



Department  
for Environment  
Food & Rural Affairs

# Conditions of Contracts Services

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# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

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

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

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

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

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

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

“Bravo” has the meaning given in paragraph 1.2 of the Form of Contract.

“CCN” means a change control notice in the form set out in Schedule 3.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Price;
- (b) details of the Contractor’s Intellectual Property Rights; and
- (c) the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential

(however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contract” has the meaning given in paragraph 1.1 of the Form of Contract.

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

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

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

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7.

**“Contractor Technology”** means all of the Contractor’s proprietary technology (including data, text, video, photos, audio, software, processes, algorithms, API’s, user interfaces, know-how, techniques, designs and other tangible or intangible materials or information) made available to the Authority and authorized users by the Contractor through the Services and Contractor Content.

**“Contractor Content”** means the online meditation and mindfulness content developed, operated and maintained by the Contractor and accessible via <http://www.headspace.com> (or other designated website) and mobile apps.

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.

“Copyright” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body” is an emanation of the foregoing.

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

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

“End Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

“Extension” has the meaning given in paragraph 1.4 of the Form of Contract.

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

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

“Form of Contract” means Section 1 of the Contract.

“General Anti-Abuse Rule” means:

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

“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.

“HMRC” means HM Revenue & Customs.

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

“Initial Contract Period” means the period from the Commencement Date to the End Date.

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

“Key Personnel” mean those persons named in the Specification as key personnel.

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

“Law” means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the relevant Party is bound to comply.

“LED” means Law Enforcement Directive (Directive (EU) 2016/680).

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

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

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

“Month” means calendar month.

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

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 for the full and proper performance by the Contractor of its obligations under the Contract.

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;



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

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

“Purchase Order” means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

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

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

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

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

“Request for Information” means a request for information under the FOIA or the EIR.

“Services” means the services set out in Schedule 1 including any modified or alternative services.

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

“Staff” means all persons employed by the Contractor or Authority as the case may be who are involved in the performance or receipt of Services under this Contract.

“Sub-Contract” means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “Sub-Contractor” shall be construed accordingly.

“Tender” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

“TFEU” means the Treaty on the Functioning of the European Union.

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

“Treaties” means the Treaty on European Union and the TFEU.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

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

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;

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

## **A2 The Authority’s Obligations**

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

## **A3 Contractor’s Status**

A3.1 The Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

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

## **A4 Notices and Communications**

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

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

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

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

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

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

- (a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]  
[REDACTED]

and

Email: [REDACTED]

- (b) For the Contractor:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

## **A5 Not Used**

## **A6 Conflicts of Interest**

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

## **B. THE SERVICES**

### **B1 Specification**

B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

### **B2 Not used**

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### **B3 Delivery**

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

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

(a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Service

(b)

(c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

### **B4 Key Personnel**

B4.1 The Authority acknowledges that there are no Key Personnel essential to the proper provision of the Services.

B4.5 If the Authority has any concerns about any Staff, the Authority shall notify the Contractor and the Contractor shall work with the Authority in good faith to address the Authority's concerns.

## **B5 Contractor's Staff**

B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

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

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B5.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final.

B5.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

## **B6 Inspection**

B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have scoped out the Authority's Service requirements before submitting its Tender and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## **B7 Not used**

## **B8 Not used**

## **B10 Employment Provisions**

B10.1 No Contractor staff shall be fully dedicated to the Authority account.

## **C PAYMENT**

### **C1 Price**

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

### **C2 Payment and VAT**

C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.

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

C2.5 Valid Invoices shall include:

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

(d)

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

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

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover the overpayment portion against future invoices raised or directly from the Contractor. All payments made by the Authority to the

Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

[REDACTED]  
[REDACTED]

C2.19 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

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

C3.1 Either party may retain or set off any amount owed to it by the other party against any amount due to that party under this Contract or under any other agreement between the Authority and the Contractor. If a party wishes to exercise its right pursuant to this clause it shall give notice to the other party within thirty (30) days of receipt of the relevant invoice, setting out the party's reasons for retaining or setting off the relevant Contract sums.

C3.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **D. STATUTORY OBLIGATIONS**

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

D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:



- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Contractor shall not during the Contract Period:

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

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

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

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

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

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate reasonably with any investigation, and subject to the Contractor and Authority agreeing the timing and scope in

advance, allow the Authority to audit any books, records and/or any other relevant documentation.

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

- (a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

## **D2 Discrimination**

D2.1 The Contractor shall:

- (a) perform its obligations under the Contract in accordance with:
  - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;

[Defra group equality, diversity and inclusion strategy 2020 to 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672222/Defra_group_equality_diversity_and_inclusion_strategy_2020_to_2024.pdf)

- iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **D3 Rights of Third Parties**

D3.2 A person who is not a Party has no right under the CRTPA to enforce any provisions of the Contract.

D3.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.

D3.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

## **D4 Health and Safety**

D4.1 The Contractor shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's health and safety policy while at the Authority's Premises.

D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **D5 Environmental Requirements**

D5.1 Where applicable given the nature of the Services being provided hereunder, the Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("Environmental Policies") which require the Authority through its procurement and management of suppliers:

- (a) conserve energy, water, wood, paper and other resources and reduce waste;
- (b) phase out the use of ozone depleting substances;
- (c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- (d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;
- (e) reduce fuel emissions wherever possible;
- (f) maximise the use of recovered materials and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

- (g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

- (a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances; and/or
- (b) HFCs and other gaseous and non-gaseous substances with a high global warming potential;

unless given written permission by the Authority to do so.

D5.3 The Contractor shall conserve energy and water; reduce carbon emissions and other greenhouse gases; minimise the use of substances damaging or hazardous to health and the environment and reduce waste by, for example, using resources more efficiently and reusing, recycling and composting and respecting biodiversity.

D5.4 If required by the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.3.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Contractor shall:

- (a) identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services; and
- (b) if such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## **D6 Not used**

## **E Not Used**

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

E3.1 The Contractor shall comply with the provisions of:

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

### **E4 Confidential Information**

E4.1 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party (and its Staff, professional advisors and consultants) shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.4 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E4.5 A Party may only disclose Confidential Information to its personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.

E4.6 Both Parties shall not, and shall procure that its personnel do not, use any of the Confidential Information received otherwise than for the purposes of this Contract.

E4.7 Clause E4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E4.8 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
- (d) to any consultant, contractor or other person engaged by the Authority

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

E4.9 Nothing in clauses E4.1 to E4.6 shall prevent Authority staff from utilising the meditation practises learned during the term of this Contract post expiry of the Contract provided that this does not result in a disclosure of the Contractor's Confidential Information or an infringement of the Contractor's Intellectual Property Rights.

E4.10 The Authority shall ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

E4.11 If a Party does not comply with clauses E4.1 to E4.6 the other Party may terminate the Contract immediately on written notice to the non-compliant Party.

E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, a Party shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.13 A Party will immediately notify the other Party of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. A Party will use its best endeavours to recover such Confidential Information or data however it may be recorded. A Party will co-operate with the other

Party in any investigation as a result of any breach of security in relation to Confidential Information or data.

## **E5 Freedom of Information**

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt:

- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR. Any disclosure of information will be discussed with the Contractor in advance.

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

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 Both Parties shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Not used**

## **E8 Intellectual Property Rights**

E8.1 The Contractor and its licensors reserve all right, title and interest in and to the Services, including the Contractor Technology and all related Intellectual Property Rights.

No rights are granted to the Authority hereunder other than as expressly set forth herein. The Authority shall not: (i) permit any third party to access the Services except as permitted hereunder; (ii) create derivative works based on the Services; (iii) copy, frame or mirror any part or content of the Services; (iv) reverse engineer the Services; or (v) access the Services in order to (a) build a competitive product or service or (b) copy any features, functions or graphics of the Services.

## **E9 Audit**

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

E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

## **E10 Not Used**

# **F. CONTROL OF THE CONTRACT**

## **F1 Failure to meet Requirements**

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the



Authority shall notify the Contractor and the Contractor shall work with the Authority in good faith to address the Authority's concerns.

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

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

terminate the Contract in accordance with clause H2.

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

F4.1 Neither party shall transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without the approval of the other Party. Subcontracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F4.2 The Contractor shall be responsible for the acts and/or omissions of its SubContractors as though they are its own.

F4.10 Subject to clause F4.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority

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

F4.11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.12, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F4.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “Transferee”):

- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F4.13 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.14 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **F5 Waiver**

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

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

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

## **F6 Variation**

F6.1 If, after the Commencement Date, the Authority’s requirements change, the Authority may request a Variation subject to the terms of this clause 6.

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

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

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution) For the avoidance of doubt, the Authority would not be entitled to any refund if the Contract is terminated pursuant to this clause.

F6.4 No Variation will take effect unless and until it is recorded in a validly executed CCN. Execution of a CCN is made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

F6.5 A CCN takes effect on the date on which both Parties communicate acceptance of the CCN via Bravo. On the date it communicates acceptance of the CCN in this way the Contractor is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

F6.6 The provisions of clauses F6.4 and F6.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Variation.

## **F7 Severability**

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

## **F8 Remedies Cumulative**

F8.1 Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F9 Entire Agreement**

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

## **F10 Counterparts**

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

# **G LIABILITIES**

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

G1.1 Each Party's total aggregate liability in each Contract Year under this Contract whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise) in connection with this Contract is limited to £100,000.

G1.2 No Party is liable to the other for any consequential, incidental, indirect or special damages or Losses incurred by the other Party, including but not limited to loss of data, use, profit, business opportunities or damage to goodwill (in each case whether direct or indirect) even if advised in advance of the possibility of such damages or Losses.

G1.3 In spite of Clause 5.1, neither Party limits or excludes any of the following:

- (a) Its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
- (b) Its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
- (c) Any liability that cannot be excluded or limited by law.

G1.4 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract.

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

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.

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

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

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

## **G2 Warranties and Representations**

G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of

any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract to the best of its knowledge:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax NonCompliance.

### **G3 Force Majeure**

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, SubContractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor. For the avoidance of doubt, a Force Majeure Event shall not apply to any Party's payment obligations under this Contract.

G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
  - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
  - ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

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

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

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;



(g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors;

(b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days;

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or

(h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority in writing as soon as reasonably practicable of any merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 (“Change of Control”). The Authority may terminate the Contract with immediate effect by notice to the Contractor within 6 Months of:

(a) being notified that a Change of Control has occurred; or

- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

The Authority shall not be entitled to any refund for terminating pursuant to this clause H1.3.

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

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

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

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

- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

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

H1.7 Upon termination by the Authority for insolvency pursuant to this clause H1, the Contractor shall refund the Authority any prepaid fees covering the remainder of the term of all order forms after the effective date of termination. In no event shall any termination relieve the Authority of the obligation to pay any fees payable to the Contractor for the period prior to the effective date of termination.

## **H2 Termination on Default**

H2.1 A Party may terminate the Contract with immediate effect by notice if the other Party commits a Default and:

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

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor may, upon 15 days' notice and provided non-payment is not cured within such period, suspend its provision of the Services and any other Services under this Agreement until payment is made.

H2.4 Upon any termination by the Authority for cause pursuant to this clause H2, the Contractor shall refund the Authority any prepaid fees covering the remainder of the term of all order forms after the effective date of termination. Upon any termination for cause by the Contractor, the Authority shall pay any unpaid fees covering the remainder of the term of all order forms after the effective date of termination. In no event shall any termination relieve the Authority of the obligation to pay any fees payable to the Contractor for the period prior to the effective date of termination.

### **H3 Termination on Notice**

H3.1 The Authority may terminate the Contract at any time by giving 30 days notice to the Contractor. The Authority shall not be entitled to any refund if the Authority terminates pursuant to this clause.

### **H4 Other Termination Grounds**

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

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

H4.2 Upon any termination by the Authority for cause pursuant to clauses H4.1 (b), (c) and (d), the Contractor shall refund the Authority any prepaid fees covering the remainder

of the term of all order forms after the effective date of termination. The Authority shall not be entitled to any refund should it terminate this Contract pursuant to clause H4.1(a).

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

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), 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), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

**H6 Not used**

**H7 Not used**

**H8 Not Used**

**H9 Not used**

**H10 Not used**

**H11 Not used**

## **I DISPUTES AND LAW**

### **I1 Governing Law and Jurisdiction**

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English

Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of a Party to take proceedings against the other Party in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

## **I2 Dispute Resolution**

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;

(b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;

(c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

(d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

(e) failing agreement, either of the Parties may invite the Mediator to provide a nonbinding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

(f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.

I2.6 Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

(a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7;

(b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7; and

(c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7,.

I2.7 If any arbitration proceedings are commenced pursuant to clause I2.6,

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.



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## ULE 1 SPECIFICATION



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# SCHEDULE 2 PRICING

**Terms and Conditions**

Service Start Date: 1<sup>st</sup> April 2022  
Service End Date: 31<sup>st</sup> March 2024  
Payment Terms: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

## SCHEDULE 3 CHANGE CONTROL

Contract Change Note	
CCN Number	
Contract Reference Number and Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of [project name] dated [dd/mm/yyyy] (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

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

Contract Change Details		
Change Requestor/Originator	[x]	
Summary of Change	[x]	
Reason for Change	[x]	
Revised Contract Value	Original contract value	[£x]
	Previous contract change values	[£x]
	Contract Change Note [x] value	[£x]
	New revised contract value	[£x]
Revised Payment Schedule	[x]	
Revised Specification	[x]	
Revised Contract Period	[x]	
Change in Contract Manager	[x]	

Other Changes	[x]
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2. Save as amended all other terms of the Original Contract shall remain effective.
3. This CCN takes effect from the date on which both Parties communicate acceptance of its terms via Bravo.

## SCHEDULE 4 COMMERCIALLY SENSITIVE INFORMATION

1.1 Without prejudice to the Authority's general obligation of confidentiality, the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 (Freedom of Information).

1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.

1.3 Where possible the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies.

1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR, the Authority will, acting reasonably but in its sole discretion, seek to apply the commercial interests exemption set out in s.43 of the FOIA to the Information listed below.

Commercially Sensitive Information		
CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY

■

App Product, Admin Portal, Product updates and roadmap, pricing proposal, webinar content, Contractor Content and Contractor Technology		Indefinite
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# SCHEDULE 5 – NOT USED

Data Processing Descriptor	Narrative
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**SCHEDULE 6 - NON DISCLOSURE AGREEMENT**

[REDACTED]

## SCHEDULE 7 - CONTRACTOR AND THIRD PARTY SOFTWARE

### CONTRACTOR SOFTWARE

For the purposes of this Schedule 7, “Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. The Contractor Software comprises the following items:

### THIRD PARTY SOFTWARE

For the purposes of this Schedule 7, “Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software specified in this Schedule 7. The Third Party Software shall consist of the following items:

Third Party Software	Supplier	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?
<b>Auth0</b>	<b>Auth0 Inc.</b>	<b>User authentication, forgetting password, linking accounts</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>



**SCHEDULE 8 – DATA PROTECTION AGREEMENT**

[REDACTED]



## Schedule 1 – Specification

### Mindfulness/Meditation Product/Service provision to Defra group

#### BACKGROUND

The Department for Environment, Food and Rural Affairs (Defra) offers a range of voluntary Employee Benefits and Wellbeing Resources, supporting the vision for the Defra group which is at the heart of our strategy:

- Creating a great place for living
- Creating a great place to work

Defra group employee benefits and wellbeing provision are offered as a key part of the Department's Employee Value Proposition (EVP) strategy, enabling the group to attract and retain talent and meet the UK Government and Defra groups Green ambition by 2030.

Our 'whole person' approach to health and wellbeing is founded on education, prevention, and early intervention across 4 pillars – mental, physical, community and financial. Our ambition is not only to support and improve colleague wellbeing to achieve business objectives, but also support the Nation's health goals and relieve pressure on the NHS.

Defra is a ministerial department, supported by 33 agencies and public bodies. Organisations to be included within this contract are:

- Defra Core
- Rural Payments Agency
- Natural England
- Animal & Plant Health Agency
- Environment Agency
- Veterinary Medicines Directorate
- Marine Management Organisation
- Centre for Environment, Fisheries & Aquaculture Science
- Joint Nature Conservation Committee
- Forestry Commission
- Royal Botanic Gardens Kew
- Office of Environmental Protection
- National Forest

Each organisation within the Defra group is an independent employer and may have individual and bespoke requirements and access arrangements under the agreed contract. Should Defra stay on Eligibility File enrolment method (either with employee ID or email address) Headspace will be able to provide reports for each Defra agency, as long as Defra adds that information in the Eligibility File

Defra has a total headcount of employees and agency contractors as noted in the table below (as of May 2021). The employee base is diverse and geographically dispersed.

Table of organisation approximate breakdown per headcount:

Organisation	Headcount
Defra Core	5519
Veterinary Medicines Directorate	167
Centre for the Environment, Fisheries & Aquaculture Sciences	610
Rural Payments Agency	2178
Marine Management Organisation	400
Forestry Commission	1431
Environment Agency	11259
Natural England	2325
Joint Nature Conservation Committee	230
Royal Botanic Gardens Kew	801
Animal and Plant Health Agency	2701

## 2.0 DESCRIPTION OF SERVICES

We believe brilliant things happen with calm minds. Our aim is to support Defra group colleague wellbeing through the provision of a mindfulness/meditation product/service, whilst also supporting the business through the provision of information on its usage, trend data, engagement, and take-up to continuously improve our wellbeing offer. Our vision is to improve colleague wellbeing to optimise attendance, engagement, resilience, and performance, and encourage greater collaboration on wellbeing within teams to support the delivery of business objectives. The mindfulness/meditation product/service is critical to helping us achieve our vision.

### SCOPE OF REQUIREMENTS

#### Core requirements

For the duration of the contract (2 years) The Supplier shall provide the core requirements which shall include, but not be limited to:

The provision of a **Mindfulness/Meditation Product/Service that is clinically validated through research and experimental study** providing state of the art mindfulness content that allows Contracting Authority personnel to meditate whenever

and wherever they want and be available twenty four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year/ three hundred and sixty six (366) days a year for the 2024 'leap year except for downtime and maintenance, unless agreed otherwise in advance by Contracting Authorities (this will be confirmed by individual Contracting Authorities on implementation).

An outline of essential and desirable features and content of The Suppliers Product/Service is set out at 4.0. The Product/Service shall be made available on the following Internet Browsers as a minimum:

- Chrome
- Firefox
- Opera
- Microsoft Edge
- Safari (only available on Apple devices)

in addition Apple iOS and Android devices (as a minimum) and operable on work devices, personal devices or both, having been acquired through the Defra group sign on portal.

This will be procured centrally and shall be customisable to the Contracting Authority. The Suppliers Product/Service will be available for up to **27,000** Contracting Authority personnel (which could increase or decrease subject to headcount changes) across Defra group, which comprises arms-length bodies and non-departmental public bodies (up to 12).

The Suppliers Product/Service will be made available to all Contracting Authority personnel across the Defra group organisations through a tried and tested One factor authentication **web-based product**.

The Supplier will provide a **dedicated customer account/engagement manager** who will have one main point of contact with a Contract Manager from within the Contracting Authorities Wellbeing and Engagement Team.

A select number of wellbeing leads from the Contracting Authority will require **administrator access to an administrative portal** allowing them the rights, for example, to analyse usage and identify user trends to drive engagement, in partnership with The Suppliers customer account/engagement manager, who will have a crucial role in leading this activity.

The Supplier shall provide a wide range of **marketing and publicity materials** that are customisable to the various organisations that make up Defra group. These will include, but not limited to, launch and enrolment resources, engagement resources, education materials and on-going publicity and awareness raising materials. These shall be made available in written and electronic materials, as well as via virtual and on-site webinars and workshops developed and delivered by Trained Personnel employed by The Supplier.

The Suppliers Product/Service shall be **scientifically backed** and **clinically validated**. The Supplier should be able to evidence improved user outcomes including, but not limited to:

- Increased focus and performance
- Decreased stress and anxiety levels
- Reduced fatigue and burnout
- Increased compassion
- Improved mood and positive emotion
- Reduced aggression

The Suppliers Product/Service shall be customisable to the various Defra group organisations and for the Contracting Authority personnel be intuitive, engaging, easy to access and operate.

The Suppliers Product, Services and Marketing/Promotional Materials shall be inclusive with a diverse range of voices, images, graphics, inputs, and session types in keeping with our ambition to be a leading employer of diversity and inclusion and in line with the nature of Defra group's operations and function. This will include, but not be limited to, imagery, graphics, and voices from across the range of protected characteristics – gender, race, sexual orientation, age, disability etc.

## **FEATURES AND CONTENT – MINDFULNESS/MEDITATION APP/WEB**

The Suppliers App shall include the following features and content as a minimum:

### **Essential**

- Guided meditation sessions of varying lengths designed to fit around differing schedules and levels of experience from 1 minute up to 8 hours plus.
- Library of meditation sessions and techniques on subjects such as sleep, exercise, and movement, breathing, focus plus more
- SOS sessions for moments of panic, anxiety, stress, conflict and similar
- Sleep tracking/monitoring to aid with improvement, including sleep story sessions
- Sessions to support the development and maintenance of focus and a performance mindset
- Personalised coaching and support
- Suitable for use at individual, team, and community levels
- App community to motivate users and provide a sense of belonging
- Mood tracker – learning about mood patterns to support improvements
- Daily personalised push notifications, nudges and solutions based on user requirement
- Option to select music and nature sounds and scenes
- Programmes for adults, children, and teens
- Alarm clock and morning meditation routines
- Ability to track meditation progress in real time e.g., breathing, heart rate during meditation
- No advertisements or in-store purchases/products
- Option to personalise user profile and mark favourites
- Gamification features e.g., badges for reaching milestones to inspire/motivate
- Short walk-through tutorials of features for new users

## Desirable

- Ability to integrate with other apps/devices
- Access to master-classes by world renowned experts
- Ability to customise/curate music playlists for various moods and occasions
- Ability to track progress and analyse the impacts of practice on life

It is desirable that The Supplier provides an enrolment page via the App which supports User led registration, in addition to registration via a web-based product.

The Supplier shall commit to continuously improving the features and content with regularly refreshed materials as developments in the health and wellbeing industry continue to emerge as well as in response to Contracting Authority feedback and insight and trend data.

## DELIVERY PRINCIPLES

The Supplier shall deliver all the Product/Services in accordance with the following principles:

- The Product/Services shall be available to all Users including those working remotely, both in the UK and in postings overseas and/ or travelling overseas;
- There are over 200 office locations across the UK including Scotland, Wales and Northern Ireland and a number of contractual and flexible homeworkers so ability to provide an excellent and uniform service to the dispersed workforce will be required;
- The Product/Service shall provide sufficient flexibility of approach to accommodate different organisational structures, operating styles, cultures and job roles;
- All Contracting Authorities Personnel are eligible to access the Product/Service;
- Confidentiality is crucial to the integrity of the Product/Service;
- The Product/Service shall be scientifically backed and clinically validated through research;
- The Product/Service shall be available on Apple iOS and Android devices and operable on work devices, personal devices or both, having been acquired through the Defra group web-based sign-on portal;

- The Product/Service Shall be available on the following Internet Browsers as a minimum: Chrome
  - Firefox
  - Opera
  - Microsoft Edge
  - Safari (only available on Apple devices)
- The Supplier shall not make changes to the contracted and agreed delivery/service model without prior discussion and agreement from the Contracting Authority;
  - The Supplier shall provide all Products/Services which support a strategy of continuous improvement and innovation which reflect the evolving nature of health and wellbeing in the workplace;
  - Although the needs of Contracting Authorities may vary, the supplier should take a holistic approach to offering products/services, identifying where costs could be reduced by joining up with other areas e.g. delivery of health promotion activities, workshops etc. to drive efficiencies, benefiting from industry and technological advances;
  - The Supplier shall not knowingly provide a Product/Service that is already available to the Authority and its employees via other contractual arrangements unless previously agreed between the Contracting Authority and the Supplier;
  - The Defra group anticipates a varying headcount over the life of this contract with transfers between Contracting Authorities and other changes likely;
  - Defra group is keen to promote partnership working. It believes partnership working is invaluable in providing an excellent service. The Supplier will be innovative and proactive and will work in close partnership as well as flexibly with the Contracting Authority.

#### **MINDFULNESS APP/WEB AVAILABILITY**

The Supplier shall ensure that the App/Web is available to all Contracting Authority personnel twenty four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year/ three hundred and sixty six (366) days a year for the 2024 'leap year' except for downtime and maintenance, unless agreed otherwise in advance by Contracting Authorities (this will be confirmed by individual Contracting Authorities on implementation).



The Supplier shall make the App/Web available to all Contracting Authority personnel. The Supplier will be informed by the Contracting Authority should this requirement change.

Other mandatory services e.g., One factor authentication web-based product, administrative portal, technical services email/inbox and customer account/engagement manager shall be made available as set out in the body of this specification. Desirable services include telephone and live chat functionality during the duration of the contract.

<b>MANDATORY SERVICE REQUIREMENTS</b>	<b>Administrative Portal</b>
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An administrative portal is required with provision for a small number of Contracting Authority Personnel to have administrator access to, for example but not limited to, monitor take up and engagement, identify user trends as a group add/remove accounts as necessary, monitor active users, and where user accounts are inactive, have provision for these to be removed and re-used by other Contracting Authority Personnel.

The Supplier shall ensure a small number of Contracting Authority Personnel have access to this Portal twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year/ three hundred and sixty six (366) days a year for the 2024 'leap year' except for downtime and maintenance, unless agreed otherwise in advance by Contracting Authorities.

Portal Administrators must have access to information relating to any planned training or seminars to be delivered by the Supplier on behalf of Contracting Authorities.

### **Web-Based Product**

The Supplier shall provide and maintain a web-based product to support the Services available to all Contracting Authorities Personnel twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year/ three hundred and sixty six (366) days a year for the 2024 'leap year' except for downtime and maintenance, unless agreed otherwise in advance by Contracting Authorities.

The Supplier shall brand the web-based product as required by Contracting Authorities. Access to the portal shall be through all Internet browsers as nominated by the Contracting Authority.

The Supplier shall provide an enrolment page via the web based product, which supports User led registration.

The Supplier shall ensure the enrolment page is a secure system and includes a process to ensure that employees registering as Users of the system are employees of the Contracting Authority. The Supplier shall ensure that the web-based product and its content is appropriate for a wide range of Users, within the Contracting Authority's organisation.

The Supplier shall ensure that their product is fully accessible to Users located overseas on their personal devices, if specified at implementation stage.

The Supplier shall update the web based version and App at regular intervals with all relevant material to support the Services and health and wellbeing of Users.

The Supplier shall make available monthly an online newsletter, which reflects current topics including publicity on national and local campaigns. Where possible the Supplier will try to accommodate any specific material that the Contracting Authority wishes to make available to its personnel distributed by the Supplier to all current and eligible users via email address.

## **Mobile Applications**

The Supplier shall provide alternative delivery of the web based product services in the form of a mobile IOS and Android application downloadable at least to Users mobile phones (work devices, personal devices or both). The Supplier shall ensure that, where this mode of delivery is selected by the Contracting Authority, the service is available to all Contracting Authorities Personnel twenty-four (24) hours a day, seven (7) days a week and three hundred and sixty five (365) days a year/ three hundred and sixty six (366) days a year for the 2024 'leap year' except for downtime and maintenance, unless agreed otherwise in advance by Contracting Authorities.

The mobile application should serve as a mobile version of the web based product. All materials that are accessible by Users of the web based product should equally be accessible by Users of the mobile application.

Depending on the enrolment method The Supplier User registration which may include:

- Username;
- User email address;
- User's employing department name; and
- Users business unit.

## **Maintenance and Upgrades**

The Supplier shall ensure that notification of scheduled maintenance and/or system upgrades is provided to the Contracting Authority led Contract Manager. Any scheduled maintenance and/or upgrades may result in the product/service being unavailable to Contracting Authority personnel. Where possible and when Partner Success Manager is aware, the Supplier will do their best to notify.

### **Self-Service, E-mail, Live Chat and Telephone Support Services**

The Supplier shall provide the Contracting Authorities with an easy-to-use single signon self-service portal for enrolment and other membership and user matters. This should include self-service tutorials and videos.

It is desirable for The Supplier to provide a telephone support service and live chat functionality for more complex user issues and queries during the life of this contract.

The Supplier is required to provide a Technical Assistance dedicated Email Address and Inbox for Supplier Personnel technical queries that must be responded to by the Supplier within 48 hours. For queries sent to [teamsupport@headspace.com](mailto:teamsupport@headspace.com), Defra will receive an automated email within 0-4 hours letting them know that this issue has been received, a member of the Supplier's team will communicate within 48hr to either confirm resolution of the issue or inform on timing to resolve if it's a fundamental issue.

### **Customer Account/Engagement Manager**

The Supplier shall appoint a dedicated customer account/engagement manager for the Contracting Authority within 5 days of the contract commencement date, providing name and contact details, to ensure that the requirements of the contract are met. The customer account/engagement manager shall have relevant industry experience. They shall have a detailed understanding of the contract, sufficient capacity and have experience of managing and partnering with public sector organisations of a similar size and complexity.

The customer account/engagement manager will need to develop an understanding of each Contracting Authority's business, culture and ways of working.

They will work primarily with the Contracting Authority lead Contract Manager to successfully manage the implementation, engagement, and management of the contract at both working and strategy levels.

The Supplier shall ensure the customer account/engagement manager is available service 0900 and 1700 Monday to Friday (not including public and bank holidays) with cover during a leave of absence.

The Supplier shall have measures in place to ensure any periods of annual leave or any unplanned absences are covered at the same level of skill and expertise. The Supplier shall clearly communicate any change to the customer account/engagement manager to Contracting Authorities, ensuring a full handover takes place.

The Supplier shall promote, deliver, and communicate transparency of pricing and savings when requested by Contracting Authorities.

The customer account/engagement manager shall hold **monthly contract review meetings** with the Contracting Authorities as agreed at the implementation stage. The content of these meetings shall include, but not be limited to:

- performance monitoring reporting (including reasons for any non-performance and any remedial action);
- app and portal maintenance, up-grades, up-dates and downtime;
- details of all complaints including nature of complaint, action taken and timescale;
- promotion activities undertaken and planned;
- external market trends, including analysis of how the Contracting Authority could benefit from such trends, including a cost analysis of any such changes;
- proposed improvements to Product/Services,
- user trend analysis data and insight

During implementation, the customer account/engagement manager should hold virtual **service review meetings** on at least a monthly basis. The content and frequency of these meetings are noted in the table below

The Supplier shall meet **quarterly with the Contracting Authorities networks and groups** to discuss quarterly reports and future engagement activity. Period by period comparison data should be presented to these working groups.

The Supplier shall meet **bi-annually** with the Contracting Authorities Contract Manager in a **strategic performance review meeting**.

The Supplier shall meet **annually** with the Contracting Authorities Contract Manager to conduct a **service review**, covering, but not limited to governance and performance monitoring, security, personal vetting and security, personnel and complaints.

The Supplier shall participate in management meetings – monthly, quarterly, bi-annual and annual – (including face to face) at no additional cost to Contracting Authorities. Where travel distance is outside of 50 miles travel, costs would be agreed in advance and charged to DEFRA

The customer account/engagement manager will be also be made available outside of the formal meetings for ad-hoc requests, queries and similar.

The Supplier shall provide contact details of Supplier Personnel responsible for managing the contract if they differ to the customer account/engagement manager.

The Supplier customer account/engagement manager shall escalate any issues that cannot be resolved between Contracting Authorities and the Supplier to the Authority.

The Supplier customer account/engagement manager will ensure queries about the contract or provision of services (not complaints) are acknowledged as follows: For



- Annual stakeholder engagement programme
- Events tailored to emerging trends and audiences

For general promotion of the Product/Services, please see directly below **Headspace** services menu. Anything outside of this will be charged. Any materials shall be agreed in advance by the Contracting Authorities and contain branding specific to the Contracting Authorities where required.



Service Credits may only be redeemed against the Services Menu outlined below; in no circumstance may Customer utilize Service Credits for the purchase or redemption of additional subscription licenses.

### **Services Menu**

██████████	██████████
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██████████████████	█

████ Supplier shall provide a range of marketing tools designed to appeal to a diverse range of employees. This shall include information for new employees, guidance on how to use the Product/Service, the features that are available, the benefits of using the Product/Service and how to access the Product/Service.

The Supplier shall conduct site visits to Contracting Authorities office locations in order to promote the services. The Supplier may also be required to attend promotional events and roadshows at the Contracting Authorities request.

The Supplier shall make available monthly an online newsletter, which reflects current topics including publicity on national and local campaigns. Where possible the Supplier will try to accommodate any specific material that the Contracting Authority wishes to

make available to its personnel distributed by The Supplier to all current and eligible users via email address.

The Supplier shall deliver the materials and programmes using a variety of communication methods, for example posters, leaflets, audio, online, webinars, seminars, workshops and televisual and shall tailor these to meet the specific needs of the Contracting Authority.

The Supplier shall embed programme materials within their online portal and mobile applications.

The Supplier shall seek feedback on the quality of education content delivery to ensure continuous improvement of materials and delivery. The Supplier shall share evaluation feedback with the Contracting Authority.

### **Supplier Personnel**

The Supplier shall ensure that all Supplier Personnel are suitably experienced, skilled and/or qualified to deliver the Services for which they are employed.

#### **Personal Security and Vetting**

The Supplier shall ensure that all Supplier Personnel have been security vetted and approved to Disclosure and Barring Service (DBS) relevant standards and/or Disclosure Scotland relevant standards where appropriate. The Supplier shall ensure this is completed prior to the involvement of Supplier Personnel in the delivery of the Services under this Framework Agreement.

The Supplier shall provide details of its Supplier Personnel security procedures to Contracting Authorities.

### **Supply Chain Management**

This section describes the supply chain mandatory requirements the Supplier shall comply with throughout the contract period.

The Government is committed to making sure that small and medium-sized enterprises (SMEs) have access to Government contract opportunities. Suppliers shall be required to proactively support the Government's SME agenda whilst delivering a quality service and ensuring that value for money is achieved.

The Supplier shall proactively encourage SME's to become part of their supply chain.

The Supplier shall ensure that they exercise due skill and care in the appointment and selection of any Sub Contractors (including associates/partners).

The Supplier shall ensure that all Sub Contractors appointed have the technical and professional resource and experience to unreservedly deliver in full all the Product/Service requirements set out in this specification.

The Supplier shall be responsible for managing and monitoring the on-going performance of any Sub contractors appointed and ensure they have a process in place to deal with any issues with under and non-performance of appointed Sub contractors.

The Supplier shall formalise relationships with Sub Contractors and manage any Sub Contractors in accordance with Industry Good Practice.

### **Service Levels and Service Credits**

The Contracting Authorities have agreed Service Levels, Service Credits and Performance Monitoring, please see Annex 2

Annex 2 (Service Levels and Services Credits) of this specification of requirements which is for information only, provides baseline Service Levels that Contracting Authorities have provided for implementation

### **Measuring Product/Service Impact and Outcomes**

The Supplier shall use published, recognised methodologies, where available and agreed in advance with the Contracting Authorities, to measure the impact and effectiveness of the Product/Services at least twice in each Contract Year.

The Supplier shall agree the forms of measures to monitor the outcomes of the Product/Services, in advance with Contracting Authorities and they may include but not be limited to impacts on:

- Focus and performance
- Stress and anxiety levels
- Fatigue and burnout levels
- Mood and positive emotion
- Aggression levels
- Overall improvement on lives and overall wellbeing

The Supplier shall undertake satisfaction scoring of the Products/Services after webinars and virtual interaction with the Contracting Authorities Personnel using for example, live voting buttons. The Supplier shall provide Contracting Authorities with live voting satisfaction results.

### **Strategy, Policy and Guidance**



The Supplier shall provide policy and strategy advice to the Contracting Authorities, including the sharing of best practice from across employment sectors.

The Supplier shall identify Product and Service trends and shall develop mitigation strategies and/or solutions in conjunction with Contracting Authorities, for example when:

- Service usage patterns indicate the need for further investigation;
- Experiencing low take up and engagement which doesn't present best value for money

The Supplier shall propose changes and/or modifications to the Product/Services in order that the Product/Services address specific trends and/or issues, including a time plan for implementation and shall work with the Contracting Authorities to implement agreed modifications.

### **Complaints Process**

The Supplier shall be responsible for ensuring Contracting Authority satisfaction is maintained for the duration of the Contract and work collaboratively with the Contracting Authority to resolve issues, which may affect satisfaction.

The Supplier shall have in place robust and auditable procedures for logging, investigating, managing, escalating and resolving complaints or problems initiated by the Authority, Contracting Authorities, and their employees. The procedure shall allow for the identification and tracking of individual complaints from initiation to resolution. Types of complaints that shall be supported in this way include, but are not limited to:

- Contracting Authorities Personnel complaints relating to the availability of receiving the Services;
- Contracting Authorities Personnel complaints in relation to the quality of Product/Services received;
- Contracting Authorities Personnel complaints in relation to Services not meeting the specific or diverse needs of individuals
- Contracting Authorities complaints relating to failure to meet agreed Service Levels; and
- Contracting Authorities complaints in relation to invoicing and billing.

The Supplier shall acknowledge complaints made by Contracting Authorities Personnel whether verbal, formal or informal and written within one (1) day of the details of the complaint being received by the Supplier. Thereafter updates on how the Supplier is proactively working to seek a resolution of the complaint shall be made by the Supplier to the Contracting Authorities at intervals of two (2) working days, until a satisfactory resolution has been agreed which is mutually acceptable to both parties.

The Supplier shall have in place a robust escalation process to support complaints handling and to ensure effective management and resolution of all complaints received from Contracting Authorities.

The Supplier shall provide Contracting Authorities with one consolidated report (per quarter) for the duration of this Contract capturing all customer complaints detailed by Contracting Authorities. These reports shall include the date the complaint was received and resolved, the nature of the complaint and actions agreed and taken to resolve the complaint and any changes to the Product/Services and lessons learnt.

The Supplier has provided the Contracting Authorities with a copy of the Suppliers documented complaints process as follows:

A complaint can be made through Email to the [REDACTED] if the [REDACTED] fails to resolve then it will be escalated to the [REDACTED] [REDACTED] and further escalation can be made to the [REDACTED]

### **Contracting Authorities Management Information (MI)**

The Supplier shall provide the following management information, as a minimum, to Contracting Authorities, unless otherwise agreed. The Supplier shall provide the management information in an Excel format as well as a PDF.( Where possible Headspace will provide with an excel (e.g location and department reporting)) Management Information should evolve to meet the Contracting Authority's requirements and to reflect any changes during the lifetime of the contract.

The Contracting Authorities will require accurate, comprehensive and robust management information to verify that Product/Services are being delivered to the required standard, providing positive quality outcomes and providing value for money.

The Supplier shall ensure Contracting Authorities Personnel anonymity and confidentiality in the delivery and content of all management information.

The Supplier shall provide management information broken down as agreed by the Contracting Authorities at Defra group level and the Supplier, however, should data enable further drill down this should be made available by organisation, agency and business unit level.

Contracting Authorities may request a reasonable number of ad-hoc Management Information reports. [REDACTED]

[REDACTED] Where these requests relate to urgent MI in relation to Freedom of Information, Minister's questions and Parliamentary Questions will be provided within the timelines outlined for each request by the Contracting Authorities. Defra will discuss with **Headspace** in advance on content to be released.

Contracting Authorities will, where the data is available, provide the Supplier with [REDACTED] statistics on causes of sick absence, absence levels, headcount data.

Contracting Authorities will supply these figures at organisational, departmental and agency level where available.

### **Contracting Authorities Monthly Management Information**

The Supplier shall provide, as a minimum, the following **monthly** management information to individual Contracting Authorities unless otherwise agreed.

#### General:

- Monthly and cumulative Contract year to date charges for the Product/Services, including any additionally agreed charges;
- Performance against agreed SLA's;
- Results of any customer satisfaction surveys/voting;
- Continuous improvement report; and
- User trend data, insight and analysis

#### Mindfulness App

- Overall number of registered users
- Overall number of active and inactive users
- New enrolments per month
- Number of sessions taken per month
- Engagement by content type
- Depth of engagement by content type
- Trend analysis of content usage and breakdown, [REDACTED]  
[REDACTED]

The Supplier shall work with the Contracting Authority to understand how the Management Information may need to evolve and change during the length of the contract.

### **Contracting Authorities Quarterly Management Information**

Where requested by the Contracting Authorities, the Supplier shall provide the following quarterly management information in Word or PDF format and as raw backing data (in Excel format) [REDACTED]  
[REDACTED] :

- An executive summary outlining usage of the Services and emerging trends, by organisation if requested by the Contracting Authority;

- Explanation of how the data has been collated and derived and any anomalies identified;
- Monthly and year to date performance against SLAs;
- Presentation in graphical and tabular form along with the base data, the specific format of which will be agreed on award of the Contract;
- The benefits and added value the Product/Service is providing, specifically stating what benefit the Supplier has brought to the Services both for the Contracting Authorities Personnel and commercially;
- Summary of Contracting Authorities Personnel complaints and identification of any trends resulting from these with a proposed Service Improvement Plan to be agreed between the parties;
- Trend analysis of Product/Service usage including suggested actions and service improvements, with proposed times and costs for implementation;
- Market innovations and trends emerging in the mindfulness, meditation and wider health and wellbeing arena.

## 8.0 IMPLEMENTATION

The Supplier shall appoint a suitably skilled and experienced implementation team with a named implementation manager. [REDACTED]

[REDACTED] The implementation manager shall work with the Contracting Authority on a daily basis to agree and deliver an implementation plan.

The Supplier shall provide implementation support for Contracting Authorities which shall include as a minimum, but not be limited to:

- A detailed implementation plan, including risks and mitigation, tasks, a timeline, milestones, priorities and dependencies;
- Work with Contracting Authorities to gain an understanding of health and wellbeing strategies, working practices and processes in each organisation.
- Work with Contracting Authorities to set up systems and processes to support the delivery of the Product/Services. This will be required at individual Contracting Authorities level as well as contract-wide.

- A communications strategy to ensure Contracting Authorities are kept informed at key stages during the transition of Services.
- Work with the incumbent Supplier to ensure a seamless transfer and continuity of Services.

## **EQUALITY, DIVERSITY AND INCLUSION:**

The Supplier shall ensure Services comply with all discrimination legislation, including the Equality Act 2010 and Gender Recognition Act 2004.

The Supplier shall ensure Supplier Personnel are trained in such legislation as required in the provision of the Product/Services. The delivery of Product/Services shall be accessible to Contracting Authorities Personnel, and shall include as a minimum:

- Telephone services to support Contracting Authorities Personnel with hearing or speech difficulties;

The Supplier shall meet or be working towards meeting the content accessibility standards WCAG 2.0 AA (in line with central Government standards. For further information see [REDACTED])

The Service shall be fully and demonstrably compliant with the Public Sector Bodies Accessibility Regulations to ensure that all staff have equal access to the Services. Further information is available at [REDACTED]  
[REDACTED]

Beyond legal compliance, the Supplier will behave in a manner that demonstrates they value and respect the diversity of our people. All Supplier personnel will be trained in supporting concerns around protected characteristics. They will seek to create an inclusive environment where everyone has access to The Suppliers product/services.

## **ANNEX 1 – GLOSSARY**

Customer Account/ Engagement Manager	means the Supplier's Customer Account/Engagement Manager appointed to manage the Contracting Authorities Contract
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Contracting Authorities Personnel	means all employees specified by the Contracting Authorities
Data	means Data relating to a record which is stored on the Supplier's systems and databases.
Defra group	means the organisations which have joined to procure the mindfulness App contract and includes the main department plus agencies and public bodies specified in this specification Section 1.2
Go Live	means an IT System, Service or product becoming operational.
Supplier Personnel	means the Personnel of the Supplier with whom the Contracting Authorities have entered into a contract
Service Levels	means the Contracting Authorities specified Service Level linked to specific functions which the Supplier is required to undertake as part of the Contract.
Public and Bank Holidays	means all Public and Bank Holidays which are detailed in the link below: <a href="https://www.gov.uk/bank-holidays">https://www.gov.uk/bank-holidays</a>

		Service Level Performance Measure				
Service Level Performance Criterion	Description	Service Level Fail RED	Service Level Warning AMBER	Service Level Pass GREEN	Service Credit Payable (%)	Service Level Status
Health and wellbeing promotion and awareness events and webinars	All events and webinars to be delivered at the date and time agreed					Critical Service Level

Contract Management	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	[REDACTED]	[REDACTED]	[REDACTED]	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>				<p>[REDACTED]</p> <p>[REDACTED]</p>	
<p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>				<p>[REDACTED]</p>	











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Date

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Date

## **Data Processing Addendum**

### **1. Introduction**

This Data Processing Addendum ("Addendum") is hereby incorporated by reference into and is part of the Master Services Agreement between the parties for the provision of services ("Agreement").

Customer is the Data Controller and is the Data Processor with respect to any Personal Data provided directly from Customer to . This Addendum shall be effective on the date agreed to by Customer. Except for the changes made by this Addendum, the Agreement remains unchanged and in full force and effect. In the event of a conflict between the Agreement, including Order Forms and Exhibits, and this Addendum, this Addendum shall control. Notwithstanding the foregoing, any claims brought under or in connection with this Addendum shall be subject to the exclusions and limitations set forth in the Agreement. No one other than a party to this Addendum, its successors and permitted assignees shall have any right to enforce any of its terms. The parties agree that this Addendum shall replace any existing data processing addendum the parties may have previously entered into in connection with the Services.

This Addendum and the Model Clauses (if included and applicable to the Addendum) only apply to the extent that Processes Customer Personal Data in the course of providing Services pursuant to the Agreement and shall terminate simultaneously and automatically with the termination or expiration of the Agreement.

Capitalized terms have the meaning given to them in the Agreement, unless otherwise defined below.

### **2. Definitions**

For the purposes of this Addendum, the following terms and those defined within the body of this Addendum apply:

a) "Applicable Data Protection Law(s)" means the relevant data protection and data privacy laws, rules and regulations directly applicable to the provision of services under the Service Agreement and this Addendum to which the Customer Personal Data are subject. "Applicable Data Protections Law(s)" shall include, but not be limited to, the General Data Protection Regulation (EU 2016/679) ("GDPR"), UK GDPR, and the California Consumer Privacy Act ("CCPA").

b) "Controller" means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data, and includes the meaning assigned to the term under Applicable Data Protection Law(s).

c) "Customer Personal Data" means Personal Data pertaining to Customer's employees or beneficiaries provided by Customer, and specifically excludes reference to any data provided directly by Customer's employees or beneficiaries (the end users) to . The Customer Personal Data and the specific uses of the Customer Personal Data are detailed in Exhibit 2 as required by GDPR.

d) "Model Clauses" means the *Standard Contractual Clauses* set out in the annex to Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.

e) "Personal Data" shall have the meaning assigned to the terms "personal data" or "personal information" under Applicable Data Protection Law(s).

f) **"Process," "Processes," "Processing," "Processed"** means any operation or set of operations which is performed on data or sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction, and includes the meaning assigned to the term under Applicable Data Protection Law(s).

g) **"Processor"** means a natural or legal person, public authority, agency or other body which Processes Customer Personal Data subject to this Addendum, and includes the meaning assigned to the term under Applicable Data Protection Law(s).

h) **"Security Incident(s)"** means any unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to Customer Personal Data.

i) **"Third Party(ies)"** means [REDACTED] contractors, agents, vendors and third-party service providers (i.e., sub-processors) that Process Customer Personal Data.

### 3. **Data Handling, Access and Processing**

a) **Role of the Parties.** As between [REDACTED] and Customer, Customer is the Controller of Customer Personal Data, and [REDACTED] shall Process Customer Personal Data as a Processor acting on behalf of Customer, as to the Processing identified in Exhibit 2. To the extent the Agreement provides [REDACTED] with the right to determine the purposes and means of processing Personal Data pertaining to Customer's end-users located in the European Economic Area (EEA) (including the United Kingdom and Switzerland), beyond the Processing identified in Exhibit 2, and [REDACTED] in fact engages in any such Processing, [REDACTED] may instead be a Controller under Applicable Data Protection Law(s) as to such Processing. Where [REDACTED] is a Controller under Applicable Data Protection Law(s), Processing undertaken in its capacity as a Controller shall not be subject to this Addendum, and [REDACTED] instead shall engage in such Processing in accordance with any Applicable Data Protection Law(s) applicable to Controllers.

To the extent that [REDACTED] collects and processes Customer Data that is regulated as personal information as that term is defined under the California Consumer Privacy Act and its amendments and regulations ("CCPA"), [REDACTED] does so as Customer's service provider as defined under the CCPA. As such, [REDACTED] does not and shall not sell the Customer Data or otherwise collect, retain, use, or disclose the Customer Data for any purpose other than those purposes provided for in this Agreement. [REDACTED] shall not retain, use or disclose the Customer Data outside the direct business relationship between [REDACTED] and Customer. [REDACTED] hereby certifies that it understands the restrictions of this Section 3 and will comply with them.

b) **General Compliance by [REDACTED].** Customer Personal Data shall be Processed by [REDACTED] in material compliance with the terms of this Addendum and all Applicable Data Protection Law(s).

c) **General Compliance by Customer.** Customer agrees that (i) it shall materially comply with its obligations as Controller under Applicable Data Protection Law(s) in respect of its Processing of Customer Personal Data and any Processing instructions it issues to [REDACTED], and (ii) it has provided notice and obtained (or shall obtain) all necessary consents (including without limitation, verifiable consent) and rights necessary under Applicable Data Protection Law(s) for [REDACTED] to Process Customer Personal Data and provide the [REDACTED] Services pursuant to the Agreement and this Addendum.

d) **[REDACTED] and Third Party Compliance.** [REDACTED] agrees to (i) enter into a written agreement with Third Parties regarding such Third Parties' Processing of Customer Personal Data that imposes on such Third Parties data protection and security requirements for Customer Personal Data that are compliant with Applicable Data Protection Law(s); and (ii) remain responsible to Customer for [REDACTED] Third Parties'

(and their sub-processors' if applicable) failure to perform their obligations with respect to the Processing of Customer Personal Data.

- e) **Authorization to Use Third Parties.** To the extent necessary to fulfill [REDACTED] contractual obligations under the Agreement or any Order Form, Customer hereby authorizes (i) [REDACTED] to engage Third Parties, including the Third Parties listed on Exhibit I attached hereto, and (ii) Third Parties to engage sub-processors. Any transfer of Customer Personal Data shall comply with all Applicable Data Protection Law(s).
- f) **Notice of Additional Third Parties.** [REDACTED] shall provide notice to Customer with respect to any engagement of a new Third Party. To receive notification via email regarding any new Third Party, Customer should email [REDACTED] to request subscription to such notices. If Customer does not contact [REDACTED] with any such request, [REDACTED] posting of the name of such Third Party on its Third-Party List (as outlined in Exhibit I) will be deemed to constitute notice of a new Third Party to Customer under this provision. Customer will have ten (10) calendar days to object after email notice is given. In the event Customer objects within ten (10) calendar days after email notice is given, [REDACTED] will make reasonable efforts to address Customer's objection or suggest a commercially reasonable change of the [REDACTED] to avoid Processing of the Personal Data by the objected-to Third Party. After this process, if a resolution has not been agreed to within ten (10) calendar days, [REDACTED] will proceed with engaging the Third Party.
- g) **Following Instructions.** [REDACTED] shall Process Customer Personal Data only in accordance with the written instructions of Customer as specifically authorized by the Agreement. [REDACTED] will, unless legally prohibited from doing so, inform Customer in writing if it reasonably believes that there is a conflict between Customer's instructions and applicable law or otherwise seeks to Process Customer Personal Data in a manner that is inconsistent with Customer's instructions.
- h) **Confidentiality.** Any person authorized to Process Customer Personal Data must agree to maintain the confidentiality of such information or be under an appropriate statutory or contractual obligation of confidentiality.
- i) **Personal Data Inquiries and Requests.** [REDACTED] agrees to comply with all reasonable instructions from Customer related to any requests from individuals exercising their rights in Personal Data granted to them under Applicable Data Protection Law(s) ("**Privacy Request**"). At Customer's request and without undue delay, [REDACTED] agrees to assist Customer in answering or complying with any Privacy Request. The best means of submitting such requests is to email [REDACTED]
- j) **Prior Consultation.** [REDACTED] agrees to provide reasonable assistance to Customer where, in [REDACTED] the type of Processing performed by [REDACTED] is likely to result in a high risk to the rights and freedoms of natural persons and thus requires a data protection impact assessment and/or prior consultation with the relevant data protection authorities.
- k) **Demonstrable Compliance.** [REDACTED] agrees to keep records of its Processing in material compliance with Applicable Data Protection Law(s) and provide such records to Customer upon reasonable advanced request to assist Customer with complying with supervisory authorities' requests.

#### 4. **International Transfers**

- a) **Data center locations.** [REDACTED] may transfer and process Customer Personal Data anywhere in the world where [REDACTED] its Affiliates or its Sub-processors maintain data processing operations. [REDACTED] at all times provide an adequate level of protection for the Customer Personal Data processed, in accordance with the requirements of Data Protection Laws.



b) **Model Clauses:** To the extent that [REDACTED] processes any Customer Personal Data that originates from the EEA, in a country that has not been designated by the European Commission or Swiss Federal Data Protection Authority (as applicable) as providing an adequate level of protection for Personal Data, the parties agree that Exhibit 3 to the Data Processing Addendum shall apply.

c) **Alternative Transfer Mechanism.** The parties agree that the data export solution identified in Section 4 (a) shall not apply if and to the extent that [REDACTED] adopts an alternative data export solution for the lawful transfer of Personal Data (as recognized under EU Data Protection Laws) outside of the EEA ("Alternative Transfer Mechanism"), in which event, the Alternative Transfer Mechanism shall apply instead (but only to the extent such Alternative Transfer Mechanism extends to the territories to which Personal Data is transferred).

## 5. **Information Security Program**

[REDACTED] agrees to implement appropriate technical and organizational measures designed to protect Customer Personal Data as required by Applicable Data Protection Law(s) (the "**Information Security Program**"). Further, [REDACTED] agrees to regularly test, assess [REDACTED]

Customer is responsible for reviewing the information made available by [REDACTED] relating to data security and making an independent determination as to whether the Services meet Customer's requirements and legal obligations under Data Protection Laws. Customer acknowledges that the Information Security Program is subject to technical progress and development and that [REDACTED] may update or modify the Information Security Program from time to time provided that such updates and modifications do not result in the degradation of the overall security of the Services purchased by the Customer.

Notwithstanding the above, Customer agrees that except as provided by this Addendum, Customer is responsible for its secure use of the Services, including securing its account authentication credentials, protecting the security of Customer Personal Data when in transit to and from the Services and taking any appropriate steps to securely encrypt or backup any Customer Personal Data uploaded to the Services.

## 6. **Audits**

[REDACTED] shall allow for and contribute to reasonable audits including inspections by the Customer (or an auditor mandated by the Customer) in relation to the Processing of the Customer Personal Data provided the Customer has a good faith belief that [REDACTED] is in non-compliance with Applicable Data Protection Laws. [REDACTED] shall make available to the Customer on request all information reasonably necessary to demonstrate compliance with Applicable Data Protection Laws. All additional costs associated with such audit or inspection shall be borne in full by the Customer unless such audit or inspection determines that [REDACTED] is not in material compliance with Applicable Data Protection Law(s).

## 7. **Return or Deletion of Data**

After termination of all [REDACTED] Services, [REDACTED] shall delete or provide to Customer all Customer Personal Data provided to [REDACTED] in its possession or control, save that this requirement shall not apply to the extent [REDACTED] is required by applicable law to retain some or all of the Customer Personal Data, or to Customer Personal Data it has archived on back-up systems, which Customer Personal Data [REDACTED] shall securely isolate and protect from any further processing, except to the extent required by applicable law.

## 8. **Security Incident**



**Exhibit 1**

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]

\_\_\_\_\_

7

Exhibit 3

[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

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  - [REDACTED]  
[REDACTED]

- [REDACTED]
  - [REDACTED]  
[REDACTED]

- [REDACTED]
  - [REDACTED]

**Schedule 1 to Exhibit 3**

### Technical and Organizational Measures including Technical and Organizational Measures to Ensure the Security of the Data

[REDACTED]

- [REDACTED]

\_\_\_\_\_

- [illegible]

\_\_\_\_\_

- [REDACTED]

\_\_\_\_\_

- 
- | Response  | Percentage |
|---|------------|
| Yes, the current administration is responsible    | 85%        |
| No, the current administration is not responsible | 15%        |

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

A horizontal bar chart titled "U.S. should take action to address climate change" showing the percentage of respondents who believe the U.S. should take action to address climate change, broken down by age group. The x-axis represents the percentage from 0 to 100. The y-axis lists age groups. The bars are black. The data is as follows:

Age Group	Percentage
18-29	88
30-49	95
50-69	78
70+	65
18-29	82
30-49	75
50-69	68
70+	55
18-29	85
30-49	78
50-69	72
70+	60
18-29	80
30-49	75
50-69	70
70+	58





[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]



[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

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[REDACTED]

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2022-06-30 - 10:45:57 AM GMT



