and Minority Ethnic people as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

(g) **Employee Vacancies**

(i) Advertise all vacancies for Staff via Universal Jobmatch in addition to any other recruitment agencies with whom the Contractor advertises such vacancies and any other actions the Contractor takes to recruit Staff.

2.4 The Diversity and Equality Delivery Plan must also include:

(a) an overview of Contractor and any Sub-contractor's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:

(i) age;

(ii) disability;

(iii) gender reassignment;

(iv) marriage and civil partnership;

(v) pregnancy and maternity;

(vi) race;

(vii) religion or belief;

(viii) sex; and

(ix) sexual orientation.

(b) an overview of Contractor and any Sub-contractor's policies and procedures covering:

(i) harassment

(ii) bullying

(iii) victimisation

(iv) Staff training and development

(c) details of the way in which the above policies and procedures are, or will be (and by when), communicated to Staff;

(d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;

(e) details of what structure and resources are currently directed towards active promotion of diversity and equality within the Staff used in the performance of the Contractor's obligations under this Contract, or if not currently in place, what will be put in place and by when.

2.5 The Authority will consider and must agree the contents of Diversity and Equality Delivery Plan. Any issues will be raised with the Contractor by the contract manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Contractor must raise and resolve the issue with the Sub-contractor.

Life Chances Workforce Monitoring Template

2.6 The Contractor shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule 14 (Life Chances)), as may be updated and amended by the Authority from time to time, duly completed in full by the Contractor in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six (6) Months after the Commencement Date and quarterly thereafter or at such other times as the Authority may reasonably require from time to time. For the avoidance of doubt, if the Contractor provides the information required under this paragraph 2.6 at the times stipulated in this paragraph 2.6 to a Contracting Body under any Call-Off Contract, then the Contractor shall be deemed to have satisfied its obligations to the Authority under this paragraph 2.6.

2.7 The Contractor shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.

2.8 The Contractor will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the "Social Value Guidance for Contractors" provided by the Authority to the Contractor.

2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned, however, the Contractor agrees to provide high level analysis and identification of trends as and when requested by the Authority.

2.10 The Contractor shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s)s undertaken or planned by the Contractor and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 14 (Life Chances)) to the satisfaction of the Authority.

2.11 Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Contractor as an on-going item at Contract review meetings. Such meetings will discuss the information provided by the Contractor in accordance with paragraph 2.2 of this Schedule 14 (Life Chances).

APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING

Important – the figures the Contractor provides must relate specifically to the staff used in the performance of the contractor's obligations under the contract only, which for the avoidance of doubt includes any Sub-contractor.

Date of Return Month: Year	
Name of Contract:	
Contract Number:	
Name of Contractor:	
Commencement Date:	
Total Number of Staff, which for the avoidance of doubt includes any Sub-contractors	

1 – Number of new Staff posts created in the performance of the Contractor's obligations under the Contract

New Staff Posts	**Number of new Staff posts created in period**	
	1-34 hr per week posts	**35 hr + per week posts**
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		

2 – Number of Apprentices in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Apprentices	**Number of Apprentices in Staff which have been employed for 26 weeks or longer in period**	**% of Apprentices in Staff at the end of the period**	**Number of Apprentices who began apprenticeships as part of the Staff during the period**
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for			

months 31-42)			

3 – Number of Disabled People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Disabled People	Number of Disabled People in Staff which have been employed for 26 weeks or longer in period	% of Disabled People in Staff at end of period	Number of Disabled People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

4 – Number of Disabled People, who had been interviewed by the Contractor under the Guaranteed Interview Scheme (GIS) for Staff posts used in the performance of the Contractor's obligations under the Contract,

DWP Priority Group – Disabled People in the Staff who had been interviewed by the Contractor under the GIS	Number of Disabled People who have been interviewed for Staff posts by the Contractor under the GIS during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

5 – Number of Young People in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Young People	Number of Young People in Staff which have been employed for 26 weeks or longer in period	% Young People in Staff at end of period	Number of Young People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			

1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

6 – Number of Older Workers in Staff used in the performance of the Contractor's obligations under the Contract

DWP Priority Group - Older Workers	Number of Older Workers in Staff which have been employed for 26 weeks or longer in period	% Older Workers in Staff at end of period	Number of Older Workers who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

7 – Number of Ex-Offenders in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number of ex-offenders in Staff which have been employed for 26 weeks or longer in period	% ex-offenders in Staff at end of period	Number of ex-offenders who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

8 – Number of Black or Minority Ethnic (BME) in Staff used in the performance of the Contractor's obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number BME in Staff which have been employed for 26 weeks or longer in period	% BME in Staff at end of period	Number of BME who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1st annual return (at 18 months for months 7-18)			
2nd annual return (at 30 months for months 19 - 30)			
3rd annual return (at 42 months for months 31-42)			

9 – Number of Employment Experience placements conducted in the performance of the Contractor's obligations under the Contract

Employment Experience placements	Number of Employment Experience placements conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

10 – Number of Work Trials conducted as part of the recruitment of Staff used in the performance of the Contractor's obligations under the Contract.

Work Trials	Number of Work Trials conducted during the period
Baseline return (at 6 months for months 0-6)	
1st annual return (at 18 months for months 7-18)	
2nd annual return (at 30 months for months 19 - 30)	
3rd annual return (at 42 months for months 31-42)	

11 – Number of vacancies for Staff advertised via Universal Jobmatch

Staff vacancies	Number of vacancies for	% of all vacancies for

advertised via Universal Jobmatch	**Staff advertised via Universal Jobmatch during the period**	**Staff advertised via Universal Jobmatch during the period.**
Baseline return (at 6 months for months 0-6)		
1st annual return (at 18 months for months 7-18)		
2nd annual return (at 30 months for months 19 - 30)		
3rd annual return (at 42 months for months 31-42)		

SCHEDULE 15 – ANNUAL FINANCIAL ASSURANCE DECLARATION

Where the Contractor has more than one contract with the Authority the information and returns detailed in this section will only be required at an organisational level not contract level.

1 Financial information required on an ongoing or annual basis

1.1 The Contractor is required to disclose material organisational changes that impact on its ongoing financial viability, including details of the revenue replacement strategy and impact on profitability and stability where significant contracts are due to end.

1.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.

2 Annual Assurance Declaration

2.1 The Contractor will complete and return the Annual Assurance Declaration to:

Department for Work and Pensions

Finance Group

Ground Floor, Hartshead Square

Sheffield

S1 2FD

Or e-mail to
workandhealth.programme@dwp.gsi.gov.uk

together with the documents detailed below within one month of submitting annual returns and accounts for the organisation to Companies House. In addition, where a Parent Company Guarantee has been provided, the Contractor is required to provide the documents detailed below for the Parent Company within one month of submission to the relevant body, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into £GB if necessary, stating the conversion rate used.

a) Annual Accounts – A copy of the final audited financial statements including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within 10 months of the end of the accounting period, as per the deadline imposed by Companies House, for Contractors registered in the UK. Where Contractors are not registered with Companies House, they must forward the information detailed in Annex 1. Where Annual Accounts are not signed off, we may request a copy of the latest Financial Year Draft Accounts prior to Annual Accounts being signed off. The draft accounts should include Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the Accounts.

b) Annual Return – A copy of the Annual Return form AR01 submitted to Companies House for Contractors registered in the UK. Where Contractors are not registered with Companies House, they must forward the information detailed in Annex 1.

c) Forecast Accounts – A copy of the latest Forecast Accounts including Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts for the year following the accounts submitted in 2.1 above.

d) Current Borrowing - A statement of current borrowing against lending limits and terms including review and renewal dates. (Including overdrafts, loans and mortgages) Disclosure of any material changes to the borrowing potential of the organisation, bank overdraft facility etc.

e) Supply Chain Monitoring - A copy of the Contractor's supply chain monitoring process, which should include details of the process for monitoring the financial viability of the supply chain (including timing), together with any known risks to supply chain stability and material changes to the supply chain. This should include extracts from Board level meetings, risk registers etc where any of the above items have been discussed.

Annex 1

Information from Contractors who are not required to submit form AR01 to Companies House.

1.1 Where Contractors are not required to submit form AR01 to Companies House, they must supply a copy of the Annual Accounts as appropriate for the Country in which they are registered, including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within the 10 months of the end of the accounting period, together with the following information:

a) Organisation name in full

b) Registered Company number (if any)

c) Annual Return made up date

d) Principal Business Activities – give a brief description of your business activities

e) Company Type e.g. Public or Private

f) Registered Office Address of the Organisation

g) The address where the organisation keeps company records if not at the Registered Office

h) The name and address of the company secretary, where applicable

i) For all Company Directors provide details including name, country/state of residence, nationality, date of birth and business occupation of all the company's directors

1.2 If the company has share capital, the annual return must also contain:

a) Information about the issued share capital; and

b) Details of the shareholders.

Annex 2

Annual Contractor Financial Assurance Declaration

Contractor's name.....

Contractor's address.....

1. We enclose the following documents for DWP –

Document Required	Explanation if not supplied
Annual Accounts	
Annual Return	
Forecast Accounts	
Current Borrowing	
Supply Chain Monitoring	

2. We declare that the information supplied to the Authority provides a complete, true and fair view of the Organisation's financial position and performance for the year ending .....

3. We have declared to DWP any proposed changes to the control or structure of the Organisation, proposed mergers or acquisitions, or any changes to the Organisation's Financial Viability. We have disclosed any material changes to borrowing potential / overdraft facility. We have disclosed to DWP our supply chain monitoring process and any material changes to our supply chain.

Signed.....

Name.....

Position in Organisation.....

On behalf of.....

Date.....

SCHEDULE 16 – CONTINUOUS IMPROVEMENT AND BENCHMARKING

1 DEFINITIONS

1.1 In this Schedule, the following expressions shall have the following meanings:

"Benchmarked Rates"	means the prices for the Benchmarked Services
"Benchmark Review"	means a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value
"Benchmarked Services"	means any Services included within the scope of a Benchmark Review pursuant to this Schedule
"Comparable Rates"	means rates payable to the Comparison Group for Comparable Services that can be fairly compared with the prices for the Services
"Comparable Services"	means Services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Contractor shall propose an approach for developing a comparable Services benchmark
"Comparison Group"	means a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Contractor or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Contractor or which, are best practice organisations
"Equivalent Data"	means data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group
"Good Value"	means that the Benchmarked Rates are within the Upper Quartile
"Upper Quartile"	means, in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of

2 BACKGROUND

2.1 The Contractor acknowledges that the Authority wishes to ensure that the Services, represent value for money to the taxpayer throughout the Term.

2.2 This Schedule sets out the following processes to ensure this Umbrella Agreement represents value for money throughout the Term and subsequently while any Call-Off Contracts remain in force

(a) benchmarking; and

(b) continuous improvement.

3 BENCHMARKING

3.1 Frequency Purpose and Scope of Benchmark Review

(a) The Contractor shall carry out Benchmark Reviews of the Services when so requested by the Authority.

(b) The Authority shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Commencement Date nor at intervals of less than twelve (12) Months after any previous Benchmark Review.

(c) The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.

(d) The Services that are to be the Benchmarked Services will be identified by the Authority in writing.

3.2 Benchmarking Process

(a) The Contractor shall produce and send to the Authority for Approval, a draft plan for the Benchmark Review.

(b) The plan must include:

(i) a proposed timetable for the Benchmark Review;

(ii) a description of the benchmarking methodology to be used;

(iii) a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking purpose; and

(iv) a description of how the Contractor will scope and identify the Comparison Group.

(c) The Authority must give notice in writing to the Contractor within ten (10) Working Days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. The Authority may not unreasonably withhold or delay its approval of the draft plan and any suggested amendments must be reasonable.

(d) Where the Authority suggests amendments to the draft plan under paragraph 3.2(c), the Contractor must produce an amended draft plan. Paragraph 3.2(b) shall apply to any amended draft plan.

(e) Once it has received the Approval of the draft plan, the Contractor shall:

(i) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Contractor's professional judgment using:

(A) market intelligence;

(B) the Contractor's own data and experience;

(C) relevant published information; and

(D) pursuant to paragraph 3.2(f) below, information from other suppliers or purchasers on Comparable Rates;

(ii) by applying the adjustment factors listed in paragraph 3.2(g) and from an analysis of the Comparable Rates, derive the Equivalent Data;

(iii) using the Equivalent Data to calculate the Upper Quartile;

(iv) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

(f) The Contractor agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

(g) In carrying out the benchmarking analysis the Contractor may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

(i) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);

(ii) exchange rates;

(iii) any other factors reasonably identified by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive.

3.3 **Benchmarking Report**

(a) For the purposes of this Schedule **"Benchmarking Report"** shall mean the report produced by the Contractor following the Benchmark Review and as further described in this Schedule.

(b) The Contractor shall prepare a Benchmarking Report and deliver it to the Authority, at the time specified in the plan approved pursuant to paragraph 3.2(c) of this Schedule, setting out its findings. Those findings shall be required to:

(i) include a finding as to whether or not a Benchmarked Services, as a whole are, Good Value;

(ii) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Services, as a whole, Good Value; and

(iii) include sufficient detail and transparency so that the Authority can interpret and understand how the Contractor has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.

(c) The Parties agree that any changes required to this Umbrella Agreement identified in the Benchmarking Report may be implemented at the direction of the Authority in accordance with Clause 42.

(d) The Authority shall be entitled to publish the results of any benchmarking of the prices of the Services to Other Contracting Bodies.

4 CONTINUOUS IMPROVEMENT

4.1 The Contractor shall adopt a policy of continuous improvement in relation to the Services pursuant to which it will regularly review with the Authority the Services and the manner in which it is providing the Services with a view to reducing the Authority's costs, the costs of Contracting Bodies (including the prices of the Services) and/or improving the quality and efficiency of the Services. The Contractor and the Authority will provide to each other any information which may be relevant to assisting the objectives of continuous improvement and in particular reducing costs.

4.2 Without limiting paragraph 4.1, the Contractor shall produce at the start of each anniversary of the Commencement Date a plan for improving the provision of

the Services under all Call-Off Contracts and reducing the prices of the Services (without adversely affecting the performance of the Umbrella Agreement or any Call-Off Contract) during the forthcoming year (**"Continuous Improvement Plan"**) for the approval of the Authority. The Continuous Improvement Plan shall include, as a minimum, proposals in respect of the following:

(a) identifying the emergence of new and evolving technologies which could improve the Services;

(b) identifying changes in behaviour of Contracting Bodies that result in a cost saving and a reduction in the prices of the Services;

(c) identifying and implementing efficiencies in the Contractor's internal processes and administration that may lead to cost savings and reductions in the prices of the Services;

(d) identifying and implementing efficiencies in the way the Authority and/or Contracting Bodies interact with the Contractor that may lead to cost savings and reductions in the prices of the Services;

(e) identifying and implementing efficiencies in the Contractor's supply chain that may lead to cost savings and reductions in the prices of the Services; and

(f) measuring and reducing the sustainability impacts of the Contractor's operations and supply-chains pertaining to the Services, and identifying opportunities to assist Contracting Bodies in meeting their sustainability objectives.

4.3 The initial Continuous Improvement Plan for the first (1st) year of shall be submitted by the Contractor to the Authority for approval within ninety (90) Working Days of the first Order or six (6) Months following the Commencement Date, whichever is earlier.

4.4 The Authority shall notify the Contractor of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. Within ten (10) Working Days of receipt of the Authority's notice of rejection and of the deficiencies of the proposed Continuous Improvement Plan, the Contractor shall submit to the Authority a revised Continuous Improvement Plan reflecting the changes required. Once approved by the Authority, the programme shall constitute the Continuous Improvement Plan for the purposes of this Umbrella Agreement.

4.5 Once the first Continuous Improvement Plan has been Approved in accordance with paragraph 4.4:

(a) the Contractor shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and

(b) the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Authority and the Contractor) to review the Contractor's progress against the Continuous Improvement Plan.

4.6 The Contractor shall update the Continuous Improvement Plan as and when required but at least once every year of this Umbrella Agreement (after the first (1st) year of this Umbrella Agreement) in accordance with the procedure and timescales set out in paragraph 4.2.

4.7 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the prices of the Services.

4.8 Should the Contractor's costs in providing the Services to Contracting Bodies be reduced as a result of any changes implemented by the Authority and/or Contracting Bodies, all of the cost savings shall be passed on to Contracting Bodies by way of a consequential and immediate reduction in the prices for the Services.

SCHEDULE 17 – UMBRELLA AGREEMENT MANAGEMENT

1 INTRODUCTION

1.1 The following definitions shall apply to this Schedule in addition to the definitions contained in Clause 1.1:

"Authority Representative"	means the representative appointed by the Authority from time to time in relation to this Umbrella Agreement
"Contractor Action Plan"	means a document, maintained by the Authority, capturing information about the relationship between the Parties including, but not limited to strategic objectives, actions, initiatives, communication channels, risks and contractor performance
"Contractor Umbrella Manager"	has the meaning given to it in paragraph 2.1(a) of this Schedule
"Contractor Review Meetings"	has the meaning given to it in paragraph 2.2(a). of this Schedule

1.2 The successful delivery of this Umbrella Agreement will rely on the ability of the Contractor and the Authority in developing a strategic relationship immediately following the conclusion of this Umbrella Agreement with the Contractor and maintaining this relationship throughout the Term.

1.3 To achieve this strategic relationship, there will be a requirement to adopt proactive Umbrella Agreement management activities which will be informed by quality Management Information, and the sharing of information between the Contractor and the Authority.

2 INTRODUCTION

2.1 Umbrella Agreement Management Structure

(a) The Contractor shall provide a suitably qualified nominated contact (the "**Contractor Umbrella Manager**") who will take overall responsibility for delivering the Services required within this Umbrella Agreement, as well as a suitably qualified deputy to act in their absence.

(b) A full governance structure for the Umbrella Agreement will be agreed between the Parties during the Umbrella Agreement implementation stage.

(c) Following discussions between the Parties following the Commencement Date, the Authority shall produce and issue to the Contractor a draft Contractor Action Plan. The Contractor shall not

unreasonably withhold its agreement to the draft Contractor Action Plan. The Contractor Action Plan shall, unless the Authority otherwise approves in writing, be agreed between the Parties and come into effect within two (2) weeks from receipt by the Contractor of the draft Contractor Action Plan.

(d) The Contractor Action Plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Contractor Action Plan shall be notified by the Authority to the Contractor. The Contractor shall not unreasonably withhold its agreement to any changes to the Contractor Action Plan. Any such changes shall, unless the Authority otherwise approves in writing, be agreed between the Parties and come into effect within two (2) weeks from receipt by the Contractor of the Authority's notification.

2.2 **Contractor Review Meetings**

(a) Regular performance review meetings will take place at the Authority's premises throughout the Term and thereafter until the expiry of the Term ("**Contractor Review Meetings**").

(b) The exact timings and frequencies of such Contractor Review Meetings will be determined by the Authority following the conclusion of the Umbrella Agreement. It is anticipated that the frequency of the Contractor Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.

(c) The purpose of the Contractor Review Meetings will be to review the Contractor's performance under this Umbrella Agreement and, where applicable, the Contractor's adherence to the Contractor Action Plan. The agenda for each Contractor Review Meeting shall be set by the Authority and communicated to the Contractor in advance of that meeting.

(d) The Contractor Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Contractor Umbrella Manager.