



Department
for Work &
Pensions

**DWP
CONTRACT**

For

**The Provision of Quality Assurance Monitoring for DWP Housing Benefit
Assurance Process**

Between

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

And

**The Institute of Chartered Accountants in England and Wales
Company Registration Number – RC000246**

CONTRACT REFERENCE NUMBER: ecm_7842

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This Contract is made on the 14th June 2021

between the Parties

The Secretary of State for Work and Pensions

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

Of

Caxton House,
Tothill Street
London
SW1H 9DA

And

The Institute of Chartered Accountants in England
and Wales (ICAEW)

with Company Registration
Number

RC000246

having the main or registered
office at

Chartered Accountants' Hall,
Moorgate Place
London
EC2R 6EA

("the Contractor")

individually referred to as "**Party**" and collectively as
"**the Parties**"

A.GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract the following provisions shall have the meanings given to them below: -

"**Access to Work**" means a grant, from DWP's Access to Work scheme, given to an employer to pay for practical support to help a Disabled Person start work, stay in work or move into self-employment.

"**Acquired Rights Directive**" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.

"**Administration**" means the administrative receivership of a company under the management of an administrator under the Insolvency Act 1986 (as amended).

"**Admission Agreement**" means an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Contractor where it agrees to participate in the Schemes in respect of the Services.

“Affiliate” means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in section 1159 of the Companies Act 2006.

“Apprentices” means people given practical training with study in the form of an apprenticeship which is organised through the National Apprenticeship Service.

“Approval” means the prior written consent of the Authority including consent provided by email by the Authority’s Representative.

“Authority” means the Secretary of State for Work and Pensions.

“Authority Data” means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: -

- (i) supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract.

“Authority’s Premises” means any premises owned by the Authority or for which the Authority has legal responsibility.

“Authority’s Representative” means the representative(s) of the Authority authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract and shall be the person(s) named in paragraph 1.1 of Schedule 2.

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

“Black and Minority Ethnic” means a person who identifies themselves as being of non-white descent.

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

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

“Business Continuity Plan” means any plan prepared as directed in clause H5.6, as may be amended from time to time.

“Change Communication” means any Operational Change Request, Operational Change Confirmation, Change Request, Impact Assessment, Change Authorisation Note or other communication sent or which must be sent pursuant to the Change Control Procedure.

“Change Control Procedure” means the procedure for proposing a Contract Change, as set out in Schedule 11 (Change Control Procedure).

“Change in Law” means any change in law which impacts on the performance of the Services which comes into force from and including the Commencement Date.

“Change Request” means a written request for a Contract Change which include the information as specified in the form of Appendix 1 of Schedule 11 (Change Control Procedure).

“Commencement Date” means the date on which this Contract is signed/sealed.

“Commercially Sensitive Information” means the Information: -

- (i) listed in Schedule 5 (Commercially Sensitive Information);
- (ii) notified to the Authority in writing (prior to the Commencement Date) which has been clearly marked as Commercially Sensitive Information which is provided by the Contractor to the Authority in confidence; or
- (iii) which constitutes a trade secret.

“Commercially Sensitive Information Schedule” means Schedule 5, containing a list of the Commercially Sensitive Information provided by the Contractor.

“Comparable Supply” means the supply of services to another customer of the Contractor that are the same or similar to any of the Services.

“Confidential Information” means: -

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential and the disclosure of which shall be carried out in accordance with clause E4; and
- b) the Commercially Sensitive Information and does not include any information: -

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

“Contract” means this written agreement between the Authority and the Contractor consisting of these terms and conditions of contract and any attached Schedules, Appendices and any document referred to in the Schedules or Appendices, including the Specification, the Invitation to Tender, the Tender and the Contractor Guidance.

“Contract Change” means any change to this Contract other than an Operational Change, including, for the avoidance of doubt, the Services, any restatement and any supplement to the Contract.

“Contracting Body” or **“Contracting Bodies”** means the Department for Work and Pensions

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

“Contractor Guidance” means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Contractor prior to the Commencement Date, and any other instructions and recommended practices notified by the Authority to the Contractor from time to time.

“Contractor’s Final Personnel List” means a list provided by the Contractor of all those persons who will transfer under the TUPE Regulations on the Service Transfer Date.

“Contractor’s Provisional Personnel List” means a list prepared and updated by the Contractor of all those persons who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor.

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

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

- a) the date of expiry set out in clause A2 (Initial Contract Period), or
- b) following an extension pursuant to clause F9 (Extension of Initial Contract Period), the date of expiry of the extended period, or
- c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in Schedule 4 (Contract Price), for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

“Contract Price Schedule” means Schedule 4 containing details of the Contract Price.

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities.

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies. In this Contract, the Authority is acting as part of the Crown.

“Data Controller” shall have the same meaning as given in Data Protection Legislation.

“Data Loss Event” any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract and/or actual or potential loss and/or alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

“Data Processor” shall have the same meaning as given in the Data Protection Legislation.

“Data Protection Impact Assessment” means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA, the Criminal Law Enforcement Data Protection Directive 2016/680, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the

Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iii) all applicable Law relating to the processing of Personal Data and privacy.

“Data Protection Officer” shall have the same meaning as given in Data Protection Legislation.

“Data Subject” shall have the same meaning as given in Data Protection Legislation.

“Data Subject Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or personnel including directors, officers, employees, sub-contractors, servants, agents and consultants in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“Directive” means EC Council Directive 2001/23/EC.

“Disability Confident Employer” means an employer who has achieved this status through the Disability Confident Scheme and has registered their commitment to recruit and retain Disabled People and people with health conditions.

“Disability Confident Scheme” is a scheme which aims to help employers make the most of the opportunities provided by employing Disabled People. It is voluntary and has been developed by employers and Disabled People’s representatives.

“Disabled Person” means a person who under section 6 and Schedule 1 of the Equality Act 2010 has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to do normal daily activities.

“DPA” means the Data Protection Act 2018.

“DWP Offshoring Policy” means the Authority’s policy and procedures in relation to hosting or accessing the Authority ICT System or official information outside of the UK including Landed Resources as advised to the Contractor by the Authority from time to time.

“Eligible Employee” means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement.

“Employment Experience” means an opportunity for an unemployed person to undertake unpaid work for an employer, to provide an understanding of a working environment and develop employment related skills. Employment experience opportunities must not replace paid jobs in the organisation.

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

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“Ex-Offenders” means an individual who has an unspent criminal conviction under The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) England and Wales Order 2013 or The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) Scotland Order 2013.

“Fair Deal Employees” means those Transferring Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal or become entitled to the protection of New Fair Deal on the Relevant Transfer Date by virtue of having originally transferred pursuant to a Relevant Transfer under the TUPE Regulations (or the predecessor legislation) from employment with a public sector employer and who were once eligible to participate in the Schemes.

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

“Forest Law Enforcement Governance and Trade (FLEGT)” means the facility that contributes to combating illegal logging and strengthening forest governance while encouraging sustainable economic development in countries that produce or process timber and export to the European Union.

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

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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

“GDPR” means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

“ICT” means information and communications technology.

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

“Impact Assessment” means an assessment of a Change Request in accordance with paragraph 5 of Schedule 11 (Change Control Procedure).

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

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

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

“International Organisation” shall have the same meaning as given in Data Protection Legislation.

“Invitation to Tender” means the invitation and instructions to tenderers issued by the Authority on 26th November 2019 attached in Schedule 1 (The Services).

“Job Seekers” means people looking for work.

“Joint Controllers” where two or more Data Controllers jointly determine the purposes and means of data processing.

“Joint Controller Agreement” means the agreement between Joint Controllers to jointly control the Personal Data based on the terms outlined in Schedule 12 Annex C.

“Key Personnel” means those persons described in clause B4.

“KPI” means a key performance indicator to which the Services are to be provided as set out in the Specification.

“Landed Resources” means when the Contractor or its Sub-contractor causes foreign nationals to be brought to the United Kingdom to provide the Services.

“Law” means any applicable law, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, exercise of the royal prerogative, enforceable European Union right including enforceable rights within the meaning of Section 2 of the European

Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, regulation, directive, order, mandatory guidance, code of practice and/or requirements or any Regulatory Body of which the Contractor is bound to comply.

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

“**Life Chances through Procurement Guidance for DWP Contractors**” means a Guidance document held on GOV.UK explaining DWPs Social Value in Schedule 8 promoting and encouraging opportunities for certain DWP Priority Groups within their workforce.

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

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

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

“**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 terminating party would otherwise derive from: -

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in clauses A, B, D, E, F, H, Schedule 3 (Monitoring Requirements) and Schedule 8 (Life Chances) over any two (2) month period during the term of the Contract;
- c) any Default which is specified in the Contract as a ‘Material Breach’ or which may be deemed to be a Material Breach.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

“**Minimum Performance Levels**” means in relation to the Contractor the minimum performance levels to which the Services must be provided as set out in Schedule 3 Appendix A.

“**Minimum Service Levels**” means the set of service levels to which the Services must be provided as set out in Schedule 3 Appendix A and any other Service Levels as notified by the Authority to the Contractor from time to time.

“Monitoring Requirements Schedule” means the details of the monitoring arrangements, more particularly described in these terms and conditions of Contract and Schedule 3 (Monitoring Requirements).

“Month” means calendar month.

“MyCSP” means the body that administers the Schemes and any replacement body from time to time.

“New Fair Deal” means the revised Fair Deal position set out in HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date.

“Older Worker” means a person 50 years of age and over.

“Operational Change” means any change in the Contractor's operational procedures which in all respects, when implemented: -

- (i) will not affect the Contract Price and will not result in any other costs to the Authority;
- (ii) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (iii) will not adversely affect the interfaces or interoperability of the Services with any of the Authority ICT System; and
- (iv) will not require a change to this Contract.

“Operational Change Confirmation” means a written response to an Operational Change Request in which the Party that receives the Operational Change Request confirms its agreement to it. The confirmation may be sent by electronic mail or letter.

“Operational Change Request” means a written request for an Operational Change which may be sent by electronic mail or by letter.

“Party” means a party to the Contract.

“Performance Improvement Plan” means the plan to be provided by the Contractor in accordance with clauses F5.2.2 and F5.2.4(i).

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

“Personal Data” shall have the same meaning as given in Data Protection Legislation and shall include Special Categories of Personal Data.

“Personal Data Breach” shall have the same meaning as given in Data Protection Legislation.

“Pre-Existing Intellectual Property Rights” means any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority or the Contractor of their obligations under this Contract and in respect of the Authority includes Authority Data.

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

“Prohibited Act” shall have the meaning given in clause D1.

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

“Protective Measures” means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):

- (i) Pseudonymisation and encrypting Personal Data;
- (ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (iii) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident
- (iv) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (v) regularly assessing and evaluating the effectiveness of such measures adopted by it.

“Pseudonymisation” shall have the same meaning as given in Data Protection Legislation.

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

“Receiving Party” means the Party which receives a proposed Contract Change.

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

“Relevant Employees” means the employees of the Contractor (including the Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who will be the subject of a Relevant Transfer by virtue of the application of the TUPE Regulations on the Service Transfer Date.

“Relevant Transfer” means a transfer of employment to which the TUPE Regulations apply.

“Relevant Transfer Date” in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

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

“Replacement Sub-contractor” means a sub-contractor of the Replacement Contractor to whom Transferring Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor).

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

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

“Schemes” means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme; and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

“Security Plan” means the Contractor’s security plan prepared as directed in paragraph 3 of Schedule 6 (Security Requirements & Plan).

“Security Policy” means the Authority’s Security Policy/Policies to be provided by the Authority to the Contractor (as updated from time to time).

“Security Tests” means conduct tests of the processes and countermeasures contained in the Security Plan.

“Service(s)” means the provision of Quality Assurance monitoring for the DWP Housing Benefit Assurance Process, more particularly described in the Specification.

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

“Special Categories of Personal Data” shall have the meaning given in Data Protection Legislation.

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or Replacement Sub-contractor.

“Service Transfer Date” means the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires.

“Social Value” means the economic, social and environmental well-being in connection with public services contracts and for connected purposes.

“Specification” means the description of the Services to be provided as specified in the Specification at Schedule 1 (The Services).

“Specific Change in Law” means a Change in Law that relates specifically to the business of the Authority that would not affect a Comparable Supply.

“Staff” mean all persons employed by the Contractor to perform its obligations under the Contract including directors, officers, employees together with the Contractor’s servants, agents, consultants, contractors of the Contractor, suppliers and Sub-contractors used or engaged in the performance of its obligations under the Contract.

“Staff Vetting Procedures” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority.

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

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

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Contractor under this Contract.

“Sustainable Development” means the sustainable development requirements specified in Schedule 7.

“Tender” means the document(s) submitted by the Contractor to the Authority in response to the Invitation to Tender.

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

“Transferring Employee(s)” means each employee of the Incumbent Contractor or the Authority (as applicable) engaged immediately prior to the Activity Date in the performance of the activities to be performed as the Services (or part of the Services) and who are the subject of a Relevant Transfer to the Contractor or any Sub-contractor by virtue of the application of the TUPE Regulations.

“TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

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

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Working Day” means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business.

“Work Trials” means an opportunity for employers to try out a potential employee before offering a job, offered in accordance with the Jobcentre Plus eligibility criteria.

“Young People” means people below 25 years of age.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions: -

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- c) Reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted;
- d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- e) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

This Contract shall commence on the Commencement Date 21st June 2021 and shall expire automatically on 29th July 2022, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under clause F9 (Extension of Initial Contract Period).

A3 Contractor's Status

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

A4 Authority's Obligations

A4.1 The Authority shall, at all times during the Contract Period, use all reasonable endeavours to procure that firms subject to quality assurance monitoring by the Contractor cooperate with the Contractor and/or its staff and provide:

- a) access to the Premises from which the Services will be performed (where applicable in the case of onsite reviews);
- b) reasonable use of office facilities and internet access (where applicable); and
- c) in a timely manner the information and/or documentation that is reasonably required by the Contractor in performing the Services, whether in hardcopy or electronic form.

A4.2 The Authority shall use all reasonable endeavours to supply to the Contractor copies of any Authority Data that may be reasonably required by the Contractor in performing the Services under the Contract. In particular, the Authority shall provide to the Contractor prior to, and at each anniversary of, the Commencement Date of the Services:

- a) copies of the Housing Benefit Assurance Process (HBAP) Policy Modules 1, 2, 3, 5 and 6;
- b) a list of the firms contracted to undertake HBAP testing during the relevant year of review; and
- c) any information and/or documentation that the Contractor may reasonably require to inform its risk-based approach to sampling of firms under review.

A4.3 Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or

in any other way constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability, under this Contract (howsoever arising), on the part of the Authority to the Contractor.

A5 Notices

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

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

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

a) For the Authority:

Address: DWP Professional Services, 1st Floor, Section R, Quarry House,
Quarry Hill, Leeds, LS2 7UA

For the attention of: Professional Services Team

Email: professional.services@dwp.gov.uk

b) For the Contractor:

Address: Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9
2FZ

For the attention of: REDACTED under FOIA Section 40, Personal
Information, Director, Quality Assurance, Professional Standards

Email: REDACTED under FOIA Section 40, Personal Information

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned due to the Authority as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Authority.

A7 Conflicts of Interest

- A7.1 The 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 financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.
- A7.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- A7.3 This clause A7 shall apply for the duration of this Contract and for a period of two (2) years after its termination.

A8 Prevention of Fraud

- A8.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Contract. Contractors and its Sub-contractors are required to: -
- a) have an established system that enables the Contractor and its Staff to report inappropriate behaviour by colleagues in respect of Contract performance claims;
 - b) ensure that their performance management systems do not encourage individual Staff to make false claims regarding achievement of Contract performance targets;
 - c) ensure a segregation of duties within the Contractor's and/or Sub-contractor's operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority;
 - d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.
- A8.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Contractor's Staff, including its directors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or Fraud has occurred or is occurring.

A8.3 If the Contractor and/or its Staff commit Fraud including deliberately submitting false claims for Contract payments with the knowledge of its senior officers in relation to this or any other contract with the Crown (including the Authority or any other Contracting Body) the Authority may: -

- a) terminate the Contract and/or any other contract the Authority has with the Contractor by serving written notice on the Contractor and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any Default of this clause.

For the avoidance of doubt any breach referred to in clause A8.3 shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

A9 Exclusion of Sub-contractors

A9.1 Where the Authority considers under Regulation 71(8) of the Public Contracts Regulations 2015 whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then: -

- a) If the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;
- b) If the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-contractor and the Contractor shall comply with such a requirement.

A9.2 The Contractor shall include in every Sub-contract: -

- a) a right for the Contractor to terminate that Sub-contract if the relevant Sub-contractor fails to comply in the performance of its contract with legal obligations in connection with environmental, social or labour law matters; and
- b) a requirement that the Sub-contractor includes a provision having the same effect as clause A9.2 (a) in any Sub-contract which it awards.

A10 Volumes

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

B.SUPPLY OF SERVICES

B1 The Services

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in this Contract, including the Specification (which forms part of the Contract) and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.

B3 Manner of Carrying Out the Services

- B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and the standards specified in this Contract. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in any way limiting any other provision of this Contract, in delivering the Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- B3.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.4 The Authority will conduct a review of the performance of this Contract at least annually during the Contract Period. During this review, a performance report will be agreed.

B4 Key Personnel

- B4.1 The Contractor acknowledges that the Key Personnel are those personnel of the Contractor that are essential to the proper provision of the Services to the Authority.

- B4.2 The Key Personnel shall not be released from supplying the Services without the prior Approval.
- B4.3 Any replacements to the Key Personnel shall be subject to prior Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Contractor's Staff

- B5.1 The Authority may, by written notice to the Contractor, refuse to admit on to, or withdraw permission for the Contractor's Staff to remain on, the Authority's Premises where the admission or continued presence of: -
- a) any member of the Staff; or
 - b) any person employed or engaged by any member of the Staff,
- would, in the reasonable opinion of the Authority, be undesirable.
- B5.2 At the Authority's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from the date of request and in advance of admission 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 and conclusive.
- B5.4 The Staff, working from the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) including Schedule [6] (Security Requirements and Plan) of this Contract as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.
- B5.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.

- B5.7 The Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B5.8 The Contractor shall further use all reasonable endeavours to ensure that its Staff who are not EU nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.9 If the Contractor, in the reasonable opinion of the Authority, fails to comply with clauses **B5.4**, and **B5.6** the Authority will be entitled to consider that failure a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.2A.

B6 Inspection of Premises

- B6.1 NOT USED.

B7 Licence to Occupy Premises

- B7.1 NOT USED
- B7.2 NOT USED
- B7.3 NOT USED.
- B7.4 NOT USED
- B7.5 NOT USED

B8 Property

- B8.1 NOT USED.
- B8.2 NOT USED
- B8.3 NOT USED
- B8.4 NOT USED.
- B8.5 NOT USED

B9 Offers of Employment

- B9.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

B10 Transfer of Undertakings (Protection of Employment) (TUPE)

B10.1 NOT USED.

B10.2 NOT USED.

B10.3 NOT USED.

Provision of Information

B10.4 NOT USED.

B10.5 NOT USED.

B10.6 NOT USED.

Contractor Indemnities

B10.7 NOT USED.

B10.8 NOT USED.

B11 Pre-Service Transfer Obligations

B11.1 During the six (6) months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of the Authority's request the Contractor shall fully and accurately disclose to the Authority and shall ensure that any relevant Sub-contractor accurately discloses (subject to all applicable provisions of the DPA) the Contractor's Provisional Personnel List and any and all information as the Authority may request in relation to the Contractor's Provisional Personnel List including but not necessarily restricted to any of the following in an anonymised format: -

- a) the ages, dates of commencement of employment or engagement, gender and place of work of those personnel;
- b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- c) the identity of the employer or relevant contracting party;
- d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- e) their wages, salaries, bonuses and profit sharing arrangements as applicable;

- f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schemes applicable to them;
 - g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
 - h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
 - i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
 - j) any other “employee liability information” as such term is defined in Regulation 11 of the TUPE Regulations.
- B11.2 Where the Contractor provides information in accordance with clause B11.1 and the Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information, the Contractor shall notify the Authority within seven (7) Working Days of any such change or discovery, provided that at least twenty (20) Working Days prior to the Service Transfer Date, the Contractor shall provide the Authority or at the direction of the Authority, to any Replacement Contractor or Replacement Sub-contractor, the Contractor’s Final Personnel List (which shall identify which of those personnel are Relevant Employees) and all the information set out in clause B11.1 in relation to the Contractor’s Final Personnel List (insofar as such information has not previously been provided).
- B11.3 The Contractor warrants that all of the information provided to the Authority pursuant to clause B11.1 and B11.2 shall be accurate and complete in all material respects at the time of providing the information. The Contractor authorises the Authority to use any and all the information as it considers necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- B11.4 From the date of the earliest event referred to in clause B11.1, the Contractor shall allow the Authority and/or the Replacement Contractor and/or Replacement Sub-contractor to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- B11.5 From the date of the earliest event referred to in clause B11.1, the Contractor shall not without the prior written consent of the Authority unless genuinely in the ordinary course of business: -
- a) vary, purport or promise to vary the terms and conditions of employment or engagement of any person listed on the Contractor’s Provisional Personnel List (including any payments connected with the termination of employment);

- b) increase or decrease the number of employees, agents or independent contractors engaged to perform the Services (or the relevant part of the Services); or
- c) assign or redeploy any person listed on the Contractor's Provisional Personnel List to other duties unconnected with the Services.

B11.6 The Contractor confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any Replacement Contractor. The Contractor warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B12 Application of the TUPE Regulations on Exit

B12.1 The Authority and the Contractor agree that where the identity of the provider of the Services (or any part of the Services) changes (including upon termination of this Contract or part of this Contract) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-Contractor, such change in the identity of the contractor may constitute a Relevant Transfer to which the TUPE Regulations will apply.

B12.2 The Authority and the Contractor acknowledge and accept that, as a result of the TUPE Regulations, where a Relevant Transfer occurs, the contracts of employment of the Relevant Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10(2) of the TUPE Regulations) on and from the Service Transfer Date as if originally made between the Relevant Employee and a Replacement Contractor and/or a Replacement Sub-Contractor (as the case may be).

B12.3 The Contractor shall, and shall ensure that any Sub-contractor shall, comply with all its obligations arising under the TUPE Regulations and/or the Acquired Rights Directive in respect of the Relevant Employees in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Relevant Employees arising in the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:-

- (i) the Contractor and/or the Sub-Contractor; and
- (ii) the Replacement Contractor and/or the Replacement Sub-Contractor.

Contractor Indemnities

B12.4 Subject to clause B12.5, the Contractor shall indemnify the Authority and/or any Replacement Contractor and/or any Replacement Sub-Contractor from and against all Loss in connection with, or as a result of: -

- a) any claim or demand in respect of any Relevant Employee arising out of their employment or the termination of their employment provided that this arises from or as a result of any act, negligence, fault or omission of the Contractor or any Sub-contractor in relation to any Relevant Employee, whether occurring before, on or after the Service Transfer Date;
- b) any claim or demand arising from or as a result of the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of: -
 - (i) any collective agreement applicable to the Relevant Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Relevant Employees which the Contractor or any Sub-contractor is contractually bound to honour;
 - (iii) any claim by any trade union or other body or person representing any Relevant Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligations to such trade union, body or person arising on or before the Service Transfer Date; and
 - (iv) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Relevant Employee identified in the Contractor's Final Personnel List for whom it is alleged the Authority and/or any Replacement Contractor and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the TUPE Regulations and/or the Acquired Rights Directive; and
 - (v) any claim made by or in respect of a Relevant Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Relevant Employees relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulations 13 of the TUPE Regulations, except to the extent that the Loss arises from or is attributable to the failure of the Authority and/or the Replacement Contractor to comply with Regulation 13(4) of the TUPE Regulations.

B12.5 The indemnities in clause B12.4 shall not apply to the extent that the Loss arises or is attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor, whether occurring or having its origin before, on or after the Service Transfer Date, including any Loss arising as a result of: -

- a) the resignation of any Transferring Employee before or after the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date; or
- b) arising from the Replacement Contractor's failure and/or Replacement Sub-contractor's failure, to comply with its obligations under the TUPE Regulations.

B12.6 If any person who is not identified in the Contractor's Final Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Personnel List that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the TUPE Regulations or the Acquired Rights Directive, then: -

- a) the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
- b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

B12.7 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

B12.8 If after the fifteen (15) Working Day period specified in clause B12.6(b) has elapsed: -

- a) no such offer of employment has been made;
- b) such offer has been made but not accepted; or
- c) the situation has not otherwise been resolved,

the Replacement Contractor and/or Replacement Sub-contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

B12.9 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of clauses B12.6 to B12.8, and in accordance with all applicable proper employment procedures set out in applicable Law, the

Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Loss arising out of the termination of employment pursuant to the provisions of clause B12.8 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Loss.

B12.10 The indemnity in clause B12.9: -

a) shall not apply to: -

(i) any claim for: -

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor; or

(ii) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and

b) shall apply only where the notification referred to in clause B12.6(a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six (6) months of the Service Transfer Date.

B12.11 If any such person as is described in clause B12.6 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-contractor within the time scales set out in clauses B12.6 to B12.8, such person shall be treated as a Relevant Employee.

Replacement Contractor Indemnities

B12.12 Subject to clause B12.13, the Authority shall procure that the Replacement Contractor indemnifies the Contractor from and against all Loss in connection with, or as a result of: -

a) any claim or demand in respect of any Relevant Employee identified in the Contractor's Final Personnel List arising out of their employment or the termination of their employment provided that this arises from or as a result of any act, negligence, fault or omission of the Replacement Contractor or any Replacement Sub-contractor in relation to any such Relevant Employee, whether occurring before, on or after the Service Transfer Date;

b) any claim or demand arising from or as a result of the breach or non-observance by the Replacement Contractor or any Replacement Sub-contractor occurring on or after the Service Transfer Date of: -

- (i) any collective agreement applicable to the Relevant Employees identified in the Contractor's Final Personnel List; and/or
- (ii) any other custom or practice with a trade union or staff association in respect of any Relevant Employees identified in the Contractor's Final Personnel List which the Replacement Contractor or any Replacement Sub-contractor is contractually bound to honour;
- (iii) any claim by any trade union or other body or person representing any Relevant Employees identified in the Contractor's Final Personnel List arising from or connected with any failure by the Replacement Contractor or a Replacement Sub-contractor to comply with any legal obligations to such trade union, body or person arising on or after the Service Transfer Date; and
- (iv) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Relevant Employee identified in the Contractor's Final Personnel List on or after the Service Transfer Date (or any person who would have been a Relevant Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the TUPE Regulations before the Service Transfer Date as a result of such proposed changes); and
- (v) any claim made by or in respect of a Relevant Employee identified in the Contractor's Final Personnel List or any appropriate employee representative (as defined in the TUPE Regulations) of any Relevant Employees relating to any act or omission of the Replacement Contractor or any Replacement Sub-contractor in relation to obligations under Regulations 13 of the TUPE Regulations.

B12.13 The indemnities in clause B12.12 shall not apply to the extent that the Loss arises from or is attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Loss arising from or attributable to the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the TUPE Regulations.

B13 Pension Protection

B13.1 The Contractor shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

Participation

B13.2 The Contractor and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable

the Contractor to participate in the Schemes in respect of the Fair Deal Employees.

B13.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes, including without limitation MyCSP's on-boarding costs.

B13.4 The Contractor and the Authority agree that the Authority shall be entitled to terminate this Contract in the event that the Contractor: -

commits an irremediable breach of the Admission Agreement; or

commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty-eight (28) days of the date of a notice giving particulars of the breach and requiring the Contractor to remedy it.

B13.5 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services, or where the Fair Deal Employees are returning to the Schemes for the first time to the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services.

B13.6 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes. In addition, the Contractor agrees to give Eligible Employees the right to transfer their past pensionable service from the Schemes to the broadly comparable scheme. Where at the Service Transfer Date Fair Deal Employees are participating in the broadly comparable scheme, the Contractor agrees to allow such Fair Deal Employees to transfer their past pensionable service from such broadly comparable pension scheme to the Schemes, and for the avoidance of doubt, should the amount offered by any such broadly comparable pension scheme be less than the amount required by the Schemes to fund day to day service, the Contractor agrees to pay any such shortfall to the Schemes.

B13.7 The Contractor undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

B13.8 The Contractor shall indemnify and keep the Authority indemnified on demand against any claim by, payment to, or Loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Contractor to or in respect of the Schemes.

Provision of Information

B13.9 The Contractor and the Authority respectively undertake to each other: -

- a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this clause B13, and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date which occurs on the commencement of the Services or any part of the Services concerning the matters stated in this clause B13 without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

Indemnity

B13.10 The Contractor undertakes to indemnify the Authority and keep the Authority indemnified on demand from and against all Loss arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

Subsequent Transfers

B13.11 The Contractor shall: -

- a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;
- b) provide all such co-operation and assistance as the Schemes and the Replacement Contractor and/or the Authority may reasonably require to enable the Replacement Contractor to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

- c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Contractor or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) Approval (such Approval not to be unreasonably withheld). Save that this clause shall not apply to any change made as a consequence of participation in an Admission Agreement.

B14 Third Party Rights in relation to TUPE and Pensions

- B14.1 Notwithstanding any other provisions of this Contract for the purposes of clauses B10 to B14 (the “**Third Party Provisions**”) and in accordance with the Contracts (Rights of Third Parties) Act 1999 (“**CRTPA**”), the Parties accept that such provisions confer benefits on persons named in such provisions other than the Parties (each such person being a “**Third Party Beneficiary**” or “**Third Party Beneficiaries**”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.
- B14.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- B14.3 If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Third Party Beneficiary shall not be required for such rescission, Contract Change or termination.
- B14.4 Clauses B10 to B13 and this clause B14 shall apply during the Contract Period and indefinitely thereafter.

C.PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Contractor’s performance of its obligations under the Contract, the Authority shall pay undisputed sums of the Contract Price in accordance with clause C2 (Payment and VAT) and Schedule 2 (Administration Requirements).

C2 Payment and VAT

- C2.1 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- C2.2 Where the Contractor submits an invoice to the Authority in accordance with clause C2.5, the Authority will consider and verify that invoice in a timely fashion.
- C2.3 The Authority shall pay the Contract Price due to the Contractor under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- C2.4 Where the Authority fails to comply with clause C2.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C2.3 after a reasonable period of time has passed.
- C2.5 The Contractor shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 2 (Administration Requirements).
- C2.6 Where the Contractor enters into a Sub-contract for the purpose of performing its obligations under the Contract, the Contractor shall include in that Sub-contract: -
- a) provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract; and
 - b) a provision requiring the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract.
- C2.7 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following an undisputed claim for payment being notified by the Contractor in accordance with the provisions of Schedule 2 (Administration Requirements).
- C2.8 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.8 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.9 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.5 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

C2.10 Where payment by the Authority of all or any part of any payment submitted or other claim for payment by the Contractor is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Schedule 2 (Administration Requirements).

C2.11 Without prejudice to clause C2.8, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to: -

- a) assess the VAT rate(s) and tax liability arising out of or in connection with the Contract; and
- b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the Contract to HM Revenue & Customs ("HMRC").

C2.12 The Authority shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Authority) in relation to VAT, including without limit: -

- a) where the Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
- b) where the Contractor has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid; and/or
- c) where the Contractor's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
- d) where the Contractor has specified a rate of VAT, or a VAT classification, to the Authority (including, but not limited to, Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Contractor subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in the scenario described in this clause C2.12 (d), the Contractor shall be obliged to repay any overpayment by the Authority on demand.

C2.13 Where the Contractor does not include VAT on an invoice, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date.

C2.14 The Contractor acknowledges that the Authority has advised the Contractor that the Contractor should seek its own specialist VAT advice in relation to the Contract

and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract's VAT status with HMRC.

C3 Recovery of Sums Due

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

- C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F9 (Extension of Initial Contract Period), the Authority may, where applicable, in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree to a Contract Change to the Contract Price. For the avoidance of doubt both Parties accept and acknowledge that any Contract Change to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Contractor in a manner not provided for in the terms of the Contract.
- C4.2 If the Parties are unable to agree a Contract Change in the Contract Price (applicable to the period of extension) in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.
- C4.3 If a Contract Change to the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in Schedule 4 (Contract Price) between the

Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

C5 Euro

- C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C6 Third Party Revenue

The Contractor may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

- D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 ("**Prohibited Act**"). For the purposes of this clause D1, a Prohibited Act is committed when the Contractor or any Staff:
- - a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to: -
 - (i) induce that person to perform a relevant function or activity improperly; or
 - (ii) reward that person for improper performance of a relevant function or activity;
 - b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
 - c) commits any offence: -
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or

- (iv) relating to defrauding, attempting to defraud or conspiring to defraud the Authority.

D1.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract.

D1.3 The Contractor shall if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

D1.4 The Contractor shall have an anti-bribery policy which it implements actively to prevent any Staff from committing any Prohibited Acts as set out in clause D1.1 and a copy of this shall be provided to the Authority upon request.

D1.5 The Contractor shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any of its Staff has: -

- a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act in clauses D1.1 or D1.2;
- b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
- c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act in clauses D1.1 or D1.2.

Any Default by the Contractor in connection with this clause D1.5 shall entitle the Authority to exercise its rights under clause F5.

D1.6 If the Contractor notifies the Authority that it suspects or knows that there may be a Default of clause D1.1 or D1.2, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clause D1.1 or D1.2, the Authority may: -

- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for

the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

- b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any Default of those clauses.

D1.8 Notwithstanding clause I (Disputes and Law), any dispute relating to: -

- a) the interpretation of clause D1; or
- b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.

D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority under the Contract or otherwise.

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by clauses D1.1 or D1.2 and the identity of the person performing that Prohibited Act.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 and Schedule 8 (Life Chances) by all Staff.

D2.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D3 The Contracts (Rights of Third Parties) Act 1999

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

D4 Environmental Requirements

D4.1 In delivering the Services, the Contractor shall comply at all times with the requirements set out in Schedule 7 (Sustainable Development Requirements) or such other requirements as notified by the Authority to the Contractor from time to time].

D4.2 If the Contractor purchases new products partially or wholly to provide the Services, the Contractor must ensure that: -

- a) any purchase of products or goods listed in Schedule 1 to the Energy Information Regulations 2011 (products with energy labels) has the highest energy efficiency class possible;
- b) any purchase of products listed in Schedule 1 to the Energy Information Regulations 2011, which is not a product with energy labels within the meaning of clause D4.2(a), complies with the relevant energy efficiency benchmark for that product in paragraph 4 to Schedule 1 of the Eco-Design for Energy-Related Products Regulations 2010;
 - (i) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and
 - (ii) any purchase of tyres carrying a label as specified in Annex II to Regulation (EC) Number 1222/2009 of the European Parliament and of the Council of 25 November 2009 (on the labelling of tyres with respect to fuel efficiencies and other parameters) has the highest fuel energy efficiency class (as defined by that Regulation).

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

D5 Health and Safety

D5.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

D5.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

- D5.3 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D5.4 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.
- D5.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

D6 Requirements for Timber

D6.1 NOT USED

D7 Tax Compliance

D7.1 NOT USED

D7.2 NOT USED

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

D8.1 NOT USED

E.PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of that data.

- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and confirmation that secure back-ups have been performed in accordance with the Authority's requirements as specified in this clause E1.5 are delivered to the Authority no less than every three (3) Months.
- E1.6 The Contractor shall ensure that any system or media on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Schedule 6 Appendix A.
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may: -
- a) require the Contractor (at the Contractor's expense) to restore or provide for the restoration of the Authority Data and the Contractor shall do so as soon as practicable but not later than ten (10) days from the date of the Authority's request, provided that any costs incurred by the Contractor in relation to restoration of the Authority Data over and above 10% of the Contract Price in any given contract year shall be reimbursed by the Authority;
- and/or;
- b) itself restore or provide for the restoration of the Authority Data and shall be reimbursed by the Contractor for any reasonable expenses incurred in doing so, subject to a cap of 10% of the Contract Price in any given contract year.
- E1.8 If at any time the Contractor suspects or has reason to believe that the Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Contractor and any of its Sub-contractors, shall not process or transfer Authority Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Where the Authority has given its prior written consent to the Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with clause E1.9 of the Contract): -

- a) the Contractor must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
- b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.

E1.11 Any breach by the Contractor of this clause E1 shall be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

E1.12 In the event the Contractor goes into Liquidation as outlined in clause H1.1(b) and H1.1(c) or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Authority: -

- a) conduct a full and thorough search for any electronic and paper records held by the Contractor which contain Authority Data/Information/Information [relating to a customer/service user]; in accordance with the Authority instructions;
- b) return all such records as described in clause E1.12(a) to the Authority in accordance with their instructions;
- c) permanently destroy all copies of any relevant electronic records; and
- d) provide written confirmation to the Authority that the actions outlined above in this clause have been completed.

E1.13 In the event of a Sub-contractor being in Liquidation (in accordance with clause F1.2) then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Authority that they have been recovered.

E1.14 In the event the Contractor is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the administrator to ensure the Contractor is able to maintain Authority and other records they have created and held in accordance with this clause E1 of this Contract and maintain these standards in the safekeeping of Authority information, i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

E1.15 Whilst in Administration the duty of the administrator is to help the Contractor trade. This may involve the administrator seeking an organisation to buy the Contractor's business or any part of it. The assignment or novation of this Contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior Approval obtained. Where the Contract is assigned or novated with prior Approval, The Institute of Chartered Accountants in England

and Wales (ICAEW) must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

E2 Protection of Personal Data

E2.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

E2.1A Both Parties shall comply with the requirements of Schedule 12.

E2.2 The Contractor shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor or any of its Staff of this clause E2.

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

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

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

E3.2 Any breach by the Contractor of this clause E3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall: -

- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E4.2 Clause E4 shall not apply to the extent that: -

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
 - b) such information was in the possession of the Party making the disclosure without obligation of confidentiality to the information owner prior to its disclosure;
 - c) such information was obtained from a third party without obligation of confidentiality;
 - d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - e) it is independently developed without access to the other Party's Confidential Information.
- E4.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E4.4 Any breach by the Contractor of clauses E4.1-E4.3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.
- E4.5 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.6 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.
- E4.7 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information: -
- a) to any government department, any part of the Crown, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body;
 - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- d) to any consultant, professional adviser, contractor, supplier or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
- e) on a confidential basis for the purpose of the exercise of its rights under the Contract, including (but not limited to) for auditing purposes (clause E9), to a body to novate, assign or dispose of its rights under the Contract (clause F1.8), to a Replacement Contractor (clause H6.2) and for the purpose of the examination and certification of the Authority's accounts; or
- f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

E4.8 The Authority shall use all reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.

E4.9 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.10 Clauses E4.1-E4.7 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or Confidential Information, which is specified as being exempt from disclosure under this Contract, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E4.13 NOT USED

E4.14 NOT USED

E4.15 NOT USED

E5 Freedom of Information

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E5.2 The Contractor shall and shall procure that its Sub-contractors shall: -
- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.
- E5.5 The Contractor acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services: -
- a) in certain circumstances without consulting the Contractor; or
 - b) following consultation with the Contractor and having taken their views into account.
- E5.6 Where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E5.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E5.8 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5 and/or any other legal requirement.

E6 Publicity, Media and Official Enquiries

E6.1 The Contractor shall not: -

- a) make any press announcements or publicise this Contract or its contents in any way; or
- b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the written consent of the Authority, which shall not be unreasonably withheld or delayed.

E6.2 Both Parties shall each take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority Premises and maintaining the confidentiality, integrity and availability of the Authority Data it has custody of in accordance with its standard security requirements and the Security Policy. The Contractor shall comply with all security requirements of the Authority while on the Authority Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E7.3 The Contractor shall comply, and shall ensure that its Staff comply with the Security Plan and the Security Policy.

E7.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy. The cost of any changes to the Security Plan made by the Contractor as a result of a change to the Security Policy will be met by the Authority, except where the changes to the Security Policy are required to comply with a General Change in Law. Any changes shall be agreed in accordance with the Change Control Procedure in clause F3 and Schedule 11.

E7.5 Until and/or unless a change to the Security Policy is agreed by the Authority pursuant to clause E7.4 the Contractor shall continue to perform the Services in accordance with its existing obligations.

E8 Intellectual Property Rights

- E8.1 Save as granted under the Contract, neither the Authority nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Contractor acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may exist in the Authority Data.
- E8.2 The Authority shall grant the Contractor a non-exclusive, revocable, royalty free licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Contractor to supply the Services. The Contractor shall have the right to sub license the Sub-contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Contractor shall cease use, and shall ensure that its Staff cease use of the Authority's Intellectual Property Rights.
- E8.3 The Contractor shall grant the Authority a non-exclusive, revocable, free licence for the Contract Period to use the Contractor's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Contractor's Intellectual Property Rights.
- E8.4 All Intellectual Property Rights in any Authority Data or other material: -
- a) furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; or
 - b) prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority,
- and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.
- E8.5 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall ensure that the owner of those rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the Authority to sub-license, transfer, novate or assign to another Contracting Body, the Replacement Contractor or to any other third party supplying services to the Authority.
- E8.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown

harmless from and against all actions, suits, claims, demands, loss, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from: -

- a) items or materials based upon designs supplied by the Authority; or
- b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor: -

- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the Authority; and
- c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

E8.8 The Authority shall at the request of the Contractor provide to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the Contract. The Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so save to the extent that such claim or demand is caused by the Authority's negligence or breach of contract.

E8.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to: -

- a) modify any or all of the Services without reducing the performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

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

and in the event that the Contractor is unable to comply with clauses E8.9(a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E9 Audit and the National Audit Office

- E9.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records 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 as may be requested by the Authority in connection with the Contract.
- E9.2 The Contractor including its Staff shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.
- E9.3 Except where an audit is imposed on the Authority by a Regulatory body, the Authority may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an audit for the following purposes: -
 - a) to verify the accuracy of any charges that become due and payable by the Authority to the Contractor in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Contractor (including Sub-contractors) in the provision of Services;
 - b) to review the integrity, confidentiality and security of the Authority Data;
 - c) to review the Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
 - d) to review the Contractor's compliance with its obligations under the Contract;
 - e) to review any records created during the provision of the Services;

- f) to review any books of account kept by the Contractor in connection with the provision of the Services;
 - g) to carry out the audit and certification of the Authority's accounts;
 - h) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and
 - i) to verify the accuracy and completeness of any management information delivered or required by this Contract.
- E9.4 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- E9.5 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including: -
- a) all Information requested within the permitted scope of the audit;
 - b) reasonable access to any Premises or sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - c) access to the Staff;
 - d) access to the Contractor Software and ICT Environment; and
 - e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.
- E9.6 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days notice of its intention to conduct an audit.
- E9.7 If an audit identifies that: -
- a) the Contractor has committed a material Default capable of remedy; the Contractor shall correct such Default as soon as reasonably practicable and as directed by the Authority in accordance with clause F5.2.1;
 - b) the Authority has overpaid any charges that become due and payable by the Authority to the Contractor in respect of the Services, the Contractor shall pay to the Authority the amount overpaid within twenty (20) Working Days. The Authority may deduct the relevant amount from the charges if the Contractor fails to make this payment; and

- c) the Authority has underpaid any charges that become due and payable by the Authority to the Contractor in respect of the Services, the Authority shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Contractor within twenty (20) Working Days.

E10 Exceptional Audits

E10.1 The Contractor shall permit the Authority and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Contractor in any of the following circumstances: -

- a) actual or suspected impropriety or Fraud;
- b) there are reasonable grounds to suspect that: -
 - (i) the Contractor is in Default under the Contract;
 - (ii) the Guarantor may be in default of the Guarantee;
 - (iii) the Contractor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or
 - (iv) a breach of the Security Policy or the Security Plan has occurred under the Contract,(each an "**Exceptional Circumstance**").

E10.2 If the Authority notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.5 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours. The requirement to give up to forty-eight (48) hours under this clause E9.2 shall not apply if the Authority reasonably believes that the Contractor is in Material Breach of any of its obligations under this Contract or Data Protection Legislation.

E11 Audit Costs

E11.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses E9.3 to E10.2 (inclusive), unless an audit identifies a material Default by the Contractor in which case the Contractor shall reimburse: -

- a) the Authority for all the Authority's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- b) where the Authority, a Regulatory Body, or the Comptroller and Auditor General appoint another Contracting Body to conduct an audit under this clause, the Authority shall be able to recover on demand from the Contractor the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Body.

E12 Malicious Software

- E12.1 The Contractor shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.
- E12.2 Notwithstanding clause E12.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any loss and to restore the Services to their desired operating efficiency.
- E12.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.2 shall be borne by the Parties as follows: -
- a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
 - b) by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

F.CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

- F1.1 Except where clauses F1.4 and F1.5 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.
- F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1.4 shall be subject to: -
- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);

- b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - c) the Authority receiving notification under both clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least five (5) Working Days prior to submission of the relevant invoice.
- F1.7 The provisions of clause C (Payment and Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to: -
- a) any Contracting Body;
 - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"): -
- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 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.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure it carries out whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

F1A Advertising Sub-contractor opportunities

F1A.1 NOT USED

F1A.2 NOT USED

F1A.3 NOT USED

F1A.4 NOT USED

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not diminish or affect any other cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Contract Change

F3.1 No Contract Change shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 11 (Change Control Procedure) and signed on behalf of the Parties except for the changes described in clauses E2.14 and E2.15 and where specified in clauses F3.3 and F3.4, which shall be made by the Authority without the requirement to be made through the

Change Control Procedure and shall be made by the Contractor at no additional cost to the Authority.

F3.2 The Parties acknowledge and agree that no Contract Change or Operational Change may be made to this Contract which has the effect of: -

- a) rendering this Contract materially different in character from the original terms of this Contract as at the original signature date of this Contract;
- b) changing the economic balance of this Contract in favour of the Contractor in a manner which is not provided for in this Contract as at the signature date of this Contract; or
- c) extending the scope of this Contract substantially.

Change in Law

F3.3 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the Contract nor be entitled to an increase in the Contract Price as a result of: -

- a) a General Change in Law; or
- b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

F3.4 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.3(b), the Contractor shall:

- a) notify the Authority as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
 - (i) whether a Contract Change is required, including to the Services, the Contract Price and/or any other part of this Contract; and
 - (ii) whether any relief from the Contractor's obligations is required including an obligation to meet a KPI; and
- b) provide the Authority with evidence:
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractor(s);
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services;
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

F3.5 Any Contract Change required as a result of a General Change in Law shall be made by the Authority to the Contract without the requirement to be made through the Change Control Procedure.

F3.6 Any Contract Change to the Contract including for the avoidance of doubt, the Contract Price or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in clause F3.3(b)) shall be implemented in accordance with the Change Control Procedure.

F4 Severability

F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the Event of Inadequate Performance

F5.1.1 The Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding: -

- a) the standard of Services;
- b) the manner in which any Services have been supplied;
- c) the manner in which work has been performed;
- d) the Equipment, materials or procedures the Contractor uses; or
- e) any other matter connected with the performance of the Contractor's obligations under the Contract.

F5.1.2 Without prejudice to its other rights and remedies under the Contract or otherwise, the Authority may, in its sole discretion, uphold a complaint and take further action in accordance with clause F5.2.1 or clause F5.2A of the Contract (as appropriate).

F5.2.1 In the event that the Authority reasonably believes that there has been a Default of the Contract by the Contractor, irrespective of whether the Default is a Material Breach, then the Authority may at no additional cost to the Authority and at the Contractor's own cost, without prejudice to its rights and remedies under the Contract or otherwise do any of the following: -

- a) request in writing that the Contractor remedies the Default within a period specified by the Authority; or
- b) require the Contractor to submit a Performance Improvement Plan in accordance with clause F5.2.2.

F5.2.2 The Contractor shall provide a Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of a written request from the Authority. The Performance Improvement Plan shall include details of why the Default has occurred, how the Default will be remedied and the date by which the Default will be remedied. The following actions in this clause F5.2.2 shall apply in respect of the Performance Improvement Plan: -

- a) The Authority shall either approve or reject in writing the Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of its receipt pursuant to this clause F5.2.2.
- b) If the Authority rejects the Performance Improvement Plan it shall set out the reasons and the Contractor shall address all such reasons in a revised Performance Improvement Plan, which it shall submit to the Authority within a further period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) ("**Revised Performance Improvement Plan**") of its receipt of the Authority's reasons.
- c) If the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) is agreed the Contractor shall immediately start work on the actions set out in the Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate).
- d) If, despite the measures taken under this clause F5.2.2 the Revised Performance Improvement Plan cannot be agreed within a period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of receipt by the Contractor of the Authority's reasons in respect of the Performance Improvement Plan then the Authority may: -
 - (i) end the Performance Improvement Plan process and refer the matter for resolution by the dispute resolution procedure set out in clause I.2 (Dispute Resolution); or
 - (ii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2.3 In the event that: -

- a) there is any subsequent Default which the Authority regards, at its sole discretion, as being substantially the same in character to a Default in respect of which a Performance Improvement Plan has been requested by the Authority in accordance with clause F5.2.1(b) or F5.2.4(i) which occurs within six (6) months of the request by the Authority for a Performance Improvement Plan to be provided under clause F5.2.2; or
- b) the Contractor is requested to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) in accordance with clause F5.2.2 or F5.2.4(i) but fails to provide a Performance

Improvement Plan or Revised Performance Improvement Plan (as appropriate) at all,

then such Default shall be deemed to be a Material Breach of the Contract.

F5.2.4 In the event that a Default is not remedied to the satisfaction of the Authority in accordance with clause F5.2.1(a) or (b) the Authority may: -

- (i) request a Performance Improvement Plan from the Contractor in respect of the Default in accordance with clause F5.2.2, irrespective of whether a previous Performance Improvement Plan has previously been requested been and/or been approved; or
- (ii) refer the matter for resolution by the dispute resolution procedure set out in clause I.2 (Dispute Resolution); or
- (iii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

F5.2A Without prejudice to clause F5.2.1, in the event that the Authority reasonably believes that there has been a Material Breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights and remedies under the Contract or otherwise, do any of the following: -

- a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the reasonable satisfaction of the Authority that the Contractor can once more be able to supply all or such part of the Services in accordance with the Contract; or
- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; or
- c) terminate the whole of the Contract, in accordance with clause H2.1(b) (Termination on Default).

F5.3 Without prejudice to its rights under clause C3 (Recovery of Sums Due) the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party in accordance with clauses F5.2A (a) or (b) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services and the Contractor shall be responsible for its own costs.

F6 Remedies Cumulative

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

F7 Monitoring of Contract Performance

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

F8 Financial Assurance

- F8.1 The Contractor is required to disclose immediately to the Authority any material changes to its organisation that impacts on its on-going financial viability including details of the revenue replacement strategy and impact awareness on its organisation's profitability and stability where significant contracts are due to end.
- F8.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.
- F8.3 Only where requested by the Authority, the Contractor is required to provide any financial information which could include but is not limited to a copy of the annual accounts and annual returns.
- F8.4 Where a Parent Company Guarantee has been requested by the Authority, the Contractor is required to provide the documents detailed in clause F8.3 for the Parent Company, including a translation and conversion (profit and loss, balance sheet and key balance sheet notes) into GBP (£), stating the conversion rate used.

F9 Extension of Initial Contract Period

- F9.1 The Authority may, by giving written notice to the Contractor of not less than (1) Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to (12) Months. The provisions of the Contract will apply (subject to any Contract Change including any adjustment to the Contract Price pursuant to clause C4) (Price adjustment on extension of the Initial Contract Period) throughout any such extended period.

F10 Entire Agreement

- F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F10.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether

negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding as referred to in this clause F10.2 shall be for breach of contract under the terms of the Contract.

F10.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in the following order of precedence: -

- a) the clauses of the Contract;
- b) the Schedules;
- c) any other document(s) referred to in the clauses of the Contract with the exception of the Tender;
- d) Tender.

F11 Counterparts

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

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1.1 Neither Party excludes or limits liability to the other Party for: -

- a) death or personal injury caused by its negligence;
- b) fraud;
- c) fraudulent misrepresentation; or
- d) any Default of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.1.2 The Contractor's liability in respect of the indemnities in clauses C2.8, E2.2, E8.6 and E8.8 shall be unlimited.

G1.2 Subject to clause G1.3, the Contractor shall indemnify the Authority and keep the Authority indemnified fully: -

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor and/or its Staff or by circumstances within its or their control

in connection with the performance or purported performance of the Contract; and

- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any customer/service user; and
- c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of: -
 - (i) the performance or non-performance by the Contractor of its obligations under the Contract subject to clause G1.4;
 - (ii) the presence of the Contractor or any of its Staff on the Authority's Premises, including financial loss arising from any advice given or omitted to be given by the Contractor;
 - (iii) infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Authority; or
 - (iv) any other loss which is caused directly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by Default by the Authority of its obligations under the Contract.

G1.4 Subject always to clause G1.1, G1.2(a), G1.2(b), G1.2(c)(ii), G1.2(c)(iii), G1.2(c)(iv) and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limit: -

- a) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed one hundred and twenty-five per-cent (125%) of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises.

G1.5 Subject always to clause G1.1 and G2 and as specified in clauses E2.2 and G1.2(c)(iv), in no event shall either Party be liable to the other for any: -

- a) loss of profits, business, revenue or goodwill; and
- b) indirect or consequential loss or damage.

- G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under 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 six (6) years following the expiration or earlier termination of the Contract.
- G1.7 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.8 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.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.
- G1.11 NOT USED

G2 Professional Indemnity

- G2.1 The Contractor shall maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than five million pounds (£5,000,000) for each individual claim (or such higher limit as the Authority may reasonably require, and as required by law, from time to time). Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- G2.2 Any excess or deductibles under the insurance referred to in clause G2.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or Sub-contractors, as applicable.
- G2.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.

G2.4 The Contractor shall, on request, provide the Authority with copies of all insurance policies referred to in clause G2.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G2.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this clause then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that: -

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the 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 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 during the Contract Period the Contractor shall disclose any change to the information referred to in this clause G3.1(c) and information in relation to the Prohibited Acts;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract: -

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

G4 Deed of Guarantee

G4.1 NOT USED

G4.2 NOT USED

G4.3 NOT USED

G4.4 NOT USED

H.DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

- H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a company** and in respect of the Contractor: -
- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in clauses H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of "Control" within the meaning of section 1124 of the Corporation Tax Act 2010 (as amended) ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of: -

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

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

H1.3 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is an individual** and: -

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- b) a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;
- c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of his assets;
- d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, seizure or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;

- f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of the business.

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

H1.5 The Authority may terminate the Contract with immediate effect by notice in writing 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 dissolved for any reason;
- c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;

- d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- e) a petition is presented for its winding up (which is not dismissed within fourteen (14) days 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 of any part of its assets;
- g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

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

H1.7 The Authority may, at its sole discretion, appoint a Replacement Contractor on the same terms and conditions as this Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Contractor provided that the Replacement Contractor meets the pre-qualification criteria *and* the change in contractor does not result in any other substantial amendments to the Contract.

H1A Termination of Contract Under the Public Contracts Regulations 2015

H1A.1 The Authority shall be entitled to terminate the Contract where: -

- (i) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
- (ii) the Authority has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract; or
- (iii) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty of the Functioning of the European Union.

H2 Termination on Default

H2.1 The Authority may without prejudice to any other right or remedy available to it terminate the Contract by written notice to the Contractor with immediate effect or such period as specified by the Authority in writing if the Contractor commits a Default and if: -

- a) the Default is not, in the opinion of the Authority capable of remedy;
- b) the Default is a Material Breach of the Contract.

H2.2 Without prejudice to the provisions of clause H1, H1A or H2.1 or to any other right or remedy available to the Authority, where the Authority considers that the Contractor has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Authority shall be entitled to serve a written notice ("**Formal Warning Notice**") on the Contractor: -

- a) specifying that it is a Formal Warning Notice;
- b) giving details of the Persistent Breach; and
- c) stating that if the Persistent Breach recurs three (3) or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- a) twenty (20) Working Days after service of a Formal Warning Notice, the Contractor has failed to demonstrate to the Authority's satisfaction that the Persistent Breach specified has not continued and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur; or
- b) within a three (3) month period after the date of service of the Formal Warning Notice, the Contractor has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred [three (3)] or more times within such three (3) month period and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur,

then the Authority may deem such failure shall constitute a Material Breach and shall be entitled to exercise its rights under clause F5.2A.

H2.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data. The Contractor shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing

with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3 (Recovery of Sums Due).

- H2.6 The Contractor may, without prejudice to any other right or remedy available to it, terminate the Contract with 3 months' written notice of their intention if the Authority commits a serious and/or repeated breach of its obligations under clause A4 (Authority's obligations). Such right of termination shall be exercisable by the Contractor on or after the expiry of that notice period.

H3 Break

- H3.1 The Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

H3.1 NOT USED

- H3.2 On the expiry or termination of this Contract or any part thereof: -

- a) the Contractor shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Contractor shall cease all use of all the Authority's Intellectual Property Rights and shall return or destroy, as the Authority requires all documents and materials (including those in electronic format) incorporating or referring to the same.

H4 Consequences of Expiry or Termination

- H4.1 Where the Authority terminates the Contract under clause F5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5 or clause H2, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss reasonably incurred by the Contractor by reason of the termination of the Contract,

provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of loss reasonably and actually incurred by the Contractor as a result of termination under clause H3. Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause H3. Following such settlement the Contractor shall, to the fullest extent lawfully permissible, be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which: -

- a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or is a claim by the Contractor for loss of profit, due to early termination of the Contract.

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

- a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
- c) return all Authority Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority;
- d) return all Personal Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority, where the Authority is the Data Controller and delete existing copies unless the Law requires storage of Personal Data and/or unless the Contractor is required to retain the Personal Data by Law; and
- e) plan for the orderly handover of the Services to the Authority or its Replacement Contractor including compliance by the Contractor with the

provisions of this clause H4.4 at no additional charge to the Authority or its Replacement Contractor.

H4.5 Unless otherwise expressly provided in the Contract: -

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration. Nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses (C (Payment and Contract Price), C3 Recovery of Sums, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E4 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E5 (Confidential Information), E6 (Freedom of Information), E9 (Intellectual Property Rights), E10 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in performing its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval in relation to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect or such period as specified by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- H5.6 The Contractor shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to the Contractor's ICT system) to the Contractor's operations, and those of Sub-contractors, however

caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

H6 Recovery upon Termination

- H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any of its Staff. In the event the Contractor fails to do so, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its Staff where any such items may be held.
- H6.2 At the expiry or early termination of the Contract Period (howsoever arising) or after the Contract Period the Contractor shall provide assistance to the Authority and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance at nil charge. Where the Contract ends for other reasons the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

I.DISPUTES AND LAW

I 1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

I 2 Dispute Resolution

- I 2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.
- I 2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and its Staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows: -
- a) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
 - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
 - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
 - g) Unless agreed otherwise in writing, in any mediation each Party shall bear its own costs of such mediation.

I 2.6 NOT USED

I 2.7 NOT USED

FORM OF AGREEMENT

This Contract has been entered into on the Commencement Date stated at A2 – Initial Contract Period.

SIGNED for and on behalf of

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

Name REDACTED under FOI
Section 40, Personal
Information

Position DWP – Commercial Lead

Signature REDACTED under FOI
Section 40, Personal
Information

23rd June 2021

SIGNED for and on behalf of

Institute of Chartered Accountant in England and Wales

Name REDACTED under FOI
Section 40, Personal
Information

Position Chief Officer, Professional
Standards Department


Signature REDACTED under FOI
Section 40, Personal
Information

22nd June 2021

SCHEDULE 1 – THE SERVICES

1 General

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

| Document | Dated |
|---|---|
| Specification  3. Specification - FINAL.pdf | 26 th November 2019 |
| Invitation to Tender REDACTED under FOI Section 43, Commercial Interests | 26 th November 2019 |
| Tendered Submission REDACTED under FOI Section 43, Commercial Interests | 9 th December 2019 |
| Bid Clarification Questions and Responses REDACTED under FOI Section 43, Commercial Interests | 18 th December 2019 |
| Revised Delivery Methodology as a result of the COVID-19 pandemic (as detailed in your letters of 4 th May 2020 (8. COVID-19) and 3 rd June 2020 (3. COVID-19 – Methodology Statement)) REDACTED under FOI Section 43, Commercial Interests REDACTED under FOI Section 43, Commercial Interests | 4 th May 2020 and 3 rd June 2020. |

2 Plan to Set Up and Mobilise Operations

In order to commence full operations the Contractor must complete the following activities by the required dates;

| Activity | Date |
|----------|------|
| | |

3 Working Hours

- 3.1 The Services shall be carried out at the following times;
To be discussed post contract award.
- 3.2 The Contractor shall not provide the Services on bank/public holidays or stipulated ad-hoc Government holiday/s.

4 Recruitment Through Jobcentre Plus

- 4.1 One of the key objectives of the Department for Work and Pensions is to move people from welfare into employment. DWP has a Great Britain-wide network of Jobcentre Plus offices that provide job broking services for unemployed people. The Contractor is therefore required to notify Jobcentre Plus when recruiting staff for any entry-level job vacancies located within Great Britain, which may arise from the delivery of their Contract to the Authority.
- 4.2 The Contractor is also encouraged to notify Jobcentre Plus of any other vacancies that may arise. The Contractor may in addition use other recruitment methods.

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS

1 Authority's Authorisation

- 1.1 The following person is the Authority's Representative and is authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract (“**Authority’s Representative**”). Contact details are shown in clause A5.3.

Name: REDACTED under FOI Section 40, Personal Information
Title: Authority's Representative

- 1.2 The Authority's Representative may approve deputy Authority's Representatives to exercise on his/her behalf such powers as are contained in this Contract.

2 Contractor's Authorisation

- 2.1 The following person is the Contractor's representative and is authorised to act on behalf of the Contractor on all matters relating to the Contract (“**Contractor’s Representative**”). Contact details are shown in clause A5.3.

Name: REDACTED under FOI Section 40, Personal Information
Title: Regional Director, Professional Standards, Contractor's Representative

3 Payment Information

- 3.1 The Authority and the Contractor shall exchange all orders, invoices, claims and payments via electronic methods. The payment solution for this Contract shall be Purchase Order and XML e-invoicing.

- 3.2 The following information is required independently from the Contractor before a claim is submitted for payment by the Authority.

- a) Copy of Invoice
- b) Details of to support delivery of the KPIs/Milestones as described in the Specification
- c) NOT USED.
- d) Details to support any expenses claims.

and shall be sent to the following person

REDACTED under FOI Section 40, Personal Information

c/o SSCL Accounts Payable Team
PO Box 406
Phoenix House

Celtic Springs
Newport
NP10 8FZ
APinvoices-DWP-U@gov.sscl.com

4 Disputed Claims

- 4.1 Notwithstanding paragraph 4.5 of this Schedule 2, payment by the Authority of all or any part of any Contract Price rendered or other claim for payment by the Contractor shall not signify Approval. The Authority reserves the right to verify Contract Price after the date of payment and subsequently to recover any sums which have been overpaid.
- 4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Authority.
- 4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of undisputed sums of such claim.
- 4.4 If any fee rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.
- 4.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the fee for which payment is being made or any previous fee.

5 Final Claims

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

SCHEDULE 3 – MONITORING REQUIREMENTS

This Schedule 3 sets out the Contract management requirements which are applicable to the delivery of the Services.

1 Reviewing Contract Performance

- 1.1 The Contractor shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered as specified.
- 1.2 The Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor's management and delivery of it.
- 1.3 The Contractor shall supply information requested relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority in this Schedule 3.
- 1.4 The Authority intends, wherever it can, to capture and collate information through its Authority ICT System(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 1.5 Any additional requests for information shall be considered in consultation with the Contractor as shall the process of defining the methods of collection.
- 1.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule 3.
- 1.7 Review meetings between the Authority and the Contractor shall also cover, as appropriate, dispute resolution and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.8 The Authority may undertake spot checks at any time to ensure that the Contractor is complying with its obligations under this Contract and the Contractor shall co-operate fully, at its own cost, with the Authority.
- 1.9 The Contractor will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, including feedback to and from customers and stakeholders; change control procedures and the prompt resolution of any problems. The Authority will agree with the Contractor day-to-day relationship management, contact points, communication flows and escalation procedures.
- 1.10 The Contractor will be expected to continuously improve the quality of the provision including that delivered by its Sub-contractors. Where quality falls below acceptable levels (see 1.1 - minimum standard) the Contractor will be expected to

have suitable escalation procedures in place to resolve this issue and, in respect of sub-contracted provision, take action where necessary to terminate the Sub-contract.

2 Access

- 2.1 In all instances, the Contractor shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring in relation to the Contract. Failure to provide such reasonable assistance shall be deemed a "Default" for the purposes of clause H2 (Termination on Default).

3 Health and Safety Responsibilities of the Authority's Representatives

- 3.1 The Authority's Representatives may visit Contractors and its Sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority may make recommendations in relation to the monitoring of health and safety requirements. In doing this the Authority's Representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not, which shall remain the responsibility of the Contractor. Instead they shall approach this from the position of any lay person. If, however, the Authority's Representative does notice something on which they require assurance or clarification, they shall raise this with the Contractor or the Sub-contractor's representative at the location where they are visiting. In no event are the Authority's Representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Contractor or its Sub-contractors or any omission to give such advice, comments or otherwise.

4 Management Information

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

| Contractor Information Required | Frequency or Date Required by |
|--|---|
| Agreement on quality and performance requirements as well as logistical timings. | To be agreed at the initial face to face/virtual planning meeting (date to be confirmed post contract award). |
| Supplier performance information against the agreed deliverables for operational level quality assurance checkpoint meeting/s and/or the mid contract face to face meeting | In advance of the meeting/s (date/s to be confirmed post contract award). |
| Final Supplier's Report | In advance of the final review meeting (date to be confirmed post contract award) |
| Final annual audit report, including: <ul style="list-style-type: none">• A summary of responses to questionnaire, highlighting any | Within four months of the initial meeting for each assurance cycle. |

| | |
|---|--|
| <p>failure to return, and any recurrent issues and concerns.</p> <ul style="list-style-type: none"> • At an industry level, a summary of findings from re-performance/sample testing carried out • At an industry level, a conclusion or opinion on the effectiveness of HBAP implementation, in terms of consistency of approach and controls, and any other relevant information. • For each individual accountancy firm any findings leading to concerns, including any control weaknesses, failure to translate testing results to HBAP reports correctly, failure to carry out required volumes of testing. The report should also detail any action the supplier has recommended the firm take following the review, and how implementation of such recommendations will be monitored by the supplier. • At an accountancy firm level, any best practice that could be shared with other accountancy firms, and how the supplier and/or DWP will share best practice • For any firm where specific concerns can be isolated to particular locations (or LAs), any action that the Supplier has recommended the firm take following the review, and how implementation of such recommendations will be monitored by the accountancy firm and the Supplier. • A summary conclusion on the performance of each accountancy firm • A summary of recommendations made, how and when these will be | |
|---|--|

| | |
|---|--|
| <p>implemented, by whom and how this will be monitored; and</p> <ul style="list-style-type: none"> • In Years 2 and 3, a report on how the previous year's recommendations have been implemented and whether these have been successful. | |
|---|--|

Management Charges and Information

4.2 NOT USED

4.3 NOT USED.

4.4. NOT USED

Appendix A – Contract Performance Targets/Service Levels

| Deliverable | Description | Delivery Date |
|--------------------|---|---|
| 1 | Development of the Initial Questionnaire. | Within two weeks of the initial meeting |
| 2 | Development of 2 nd phase of assurance regime. | Within three weeks of the initial meeting |
| 3 | Delivery of assurance regime | At the mid assurance cycle meeting |
| 4 | Final Report. | Within four months of the initial meeting for each assurance cycle. |

Contract Management, Service Levels and Contract Performance Targets will be supported throughout each assurance cycle by a number of additional touch point meetings, the timing of which will be agreed by operational managers at ICAEW and DWP on an ad hoc basis.

Key Performance Indicators/Service Levels

1. In delivering the Services the Contractor acknowledges that it is under an obligation to meet the following Key Performance Indicators/Service Levels and furthermore that failure to meet all or any of the specified Key Performance Indicators/Service Levels, shall entitle the Authority to exercise its rights under clause F5.
2. KPIs and Service Levels are subject to compliance by the Authority of its obligations under A4.
3. The following Service Levels shall apply to this Contract: -

| KPI | Description | Target | Delivery Date |
|------------|---|------------------------|---|
| 1 | Development of the Initial Questionnaire. | 100% complete | Within two weeks of the initial meeting |
| 2 | Development of 2 nd phase of assurance regime. | 100% complete | Within three weeks of the initial meeting |
| 3 | Delivery of assurance regime | 50-60% complete | At the mid assurance cycle meeting |
| 4 | Final Report. | 100% complete | Within four months of the initial meeting for each assurance cycle. |

Appendix B – Performance Review Table for Contract Management

1. The following definitions shall be used to determine the standard **Performance Rating** in the Contractor's Performance Review Table: -

| | | |
|---|---------------------|---|
| 4 | High Standard | <ul style="list-style-type: none">• Sometimes exceed and consistently achieves the required standard• Very few weaknesses• Limited management support needed. |
| 3 | Acceptable Standard | <ul style="list-style-type: none">• Meets required standard• Few weaknesses• Some management support needed |
| 2 | Below Standard | <ul style="list-style-type: none">• Usually meets, but sometimes fails to meet required standard• Some weaknesses• Considerable management support needed |
| 1 | Failure | <ul style="list-style-type: none">• Cannot meet required standard without excessive management support• Many weaknesses |

2. **Contractor's Performance Review Table: -**

| | | |
|----------------------------------|--------------|----------------|
| <i>Date of Review</i> | | |
| <i>Description</i> | <i>Score</i> | <i>Remarks</i> |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| <i>Total</i> | | |
| <i>Comments</i> | | |
| | | |
| | | |
| <i>Signed for the Authority</i> | <i>Date</i> | |
| | | |
| <i>Signed for the Contractor</i> | <i>Date</i> | |
| | | |

Appendix C – MI Reporting Template

NOT USED

SCHEDULE 4 – Contract Price

1 General

For the performance of the Services, the Contractor shall be paid the Contract Price calculated using the prices and rates entered in this Schedule 4. The Contract Price is £157,223.00 (excl. VAT) and will be paid as per the Pricing Schedule submitted as part of the Supplier's tendered submission:

REDACTED under FOI Section 43, Commercial Interests

and the responses to:

- Question 5 of the Clarification Questions **REDACTED under FOI Section 43, Commercial Interests**; and
- Question 9 of the Clarification Questions **REDACTED under FOI Section 43, Commercial Interests**.

The full breakdown of the Contract Price is as follows:

| Deliverable Number/s | Deliverable Description | Assurance Cycle 2018/19 | Assurance Cycle 2019/20 | Assurance Cycle 2020/21 |
|-----------------------------|--|--|--|--|
| 1. | Development of the Initial Questionnaire | REDACTED under FOI Section 43, Commercial Interests | | |
| 2. | Development of 2 nd phase of assurance regime | REDACTED under FOI Section 43, Commercial Interests | | |
| 3. | Delivery of assurance regime | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests |
| 4. | Final Report. | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests |
| | Additional one-off fee for covering all | REDACTED under FOI Section 43, | | |

| | | | | |
|-----------------------------|--------------------------------------|---|---|---|
| | firms within assurance cycle 2018/19 | Commercial Interests | | |
| | Sub-Total | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests | REDACTED under FOI Section 43, Commercial Interests |
| Total Contract Price | | | | £157,223.00 |

Any expenses incurred will be paid as per the DWP Policy on Expenses for Business Travel and Accommodation for Contractors, Interim Managers and Consultants:



Contractors
Expenses Policy.pdf

SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION

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

| Document | Page Number | Section | Condition or Paragraph Number | Explanation of harm which may result from disclosure and time period applicable to sensitivity. |
|-----------------------------|-----------------------------------|---------|-------------------------------|---|
| Pricing schedule | Questionnaire 7 | All | All | REDACTED under FOI Section 43, Commercial Interests |
| Social media policy | Attached with draft security plan | All | All | REDACTED under FOI Section 43, Commercial Interests |
| Information security policy | Attached with draft security plan | All | All | REDACTED under FOI Section 43, Commercial Interests |
| Draft Security Plan | Draft Security Plan | All | All | REDACTED under FOI Section 43, Commercial Interests |

2. The Contractor acknowledges that circumstances may arise that require disclosure and are outside the control of the Authority, for example, due to a legal requirement including a court order.
3. The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
4. The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
5. The Authority will publish without prior consent from the Contractor all information provided by the Contractor **not** identified in this Schedule 5 as constituting Commercially Sensitive Information under the Authority's transparency reporting requirements provided that such disclosure satisfies the requirements of the FOIA.
6. The Authority reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

1.1 This Schedule 6 covers;

- a) Principles of security for the Contractor ICT system, derived from the Security Policy, including without limitation principles of physical and information security;
- b) The creation of the Security Plan;
- c) Audit and testing of the Security Plan;
- d) Compliance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- e) Breaches of Security.
- f) Security provisions with which the Contractor shall comply in providing the services relevant to this Contract.

2 Principles of Security

2.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor ICT system. The Contractor also acknowledges the confidentiality of the Authority's Data.

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

- a) is in accordance with Good Industry Practice and Law;
- b) complies with the Security Policy;
- c) meets any specific security threats to the Contractor System; and
- d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Schedule 6;
- e) meets the requirements of the Cyber Essentials Scheme, unless deemed out of scope for this requirement.

2.3 Without limiting paragraph 2.2 of this Schedule 6, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks: -

- a) loss of integrity of Authority Data;

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

3 Security Plan

Introduction

- 3.1 The Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.
- 3.2 A draft Security Plan provided by the Contractor as part of its Tender is set out in Appendix B.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision) of this Schedule 6, the Contractor will prepare and deliver to the Authority for Approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix B of this Schedule 6.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within ten (10) Working Days of a notice of non-Approval and re-submit for Approval. The Parties will use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 12 Dispute Resolution. No Approval to be given pursuant to this paragraph 3.4 of this Schedule 6 may be unreasonably withheld or delayed. However, any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 of this Schedule 6 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
- a) the provisions of this Contract; this Schedule 6 (including the principles set out in paragraph 2 of this Schedule 6);
 - b) the provisions of Schedule 1 relating to security;
 - c) ISO/IEC27002 and ISO/IEC27001;
 - d) the data protection compliance guidance produced by the Authority.
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 of this Schedule 6 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Contractor which provision the Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Contractor and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule 6.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Contractor annually, or from time to time to reflect: -
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Contractor ICT system, the Services and/or associated processes; and
 - c) any new perceived or changed threats to the Contractor ICT system.

- d) a reasonable request by the Authority.
- 3.11 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Contractor proposes to make to the Security Plan as a result of an Authority request or change to the Schedule 1 (The Services) or otherwise shall be subject to the change control procedure and shall not be implemented until approved in writing by the Authority.

4 Audit and Testing

- 4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 4.2 The Authority shall be entitled to send the Authority's Representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 of this Schedule 6 reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to Approval in accordance with paragraph 3.12 of this Schedule 6, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance with ISO/IEC 27001

5.1 NOT USED

5.2 NOT USED.

5.3 The Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Contractor, then the Authority shall notify the Contractor of the same and give the Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Contractor does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.

5.5 If, as a result of any such independent audit as described in paragraph 5.4 of this Schedule 6 the Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 Breach of Security

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

6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1 of this Schedule 6, the Contractor shall; -

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

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract, then the Contractor shall be entitled to refer the matter to the change control procedure in clause F3 (Contract Change) and Schedule 8 (Change Control Procedure).

- b) as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

7 Authority Data relevant to the Contract

- 7.1 The Specification will outline the services to be provided by the Contractor, including the type of Authority Data involved.
- 7.2 The majority of information that is created or processed by the public sector is described as 'Official'. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media.

8 Accreditation

- 8.1 Where a system is being used to deliver the Services it may be appropriate to conduct security accreditation.
- 8.2 The DWP Security Accreditation Team may undertake an accreditation of the service where the Contractor shall provide appropriate accreditation evidence to DWP upon request throughout the lifecycle of the Contract.
- 8.3 Where security accreditation is required the Contractor must ensure that the service in scope remains accredited throughout the Contract Period and that there is an agreed accreditation assurance plan in place supporting the DWP deployed service.

9 Ongoing Assurance

- 9.1 The Contractor shall adhere to the DWP Security working practices in order to provide the following functions to provide ongoing assurance to the Authority: -
 - a) NOT USED;
 - b) NOT USED;
 - c) Collaborate with the Supplier Security Team to demonstrate continued compliance against ISO27001 controls;
 - d) The Contractor shall act as a conduit between the DWP Supplier Security Team and relevant Supplier Stakeholder, ensuring issues and activities are progressed;
 - e) The Contractor shall collaborate with the relevant DWP Supplier Security Team, ensuring issues and activities are progressed;
 - f) The Contractor shall ensure contractual Security Obligations are fully understood and complied with;

g) The Contractor shall provide required statistics against, but not limited to:

- Security Awareness Training
- Security Incidents
- Security Clearance
- Privileged Users
- Offshore Status
- Internal Audit/Compliance

Appendix A – DWP Security Policies and Standards

1. The Department for Work and Pensions (referred to as DWP or Authority in this Schedule 6) treats information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which DWP is the Data Controller.
2. In order to protect Authority Data and Personal Data appropriately, the Contractor must provide the security measures and safeguards appropriate to the nature and use of such information. The Contractor must comply, and be able to demonstrate compliance, with the relevant DWP policies and standards.
3. The main DWP policies include: -
 - Information Security Policy
 - Physical Security Policy
 - Acceptable Use Policy

The above policies can be found at: gov.uk
4. The Contractor must appoint a named officer who will act as a first point of contact with DWP for security issues. In addition all Staff, with access to the Authority ICT System, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.
5. The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.
6. Whilst DWP policies are written for internal DWP requirements the Contractor must implement appropriate arrangements which ensure that Authority Data and any DWP assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.
7. It is the Contractor's responsibility to monitor compliance of its Staff including its Sub-contractors and provide assurance to DWP, as requested regarding such compliance.
8. Failure to comply with any of these DWP Policies and Standards could result in termination of the Contract by DWP.
9. The following paragraphs 10 – 15 inclusive are some key basic requirements that all Contractors must apply:

10. Personnel Security

- 10.1 Staff recruitment by the Contractor must be in accordance with government requirements for pre-employment checks including Baseline Personnel Security

Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>). The Baseline Personnel Security Standard comprises verification of the following four main elements:

- Identity
- Nationality and Immigration Status (including an entitlement to undertake the work in question)
- Employment history (past 3 years); and
- Criminal Record (unspent convictions only).

Additionally, prospective employees are required to give a reasonable account of any significant periods (6 months or more in the past 3 years) of time spent abroad.

- 10.2 The Contractor must ensure that its Staff are trained and made aware of DWP security and any specific Contract requirements.

11. Secure Information Handling and Transfers

- 11.1 The Contractor shall ensure the physical and electronic handling, processing and transferring of Authority Data and Personal Data, including secure access to systems and the use of encryption, where appropriate, is carried out in accordance with this Contract.

12. Portable Media

- 12.1 The Contractor shall use encrypted laptops and encrypted storage devices and other removable media when handling Authority Data, Personal Data.

13. Offshoring

- 13.1 Transfer of Personal Data outside of the European Economic Area or International Organisation by the Contractor shall require the Approval of the Authority and shall be carried out in accordance with clause E2.

14. Physical Security

- 14.1 NOT USED

15. Security Incidents

- 15.1 The Contractor shall include identification, managing and agreed reporting procedures for actual or suspected security breaches. Reporting of breaches by the Contractor relating to Personal Data shall be carried in accordance with clause E2.

Appendix B – Draft Security Plan

REDACTED under FOIA Section 43, Commercial Interests

SCHEDULE 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

NOT USED

SCHEDULE 8 – LIFE CHANCES

1 General

- 1.1 The Contractor acknowledges that the Crown is committed to assisting people to move from welfare to employment and driving forward improvements in economic, social and environmental well-being.
- 1.2 The Contractor acknowledges that the Authority has a responsibility to support and promote wider social sustainability objectives for the benefit of society.
- 1.3 The Contractor acknowledges that the Authority is supporting the Crown's Life chances and social value agendas by aiming to promote opportunities for groups of persons ("**DWP Priority Groups**") which the Authority regards as meriting priority assistance including but not limited to Apprentices, Disabled People, Young People, Older Workers, Ex-Offenders and Black and Minority Ethnic people.

2 Diversity and Equality Delivery

- 2.1 The Contractor has provided the following information on their Equality, Diversity and Inclusion Policy:

REDACTED under FOIA Section 43, Commercial Interests

The Contractor's Equality, Diversity and Inclusion Policy also includes their policy on Anti-Bullying and Harassment.

- 2.2 NOT USED.

- 2.3 The Contractor has provided the following information on their organisation's general Work Experience and Internship Procedure:

REDACTED under FOIA Section 43, Commercial Interests

which covers the following areas, ensuring that the Contractor shall take the following action(s) in respect of the following DWP Priority Groups: -

a) Apprentices

- NOT USED.

b) Disabled People

- NOT USED.

c) Young People – Under 25

- Provide Employment Experience to Young People (e.g. students and those seeking internships) to develop their skills and experience and increase their employability.

d) Older Workers

- NOT USED.

e) Ex-Offenders

- NOT USED.

f) Black and Minority Ethnic people

- NOT USED.

g) Job Seekers

- NOT USED.

In addition, the Contractor has provided the following information on their action(s) in respect of the following DWP Priority Groups: -

Disabled People

- Disability Confident is a scheme that supports employers to attract, recruit and retain disabled people. Detailed Information about Disability Confident can be accessed via Gov.UK. The Authority strongly encourages Contractors, and their suppliers, to sign up to Disability Confident, declaring their support for disabled workers by displaying the values and behaviours set out therein. The Contractor is signed up to Disability Confident; and

Older Workers

- Provide Employment Experience to Older People as members of Staff by way of signing up to the Careers Transition Partnership which assists ex-service personnel to find employment after they leave the forces (<https://www.ctp.org.uk/>); to develop their skills and experience and increase their employability. The Contractor is signed up to the Careers Transition Service.

2.4 NOT USED.

2.5 NOT USED.

Life Chances Workforce Monitoring Template

2.6 NOT USED.

2.7 NOT USED.

2.8 NOT USED.

2.9 NOT USED.

2.10 NOT USED.

2.11 NOT USED.

**SCHEDULE 8 APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING
TEMPLATE**

NOT USED.

SCHEDULE 9 – WELSH LANGUAGE SCHEME

NOT USED

SCHEDULE 10 – PARENT COMPANY GUARANTEE

NOT USED

SCHEDULE 11 – CHANGE CONTROL PROCEDURE

1 General Principles of Change Control Procedure

- 1.1 This Schedule 11 sets out the procedure for dealing with Contract Changes and Operational Changes.
- 1.2 If either Party is in doubt about whether a change to the Contract falls within the definition of an Operational Change, it must be processed as a Contract Change.
- 1.3 For any Change Communication to be valid under this Schedule 11, it must be sent in accordance with the provisions of clause A5 (*Notices*) as if it were a notice.

2 Costs

- 2.1 The Contractor shall be entitled to increase the Contract Price only if the Impact Assessment satisfies the requirement in paragraph 5.2 of the Schedule 11, that the Contract Change is not exempt from a change in Contract Price as specified in clause F3 and it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and the Authority agrees to pay such increase.
- 2.2 The Contractor shall decrease the Contract Price if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3 Any change to the Contract Price resulting from a Contract Change, whether the change will cause an increase or a decrease in the Contract Price, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.4 Each Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Operational Change Procedure

- 3.1 Any Operational Changes identified by either Party to improve operational efficiency of the Services may be implemented by the Contractor without following the Change Control Procedure provided they do not: -
 - (a) involve the Authority in paying any additional Contract Price or other costs;
 - (b) have an impact on the business of the Authority;

- (c) require a change to this Contract; or
 - (d) have a direct impact on use of the Services.
- 3.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Contract Period, and which may be sent by electronic mail or by letter.
- 3.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.
- 3.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 3.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

4 Contract Change Procedure

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Appendix 1 of this Schedule 11.
- 4.2 If the Authority issues a Change Request, then the Contractor shall provide as soon as reasonably practical, and in any event within ten (10) Working Days of the date of receiving the Change Request, an Impact Assessment to the Authority.
- 4.3 If the Contractor issues the Change Request, then it shall provide an Impact Assessment to the Authority at the same time as the Change Request.
- 4.4 If the Contractor requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Authority within three (3) Working Days of the date of receiving the Change Request.
- 4.5 Provided that sufficient information is received by the Authority to fully understand the nature of the request for clarification and the reasonable justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 Impact Assessment

- 5.1 An Impact Assessment shall be substantially in the form of Appendix 2 of this

Schedule 11.

5.2 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the impact the proposed Contract Change will have on the Services and the Contractor's ability to meet its other obligations under this Contract;
- (b) any additional changes to the terms of this Contract that will be required as a result of that impact which may include changes to: -
 - (i) the Services, and/or the Service Levels;
 - (ii) the format of Authority Data, as set out in the Services;
 - (iii) the Implementation Plan and any other timetable previously agreed by the Parties; and
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority ICT System;
- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Services which comes into force after the Commencement Date;
- (e) any amendments to the Contract wording proposed in the Change Request Form;
- (f) such other information as the Authority may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Contract Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

5.3 The calculation of costs for the purposes of paragraphs 5.2(g) and (h) of this Schedule 11 shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;

- (c) include evidence of the cost of any assets required for the Change; and
 - (d) include details of any new Sub-contracts necessary to accomplish the Change.
- 5.4 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to clause E2 (Protection of Personal Data).
- 5.5 Subject to the provisions of paragraph 5.6 of this Schedule 11, the Authority shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 6 of this Schedule 11 within fifteen (15) Working Days of receiving the Impact Assessment.
- 5.6 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification.
- 5.7 At the Authority's discretion, the Parties may repeat the process described in paragraph 5.6 of this Schedule 11 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment to enable it to take one of the steps prescribed by paragraph 6 of this Schedule 11.

6 Authority's Right of Approval

- 6.1 Subject to paragraphs 5.6 and 5.7 of this Schedule 11, within fifteen (15) Working Days, or timescale agreed between both Parties, of receiving the Impact Assessment from the Contractor, the Authority shall do one of the following:
 - (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in paragraph 6.5 of this Schedule 11; or
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the Services to comply with any changes in Law.
- 6.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Authority in accordance with paragraph 6.5 of this Schedule 11.

- 6.3 Unless the Authority expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.
- 6.4 Any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 6.5 If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 of this Schedule 11 and it has not been rejected by the Contractor in accordance with paragraph 7 of this Schedule 11, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 of this Schedule 11 and send them to the Contractor. The Contractor shall sign/executed as a deed (as appropriate) both copies and deliver both signed/executed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign/seal (as appropriate) both copies and return one copy to the Contractor. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.

7 Contractor's Right Of Rejection

- 7.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Authority would:
- (a) materially and adversely affect the risks to the health and safety of any person; and/or
 - (b) require the Services to be performed in a way that infringes any Law,
- 7.2 then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2 of this Schedule 11.
- 7.3 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 7.1 of this Schedule 11.

8 Failure to Comply

- 8.1 If the Contractor fails to complete an Impact Assessment, implement or successfully comply with the Contract Change by the required date, the Authority may: -
- (a) give the Contractor a further opportunity to implement or comply with the Contract Change; or

- (b) escalate any issues arising out of the failure to implement or comply with the Contract Change to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in clause I2 (Dispute Resolution).
- 8.2 If, despite the measures taken under paragraphs 8.1 (a) & 8.1(b) of this Schedule 11, the Contractor fails to implement or comply with the Contract Change, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause I2 (Dispute Resolution).
- 9 Management Information**
- 9.1 The Parties shall update the Contract to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Request and annotate with a reference to the Change Authorisation Note or Operational Change Request pursuant to which the relevant Contract Changes or Operational Changes were agreed.

APPENDIX 1 - Change Request Form

(For Completion by the Party Requesting Change)

| | | |
|--|-----------------------------------|--------------------------------------|
| Change Request No: | Contract Title & Contract Number: | Contractor Name & Registered No: |
| Contract Change Title: | | Contract Change Implementation Date: |
| Full Description of Requested Contract Change (including proposed changes to wording of the Contract): | | |
| Reasons for and Benefits of Requested Contract Change: | | |
| Name of Owner Requesting Change: | | |
| Signature of Owner Requesting Change: | | |
| Date of Signature: | | |
| (For Completion by Party Receiving Request for Change) Disadvantages of Requested Contract Change, if any: | | |
| Details of any proposed alternative scenarios, if any; | | |
| Authorisation to Complete Impact Assessment: (Name) | | |
| Impact Assessment Assigned to: (Name) | | |
| Impact Assessment Assigned on: (Date) | | |

APPENDIX 2 - Impact Assessment

(For Completion by DWP Contractor)

| | | |
|--|-----------------------------------|--------------------------------------|
| Change Request No: | Contract Title & Contract Number: | Contractor Name & Registered No: |
| Contract Change Title: | | Contract Change Implementation Date: |
| Full Details of the Impact the proposed Contract Change will have on the services and your ability to meet your other obligations under this Contract: | | |
| Any additional changes to this Contract that will be required as a result of the change – including any: 1. Service/Service Levels/Performance Levels 2. Format of Authority Data 3. Timetable for the Implementation, including testing 4. Amendments to contract wording 5. Cost of implementing the change – ongoing/increase/decrease in costs 6. Alteration in Resources – estimated volumes and applicable rates | | |
| Impact Assessment Completed by: (Name & Position in Organisation) | | |
| (For Completion by DWP) Impact Assessment Approved by: (Name & Date) | | |
| Impact Assessment Rejected by: (Name & Date) | | |
| Reason for Rejection: | | |

APPENDIX 3 - Change Authorisation Note

(For Completion by DWP)

| | | |
|--|-------------------------------|--------------------------------------|
| Change Request No: | Contract Title & Contract No: | Contractor Name & Registered No: |
| Contract Change Title: | | Contract Change Implementation Date: |
| Detailed Description of Agreed Contract Change for which the Impact Assessment has been prepared. Provide details: | | |
| Details of Agreed adjusted Contract Price resulting from the Contract Change for which the Impact Assessment has been prepared. Provide details: | | |
| Amended/New Contract Wording – must include details of Cross Referencing to Original Contract Documents: | | |
| In consideration of the rights and obligations created, granted and assumed by each Party to the other Party pursuant to this Change Authorisation Note, the Parties have agreed to enter into this Change Authorisation Note. | | |
| The provisions of the Contract shall, save as amended in this Change Authorisation Note, continue in full force and effect, and shall be read and construed as one document with this Change Authorisation Note. | | |

| | |
|---|--|
| Signed on Behalf of the Authority: | Signed on Behalf of the Contractor: |
| Signature: | Signature: |
| Name: | Name: |
| Position: | Position: |
| Date: | Date: |

SCHEDULE 12 – SEPARATE CONTROLLER DATA SHARING

Pursuant to the terms of the Agreement each Party wishes to share certain Personal Data (as hereafter defined). Each Party wishes to ensure that the other Party complies with its legal obligation in connection with such Personal Data and otherwise agrees the responsibilities set out in this Schedule. Accordingly, in consideration of the benefits of the Parties of the sharing of Personal Data, the Parties agree to comply with the following terms.

1. DEFINITIONS AND INTERPRETATION

- 1.1. Any words defined in the Agreement and used in this Schedule shall have the meaning given in the Agreement. Otherwise, in this Schedule, unless the context otherwise requires, the following words and expressions shall have the following meanings:

| | |
|--------------------------------------|--|
| “Data Protection Legislation” | means all applicable data protection and privacy legislation, regulations and guidance including the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the European Data Protection Board or the Information Commissioner from time to time, together with: (a) Regulation (EU) 2016/679 (the "General Data Protection Regulation" or "GDPR"), and (b) the UK Data Protection Act 2018 (in each case, all as amended, updated or re-enacted from time to time); |
| “Disclosing Party” | means a Party to this Agreement which discloses or makes available directly or indirectly Personal Data |
| “Effective Date” | means the Commencement Date. |
| “Personnel” | means any employee, officer or director, or an individual working as a consultant, independent contractor or agent, and/or temporary worker of a Party. |
| “Processing” | has the meaning given to that term in Data Protection Laws (and related terms such as process have corresponding meanings); |
| “Regulator” | means the UK Information Commissioner’s Office and the European Data Protection Board or any successor body to either regulator from time to time and any other supervisory authority with jurisdiction over either Party. |
| “Security” | means a Party’s technological, physical, administrative, organisational and procedural safeguards, including, without limitation, policies, procedures, guidelines, practices, standards, controls, hardware, software, firmware and physical security measures, the function or purpose of which is, in whole or part, to: (a) protect the confidentiality, integrity or availability of Shared Data; (b) prevent the unauthorized use of or unauthorised access to Shared Data; (c) prevent |

| | |
|--------------------------|---|
| | the loss, theft or damage of Shared Data; or (d) comply with Data Protection Legislation. |
| “Security Breach” | means any actual, threatened, or reasonably suspected: (a) unauthorised use of, or unauthorised access to Shared Data, damage to, or inability to access, Shared Data due to a malicious use, attack or exploit of such Shared Data; (b) unauthorised access to, theft of or loss of Shared Data; (c) unauthorised use of Shared Data for purposes of actual, reasonably suspected or attempted theft, fraud, identity theft or other misuse; (d) unauthorised disclosure of Shared Data. |
| “Shared Data” | means Personal Data held by one Party as a Data Controller, which is provided to the other Party as a Data Controller under this Agreement. |

- 1.2. Clause headings shall not affect the interpretation of this Schedule.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7. Any obligation in this Schedule on a person not to do something includes an obligation not to agree or allow that thing to be done.

2. DATA SHARING

- 2.1. The parties shall each comply with their respective obligations under the Data Protection Legislation when Processing Shared Data pursuant to the terms of this Schedule.
- 2.2. Annex A of this Schedule sets out a description of Shared Data for illustrative purposes and is set out without limitation to the generality of Shared Data that may be Processed pursuant to the terms of this Schedule.
- 2.3. For the purposes of this Clause 2, the parties acknowledge that in respect of Shared Data Processed pursuant to the terms of this Schedule and the Agreement the parties are separate Data Controllers. Depending on

circumstances of a specific transfer of Personal Data, one party will be the Recipient and the other the Disclosing Party.

- 2.4. Both parties shall at all times remain responsible for the acts and omissions pursuant to this Schedule of their respective Personnel and suppliers, contractors and agents.
- 2.5. The parties shall only Process Shared Data for the purpose or purposes set out in their respective privacy notices, copies of which shall be provided to the other party upon request.
- 2.6. Each party shall comply with its own obligations under this Clause at its own cost.

3. WARRANTIES

- 3.1. The Disclosing Party represents, warrants and covenants during the term of the Agreement that, in relation to the Shared Data:
 - 3.1.1. the Shared Data has been obtained by the Disclosing Party in accordance with the Data Protection Legislation;
 - 3.1.2. privacy notices provided to Data Subjects are compliant with, and have been provided to the Data Subject in a manner which is compliant with, the Data Protection Legislation;
 - 3.1.3. there are no circumstances of which the Disclosing Party is aware which are likely to give rise to breach of the Data Protection Legislation in the future (including any unauthorised disclosure) or any notice, complaint, claim or notification from a Data Subject or Regulator; and
 - 3.1.4. transferring the Shared Data to the Recipient in accordance with this Schedule will not constitute a breach of the Data Protection Legislation.

4. SECURITY

- 4.1. Both parties shall implement appropriate technical and organisational measures to ensure a level of Security appropriate to the risk involved under this Schedule
 - 4.1.1. protect all Shared Data from unauthorized use, alteration, access or disclosure, and loss, theft, and damage, and to protect and ensure the confidentiality, integrity and availability of Shared Data; and
 - 4.1.2. prevent a Security Breach.

- 4.2. Both parties shall keep accurate records of the Security measures which they have in place and shall make such records available to the other party upon request.
- 4.3. Security measures shall be regularly tested by each party to assess the effectiveness of the measures in ensuring the security, confidentiality, integrity, availability and resilience of Shared Data, and the party's compliance with this Schedule and the party's obligations under the Data Protection Legislation. Both parties shall maintain records of the testing.
- 4.4. In the event of a Security Breach, the Recipient shall notify the Disclosing Party's Representative without undue delay and in any event within twenty-four (24) hours after the Recipient, or its suppliers, contractors and or agents discovered such Security Breach.
- 4.5. Following the notification referred to in Clause 4.4 of this Schedule above, the Recipient shall provide assistance and co-operation with the Disclosing Party to mitigate the Security Breach, including to:
- 4.5.1. immediately conduct a reasonable investigation of the reasons for and circumstances of such Security Breach;
 - 4.5.2. take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach, and remediate such Security Breach, without delay;
 - 4.5.3. remediate the effects of a Security Breach;
 - 4.5.4. promptly produce a written report setting out all relevant details concerning such Security Breach, including without limitation any security, risk or compliance assessment and security control audit reports; and
 - 4.5.5. provide regular updates to the Disclosing Party following a Security Breach.

5. RECORDS, NOTIFICATION AND ASSISTANCE

- 5.1. Both parties shall at their own cost:
- 5.1.1. keep a record of any Processing of Shared Data it carries out;
 - 5.1.2. notify the other party promptly (but in any event within 24 hours) should it; receive any Data Subject access request or complaint or any information notice, enforcement notice or other correspondence from a Regulator, individual or third party in respect of Shared Data; or become aware of any circumstance which may cause either party

to breach this Schedule or which may cause either party to breach the Data Protection Legislation; and

- 5.1.3. reasonably cooperate and coordinate with the other Party concerning the other Party's compliance with Data Protection Legislation.

6. RESERVATION OF RIGHTS AND ACKNOWLEDGMENT

- 6.1. All Shared Data shall remain the property of the relevant Disclosing Party where such proprietary rights arise at law. Each party reserves all rights in its Shared Data. No rights, including intellectual property rights, in respect of a party's Shared Data are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Schedule.
- 6.2. Except as expressly stated in this Schedule, no party makes any express or implied warranty or representations concerning its Shared Data, or the accuracy or completeness of the Shared Data.

ANNEX A – DATA PROCESSING

1. The contact details of the Contractor's Data Protection Officer are: ICAEW Data Protection Office (data.protection@icaew.com).

| |
|---|
| The details of the Processing taking place under this Agreement is set out below. |
| Data Subjects Employees and principals of the firms subject to review; Employees of the Authority and the Contractor; Potentially also the personal information of individuals held on firm files (although such information would not be recorded or stored by the Contractor) |
| Categories of data Names and basic contact information including addresses and email addresses. |
| Categories of sensitive personal data N/A |
| Processing purposes To enable the Contractor to discharge the Services under this Agreement. |
| Nature of processing Use and storage of the personal data to enable the Contractor to carry out the Services under the Agreement |
| Duration of the processing For the term of the Agreement and for 6 years following its expiry or termination |
| Breach Notification Report any data breach to the ICAEW Data Protection Office on; data.protection@icaew.com REDACTED under FOIA Section 40, Personal Information |

ANNEX B – DATA CONTROLLER

NOT USED

ANNEX C – JOINT DATA CONTROLLERS

NOT USED