

**Umbrella Agreement for Employment and Health Related Services  
Intensive Personalised Employment Support**

**AGREEMENT FOR THE PROVISION OF SERVICES**

**Between**

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

**and**

**Remploy Limited  
(the “Contractor”)**

**Contract Number: DWP\_20441\_6**

## Order Form

### SECTION A

This Order Form is issued in accordance with the provisions of the umbrella agreement between (1) the Secretary of State for Work and Pensions and (2) Remploy Limited dated 12 January 2017 for the provision of employment and health related support services with contract reference number 2016/S 193-34740 ("Umbrella Agreement"). The Contractor agrees to supply the Services specified below on and subject to the terms of this Contract and for the avoidance of doubt this Contract consists of the terms set out in this Order Form and the Terms and Conditions attached to this Order Form.

### FROM

|                                     |                                                                                                |
|-------------------------------------|------------------------------------------------------------------------------------------------|
| <b>Authority</b>                    | Secretary of State for Work and Pensions (" <b>Authority</b> ") acting as part of the Crown    |
| <b>Service Address:</b>             | Caxton House, Tothill Street, London, SW1H 9NA                                                 |
| <b>Invoice Address:</b>             | SSCL Accounts Payable Team<br>Room 6124<br>Tomlinson House<br>Norcross<br>Blackpool<br>FY5 3TA |
| <b>Contact Reference:</b>           | Name: Shared Services Helpline<br>Ref: DWP_20441_6<br>Phone: <b>REDACTED</b>                   |
| <b>Order Number:</b>                | DWP_20441_6<br>To be quoted on all correspondence relating to this Order:                      |
| <b>Commencement Date:</b>           | 2 <sup>nd</sup> December 2019                                                                  |
| <b>Contract Package Area (CPA):</b> | CPA6 Wales                                                                                     |

### TO

|                           |                                             |
|---------------------------|---------------------------------------------|
| <b>Contractor:</b>        | Remploy Limited (" <b>Contractor</b> ")     |
| <b>Registered Number:</b> | 09457025                                    |
| <b>Service Address:</b>   | 18c Meridian East<br>Meridian Business Park |

|                           |                                                                                                |
|---------------------------|------------------------------------------------------------------------------------------------|
|                           | Leicester<br>LE19 1WZ                                                                          |
| <b>Contact Reference:</b> | Name: <b>REDACTED</b><br>Ref: DWP_20441_6<br>Phone: <b>REDACTED</b><br>e-mail: <b>REDACTED</b> |

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

## SECTION B

### 1. FORMATION OF CONTRACT

- 1.1 BY SIGNING AND RETURNING THIS ORDER FORM the Contractor agrees to enter the Contract with the Authority to provide the Services.
- 1.2 The Parties hereby acknowledge and agree that they have read the Order Form and the Terms and Conditions (attached hereto) and by signing below agree to be bound by this Contract.

**For and on behalf of the Contractor:**

|                |  |
|----------------|--|
| Name and Title |  |
| Signature      |  |
| Date           |  |

**For and on behalf of the Authority (acting as part of the Crown):**

|                |  |
|----------------|--|
| Name and Title |  |
| Signature      |  |
| Date           |  |

## Terms and Conditions

### Contents

|          |                                                     |           |
|----------|-----------------------------------------------------|-----------|
| <b>A</b> | <b>GENERAL PROVISIONS .....</b>                     | <b>9</b>  |
| A1       | Definitions and Interpretation .....                | 9         |
| A2       | Contract Period .....                               | 35        |
| A3       | Contractor's Status .....                           | 35        |
| A4       | Authority's Obligations .....                       | 35        |
| A5       | Notices .....                                       | 36        |
| A6       | Representatives of the Parties .....                | 36        |
| A7       | Mistakes in Information .....                       | 37        |
| A8       | Conflicts of Interest .....                         | 37        |
| A9       | Prevention of Fraud .....                           | 37        |
| A10      | ESF Funding .....                                   | 38        |
| <b>B</b> | <b>SUPPLY OF SERVICES .....</b>                     | <b>39</b> |
| B1       | The Services .....                                  | 39        |
| B2       | Not used .....                                      | 40        |
| B3       | No Guarantee of Levels, Values or Exclusivity ..... | 40        |
| B4       | Provision and Removal of Equipment .....            | 40        |
| B5       | Manner of Carrying Out the Services .....           | 41        |
| B6       | Participant Complaints .....                        | 41        |
| B7       | The Merlin Standard .....                           | 42        |
| B8       | Key Personnel and Key Workers .....                 | 43        |
| B9       | Contractor's Staff .....                            | 44        |
| B10      | Inspection of Premises .....                        | 45        |
| B11      | Licence to Occupy Premises .....                    | 45        |
| B12      | Property .....                                      | 45        |
| B13      | Offers of Employment .....                          | 46        |
| B14      | Employee Provisions and TUPE .....                  | 46        |

|          |                                                                         |           |
|----------|-------------------------------------------------------------------------|-----------|
| B15      | RNOs, tMPLs, Customer Service Standards and Performance Indicators..... | 46        |
| B16      | Performance Improvement Process .....                                   | 47        |
| B17      | Universal Credit .....                                                  | 49        |
| B18      | Services Improvement .....                                              | 50        |
| B19      | Step-In Rights .....                                                    | 50        |
| B20      | Cancellation or Suspension after a Contractor Termination Event .....   | 52        |
| B21      | Formal Warning Notice .....                                             | 53        |
| B22      | Monitoring of Contract Performance.....                                 | 53        |
| <b>C</b> | <b>PAYMENT AND FEES .....</b>                                           | <b>55</b> |
| C1       | Fees.....                                                               | 55        |
| C2       | Service Fee .....                                                       | 55        |
| C3       | Outcome Payments .....                                                  | 55        |
| C4       | Validation & Extrapolation of Outcomes.....                             | 58        |
| C5       | Recovery of Sums Due .....                                              | 60        |
| C6       | Deferral and Forfeit of Service Fee .....                               | 61        |
| C7       | Currency other than Sterling.....                                       | 62        |
| C8       | Third Party Revenue.....                                                | 62        |
| C9       | VAT.....                                                                | 63        |
| C10      | Methods of Payment .....                                                | 64        |
| <b>D</b> | <b>STATUTORY OBLIGATIONS AND REGULATIONS.....</b>                       | <b>64</b> |
| D1       | Prevention of Bribery and Corruption .....                              | 64        |
| D2       | Discrimination .....                                                    | 66        |
| D3       | The Contracts (Rights of Third Parties) Act 1999 .....                  | 66        |
| D4       | Environmental Requirements.....                                         | 67        |
| D5       | Health and Safety.....                                                  | 67        |
| D6       | Tax Compliance .....                                                    | 68        |
| D7       | Termination Rights due to any Occasion of Tax Non-Compliance .....      | 68        |
| D8       | Supplier Code of Conduct .....                                          | 68        |

|          |                                                                               |           |
|----------|-------------------------------------------------------------------------------|-----------|
| <b>E</b> | <b>PROTECTION OF INFORMATION .....</b>                                        | <b>69</b> |
| E1       | Authority Data .....                                                          | 69        |
| E2       | Protection of Personal Data and Special Categories of Personal Data .....     | 70        |
| E3       | Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989 ..... | 76        |
| E4       | Confidential Information .....                                                | 76        |
| E5       | Transparency and Freedom of Information .....                                 | 78        |
| E6       | Publicity, Media and Official Enquiries .....                                 | 80        |
| E7       | Security .....                                                                | 80        |
| E8       | Intellectual Property Rights .....                                            | 81        |
| E9       | Audit and the National Audit Office and Open Book Data .....                  | 83        |
| E10      | Exceptional Audits .....                                                      | 84        |
| E11      | Audit Costs .....                                                             | 85        |
| E12      | Malicious Software .....                                                      | 85        |
| E13      | Provision of Management Information .....                                     | 85        |
| E14      | Records Relating to the Provision of the Services .....                       | 85        |
| <b>F</b> | <b>CONTROL OF THE CONTRACT .....</b>                                          | <b>86</b> |
| F1       | Transfer and Sub-Contracting .....                                            | 86        |
| F2       | Waiver .....                                                                  | 87        |
| F3       | Changes to the Contract .....                                                 | 88        |
| F4       | Severability .....                                                            | 91        |
| F5       | Remedies Cumulative .....                                                     | 91        |
| F6       | Entire Agreement .....                                                        | 91        |
| F7       | Counterparts .....                                                            | 92        |
| F8       | Further Assurance .....                                                       | 92        |
| <b>G</b> | <b>LIABILITIES .....</b>                                                      | <b>92</b> |
| G1       | Liability and Indemnity .....                                                 | 92        |
| G2       | Insurance .....                                                               | 97        |
| G3       | Warranties and Representations .....                                          | 97        |

|          |                                                                                                                                        |            |
|----------|----------------------------------------------------------------------------------------------------------------------------------------|------------|
| G4       | Deed of Guarantee.....                                                                                                                 | 98         |
| <b>H</b> | <b>TERMINATION RIGHTS AND DISRUPTION .....</b>                                                                                         | <b>99</b>  |
| H1       | Termination by the Authority .....                                                                                                     | 99         |
| H2       | Termination by the Contractor .....                                                                                                    | 100        |
| H3       | Partial Termination .....                                                                                                              | 100        |
| H4       | General Provisions on Expiry or Termination .....                                                                                      | 100        |
| H5       | Exit Management .....                                                                                                                  | 101        |
| H6       | Payments by the Authority .....                                                                                                        | 101        |
| H7       | Payments by the Contractor.....                                                                                                        | 102        |
| H8       | Disruption.....                                                                                                                        | 102        |
| <b>I</b> | <b>Disputes and Law.....</b>                                                                                                           | <b>103</b> |
| I1       | Governing Law and Jurisdiction.....                                                                                                    | 103        |
| I2       | Dispute Resolution .....                                                                                                               | 103        |
|          | Schedule 1 - The Services.....                                                                                                         | 105        |
|          | Schedule 1A - Implementation Plan.....                                                                                                 | 110        |
|          | Schedule 1B - Contract Package Area .....                                                                                              | 111        |
|          | Schedule 2 - Tender Minimum Performance Levels (tMPLs), Required Number of Outcomes (RNOs) and Customer Service Standards (CSSs) ..... | 117        |
|          | Schedule 3 - Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators .....                                 | 119        |
|          | Schedule 4 - Fees and Payment.....                                                                                                     | 123        |
|          | Schedule 5 - Commercially Sensitive Information.....                                                                                   | 129        |
|          | Schedule 6 - Security Requirements and Plan .....                                                                                      | 130        |
|          | Schedule 7 - Sustainable Development Requirements.....                                                                                 | 149        |
|          | Schedule 8 - Welsh Language Scheme.....                                                                                                | 151        |
|          | Schedule 9 - Parent Company Guarantee .....                                                                                            | 153        |
|          | Schedule 10 - Exit Management.....                                                                                                     | 161        |

|                                                                                             |     |
|---------------------------------------------------------------------------------------------|-----|
| Schedule 11 - Allocation of Costs on Termination .....                                      | 172 |
| Schedule 12 - ESF Requirements .....                                                        | 178 |
| Schedule 13 - Change Control Procedure .....                                                | 183 |
| Schedule 14 - Key Personnel .....                                                           | 190 |
| Schedule 15 - Sub-contractors .....                                                         | 191 |
| Schedule 16 - Dispute Resolution Procedure .....                                            | 197 |
| Schedule 17 - Life Chances.....                                                             | 204 |
| Schedule 18 - Business Continuity and Disaster Recovery .....                               | 213 |
| Schedule 19 - Employee Provisions and TUPE.....                                             | 220 |
| Schedule 20 - Management Information.....                                                   | 244 |
| Schedule 21 - Insurance Requirements.....                                                   | 249 |
| Schedule 22 - Financial Distress .....                                                      | 256 |
| Schedule 23 - Personal Data, Special Categories Of Personal Data And Data Subjects<br>..... | 262 |
| Schedule 24 – DWP Supplier Code of Conduct.....                                             | 263 |

## **A GENERAL PROVISIONS**

### **A1 Definitions and Interpretation**

A1.1 In this Contract capitalised expressions shall have the meanings as set out below. If a provision does not have an interpretation in this clause A1.1, it shall have the meaning given to it in the Umbrella Agreement:

**“Action Plan”** means a written plan prepared by the Contractor at the initial Face to Face meeting and updated at each subsequent meeting with each Participant setting out the agreed actions to move the Participant into work.

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

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

**“Anticipated Contract Value”** means the sum set out at paragraph 1.18 of the Specification which relates to this Contract;

**“Apportioned Paid Unable to Validate Outcomes”** in respect of each Payment Validation Period, shall be calculated as follows:

$(A \times B) / (B + C)$  where:

A = the number of Paid Unable to Validate Outcomes in the Outcomes Sample for that Payment Validation Period (as determined by the Authority)

B = the number of Outcome Fails in the Outcomes Sample for that Payment Validation Period (as determined by the Authority)

C = the number of Outcome Passes in the Outcomes Sample for that Payment Validation Period (as determined by the Authority)

**“Apprentice”** means an individual on an apprenticeship as more particularly described at <https://www.gov.uk/topic/further-education-skills/apprenticeships> (or such other place as the Authority notifies the Contractor from time to time).

**“Approval”** means the prior written consent of the Authority.

**“Assets”** means all assets and rights used by the Contractor to provide the Services in accordance with the Contract but excluding any and all assets and rights owned by the Authority.

**“Audit Agents”** means:

- (a) the Authority’s internal and external auditors;
- (b) the Authority’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;

- (e) the European Commission;
- (f) the European Court of Auditors;
- (g) any party formally appointed by the Authority and/or by the Crown and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and
- (h) successors or assigns of any of the above.

**“Audit Rights”** means the audit and access rights referred to in clause E.

**“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; and

for the avoidance of doubt, includes Personal Data for which the Authority is a Controller.

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

**“Authority Premises”** means Premises which are owned and/or controlled by the Authority.

**“Authority Requirements”** means the requirements of the Authority set out in Schedules 1 (the Services), 2 (Tender Minimum Performance Levels (tMPLs), Required Number of Outcomes (RNOs) and Customer Service Standards (CSS)), 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators), 4 (Fees and Payment), 6 (Security Requirements and Plan), 8 (Welsh Language Scheme), 10 (Exit Management), 12 (ESF Requirements), 15 (Sub-contractors), 17 (Life Chances), 18 (Business Continuity and Disaster Recovery), 20 (Management Information), 21 (Insurance Requirements) and 22 (Financial Distress).

**“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.

**“Authority's Representative”** means the individual named at clause A6.1 or such other individual as the Authority may notify in writing to the Contractor from time to time and the Authority’s Representative is authorised to act on behalf of the Authority on all matters relating to the Contract.

**“Average Annual Contract Value”** means **REDACTED**

**“BravoSolution Portal”** or **“Bravo”** means the "BravoSolution" electronic portal, or such replacement or successor system which the Authority may notify to the Contractor from time to time, which is accessible by the Contractor.

**“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 System or any ICT or data (including the Authority’s Data), and any Personal Data and any Special Categories of 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 Central Government Body concerning the legislation.

**“Business Continuity and Disaster Recovery Plan”** or **“BCDR Plan”** means any plan prepared as directed in clause H8.6, as may be amended from time to time.

**“Case Conference”** means a meeting between a Participant, a Jobcentre Plus representative and the Contractor to discuss the Participant’s progress and ensure their needs are being met.

**“Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency.

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

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

**“Change Control Procedure”** means the procedure for changing this Contract, as set out in Schedule 13.

**“Change in Law”** means any change in Law which comes into force after the Commencement Date.

**“Change of Control”** means a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010.

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

**“Cohort Period”** means a calendar month.

**“Cohort Profiles”** means tables which profile the number of Outcomes and the point in time of achievement of such Outcomes. Such tables may be based on either an assumed number of Participant Starts or on the actual number of Participant Starts.

**“Commencement Date”** means the date on which this Contract becomes legally binding. The Contract will be deemed to take effect on the date of the second Party's signature.

**“Commercially Sensitive Information”** means the information:

- (a) listed in the Commercially Sensitive Information Schedule, or
- (b) is Commercially Sensitive Information under the Umbrella Agreement.

**“Commercially Sensitive Information Schedule”** means Schedule 5.

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

**“Compensation Payment”** shall have the meaning given to it in Schedule 11.

**“Completer”** means an individual who has completed the IPES Programme to which the Specification relates.

**“Confidential Information”** means:

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

**“Contract”** means this contract between the Authority and the Contractor (entered into pursuant to the Umbrella Agreement) consisting of the Order Form and the Terms and Conditions, the Schedules and any Appendices or Annexes to the Terms and Conditions, the Tender, the Specification, the Q&A log, the Tender Clarification, the Umbrella Agreement, and any other document referred to in the Contract in respect of which either Party has rights and/or obligations.

**“Contract Change”** means any change, amendment, variation, restatement or supplement to this Contract other than an Operational Change or a Substantial Change.

**“Contract Performance Reviews”** or **“CPRs”** shall have the meaning as set out in Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators).

**“Contract Period”** has the meaning set out in Clause A2.

**“Contract Personal Data”** means any Personal Data, including Special Categories of Personal Data, Joint Personal Data and Participant Personal Data, Processed by either Party in connection with this Contract, and for the purposes of this Contract, all as more particularly described at Schedule 23, Annex B.

**“Contract Year”** means a period which falls within the Contract Period, either in whole or in part, ending on 1<sup>st</sup> December annually.

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

**“Contracting Authority”** means any contracting authority as defined in Regulation 2 of the Public Contract Regulations 2015, for the avoidance of doubt, including the Authority.

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

**“Contractor System”** means any such electronic or hard copy system/process utilised in the delivery of the Services and that is used to transfer, disclose, receive or store Authority Data

including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system.

**“Contractor ICT System”** means any electronic system/process that is part of the Contractor System.

**“Contractor Termination Event”** means:

- (a) the occurrence of three (3) Defaults in any six (6) Month period;
- (b) the Contractor committing a material Default which is irremediable;
- (c) as a result of the Contractor's Default, the Authority incurring Losses in any Contract Year which exceed eighty percent (80%) of the value of the aggregate annual liability cap for that Contract Year as set out in clause G1.7(b);
- (d) the Contractor committing a material Default, whether or not such material Default is capable of remedy, under any of the following clauses:
  - (i) Clause E2 (Protection of Personal Data and Special Categories of Personal Data);
  - (ii) Clause E4 (Confidential Information);
  - (iii) Clause E5 (Transparency and Freedom of Information); or
  - (iv) Clause E7 (Security);
- (e) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (f) a failure by the Contractor to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or
- (g) where a right of termination is expressly reserved in this Contract, including (without limitation) pursuant to:
  - (i) Clause A8 (Conflicts of Interest);
  - (ii) Clause A9 (Prevention of Fraud);
  - (iii) Clause B9 (Contractor's Staff);
  - (iv) Clause B16 (Performance Improvement Process);
  - (v) Clause B19 (Step-In Rights);
  - (vi) Clause B21 (Formal Warning Notice);
  - (vii) Clause B22 (Monitoring of Contract Performance);
  - (viii) Clause D1 (Prevention of Bribery and Corruption);
  - (ix) Clause D7 (Termination Rights Due to any Occasion of Tax Non-Compliance);
  - (x) Clause E1 (Authority Data);

- (xi) Clause E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act) 1989;
  - (xii) Clause E4 (Confidential information);
  - (xiii) Clause E8 (Intellectual Property Rights); or
  - (xiv) Schedule 3 (CPRs, Contractor Systems Assurance & Performance Indicators).
- (h) an Insolvency Event occurring in respect of the Contractor or the Guarantor;
  - (i) a Change of Control of the Contractor or a Guarantor unless:
    - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the Change of Control;
  - (j) a Change of Control of a Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such Change of Control, the Contractor terminates the relevant Sub-contract and replaces it with a comparable Sub-contract which is approved by the Authority pursuant to paragraph 2 of Schedule 15 (Sub-contractors); or
  - (k) 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.

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

**“Contractor’s Representative”** means the individual named at clause A6.3 or such other individual as the Contractor may notify in writing to the Authority from time to time and the Contractor’s Representative is authorised to act on behalf of the Contractor on all matters relating to the Contract.

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

**“Controller”** shall have the same meaning as given in the GDPR.

**“CPA”** or **“Contract Package Area”** means the geographical area within which the Services are delivered which is more particularly described in Schedule 1B.

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

**“CSS Measurement Period”** means the period in respect of which the Contractor’s achievement of the Customer Service Standards shall be measured by the Authority. Such period could be any

Month, three (3) Month, twelve (12) Month or other period at the absolute discretion of the Authority.

**“CSS Measurement Point”** means the point in time at which the Authority measures/reviews the Contractor’s achievement of the Customer Service Standards, which will be the last day of a Month or such other point in time as the Authority selects in its absolute discretion.

**“CSS Measurement Review”** means the Authority’s review of the Contractor’s achievement of the Customer Service Standards.

**“Customer Service Standards”** means the service levels to which the Services are to be supplied by the Contractor as set out in Schedule 2 (Tender Minimum Performance Levels (tMPLs), Required Number of Outcomes (RNOs) and Customer Service Standards (CSS)) and which shall include the Specification Customer Service Standards and the Tender Customer Service Standards.

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

**“Data Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data and Special Categories 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 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy.

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

**“Data Schedule”** means Schedule 23 (Personal Data, Special Categories of Personal Data and Data Subjects).

**“Data Subject”** shall have the same meaning as given in the GDPR.

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data and Special Categories of Personal Data.

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

**“Deferral Notice”** means the notice to be issued by the Authority in relation to Deferral of payment of Service Fee Periodic Payments.

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

**“Delivery Model”** means the structures and processes used by the Contractor to deliver the Services as described in Schedule 1.

**“Did Not Attend”** means an individual who has been Referred to the Contractor, but does not attend the initial Face to Face meeting with the Contractor.

**“Did Not Start”** means an individual who has been Referred to the Contractor, and attends the initial Face to Face meeting with the Contractor, but does not go on to receive IPES Services from the Contractor.

**“Disallowed Financial Contribution”** means a direct or indirect contribution which:

- (a) is valued by the Authority in its absolute discretion at more than £1,000, or
- (b) is deemed by the Authority in its absolute discretion to not be a contribution towards working capital or equipment, or to be an inappropriate method of providing support to a self-employed Participant.

**“Dispute”** means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to clause 12.

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

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

**“DPA”** means the Data Protection Act 2018.

**“Due Diligence Information”** means any information supplied to the Contractor by the Authority prior to the Commencement Date.

**“DWP” or “Department of Work and Pensions”** means the Authority.

**“DWP Offshoring Policy”** means DWP’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.

**“Early Completer”** means a Participant for whom IPES Services are not appropriate in accordance with the Specification.

**“Earnings PI”** means the number of Participants which the Contractor anticipates would need to have earned an income from employment, during the Performance Measurement Period, for the Contractor to achieve the relevant RNO.

**“Employed Outcome”** means a Lower Threshold Employed Outcome or a Higher Threshold Employed Outcome.

**“Employed Outcome Payment”** means an Outcome Payment payable in respect of an Employed Outcome. Employed Outcome Payments are either Lower Threshold Employed Outcome Payments or Higher Threshold Employed Outcome Payments.

**“Employee Liabilities”** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any

award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract, statute or otherwise; or
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.

**“Employer Support Plan”** means the document produced by the Contractor and issued to the Participant’s employer within 10 Working Days of the Participant starting employment. The Employer Support Plan details the support the Contractor will give to the Participant and the employer in order to help the Participant to sustain the employment. The Employer Support Plan also details the Participant’s support needs from the employer following the end of the period in which the Contractor delivers IPES Services to the Participant.

**“Employment Business”** means any part of the Contractor, the Contractor’s Group, any Sub-contractor or any Sub-Contractor’s Group which:

- (a) carries out the services described in the Specification; or
- (b) has as its dominant purpose or activity the employment of Participants or Completers.

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

**“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.

**“ESF Co-Financing Organisation”** means designated bodies including the Authority which channel both ESF and match funding to meet ESF priorities.

**“ESF Form”** means the ESF 14-20 start form or the ESF 14-20 end form as the context requires both of which are more particularly described in Chapter 18 (European Social Fund) of the Provider Guidance.

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

- (a) the common principles, rules and standards for the European Social Fund as defined by Regulation (EU) No 1303/2013 of 17 December 2013; and
- (b) the European Commission's requirements;
- (c) the Managing Authority's requirements; and
- (d) the Authority's requirements.

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

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

**"Exit Plan"** means the plan produced and updated by the Contractor during the Contract Period in accordance with Paragraph 4 of Schedule 10 (Exit Management).

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

**"Face to Face"** means a meeting where all attendees attend in person (not a Skype meeting or similar).

**"Financial Distress Event"** means the occurrence of one or more of the events listed in paragraph 3.1, 4.1, and 5.1 of Schedule 22.

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

**"Final Offer"** means the Contractor's updated and final response to the ITT following completion of the Mini-Competition Commercial Dialogue Stage.

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

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

**"Force Majeure Notice"** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**"Formal Warning Notice"** means notice issued by the Authority under clause B21 in respect of a Non Service Failure Default.

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

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

**“General Anti-Abuse Rule”** means:

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

**“General Change in Law”** 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 at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws.

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

**“Guarantee”** means the deed of guarantee in favour of the Authority entered into by the Guarantor (which is substantially in the form set out in Schedule 9 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

**“Guarantor”** means the body which is acceptable to the Authority as guarantor, at the Authority’s discretion, which has agreed to guarantee the due performance of the Contract by the Contractor and has entered into the Guarantee.

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

**“Higher Threshold Employed Outcome”** means when a Participant receives gross earnings (excluding any Non-Qualifying Earnings) in at least the amount described at paragraph 5.6 (Employed Outcome Payment), bullet point 2, of the Specification and the Authority identifies such earnings using HMRC PAYE Data or through the Special Customer Record Procedures.

**“Higher Threshold Employed Outcome Payment”** means an Employed Outcome Payment payable in respect of a Higher Threshold Employed Outcome.

**“Higher Threshold Outcome”** means a Higher Threshold Employed Outcome or a Higher Threshold Self-Employed Outcome.

**“Higher Threshold Outcome Payment”** means a Higher Threshold Employed Outcome Payment or a Higher Threshold Self-Employed Outcome Payment.

**“Higher Threshold Outcome RNO”** means the total number of Higher Threshold Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Participant Starts in the CPA. The Higher Threshold Outcome RNO shall be calculated by the Authority on the basis of the Cohort Profiles and tMPLs set out in Schedule 2.

**“Higher Threshold Self-Employed Outcome”** means when:

- (a) a Participant is self-employed for the period described at paragraph 5.10 (Self-Employed Outcome Payment), bullet point 2, of the Specification,
- (b) the Contractor can evidence that period of self-employment to the satisfaction of the Authority, and
- (c) the Participant is not a Non-Qualifying Participant.

Any period of self-employment can only be counted once towards a Lower Threshold Self-Employed Outcome, and once towards a Higher Threshold Self-Employed Outcome, regardless of whether the Participant has one or multiple self-employed occupations during that period.

**“Higher Threshold Self-Employed Outcome Payment”** means a Self-Employed Outcome Payment payable in respect of a Higher Threshold Self-Employed Outcome.

**“HMRC”** means Her Majesty's Revenue and Customs.

**“HMRC PAYE Data”** means the real time information held by HMRC in respect of Participants and used by the Authority to determine and to verify Outcomes.

**“ICE”** means the independent case examiner who reviews complaints from Participants about certain government organisations, including Jobcentre Plus, that deal with benefits and financial support, details of which are set out at (or such other place as the Authority notifies the Contractor from time to time): <https://www.gov.uk/government/organisations/independent-case-examiner>.

**“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 6 of Schedule 13.

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

**“Ineligible Outcome”** means any Outcome Payment, or part thereof, which has been paid to the Contractor by the Authority which is determined by the Authority not to have been eligible for payment in accordance with any provision of a Programme Contract including, for the avoidance of doubt, clause C4 (Validation and Extrapolation of Outcomes).

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

**“Insolvency Event”** means:

- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
  - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
  - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;

- (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
  - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
  - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
  - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
  - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.

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

**“Intensive Personalised Employment Support”** means the Authority's Intensive Personalised Employment Support programme in England and Wales as more particularly described in the Specification.

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

**“In-Work Support”** means individualised support provided by the Contractor to the Participant throughout the Participant’s employment or self-employment during the period that the Contractor is delivering IPES Services to the Participant.

**“IPES”** means Intensive Personalised Employment Support.

**“IPES Exit Activity Plan”** means the document produced by the Participant’s Key Worker, and issued to the Participant, within 10 Working Days of the Participant becoming a Completer. The IPES Exit Activity Plan details the next steps for the Participant, including any further support needed.

**“IPES Progress Report”** means the document produced by the Contractor within 10 Working Days of the Participant becoming a Completer, which details the reasons why the Participant has become a Completer, any progress the Participant made whilst on IPES, any experience the Participant gained in a working environment, and the Participant’s next steps when they leave IPES. The Progress Report is issued to Jobcentre Plus where a Warm Handback is required.

**“Irregularity”** means:

- (a) directly, or indirectly;
- (b) submitting a claim for, or agreeing to receive, or accepting;
- (c) any Outcome Payment, or Service Fee, or financial, or other advantage;
- (d) in connection with a Programme Contract;
- (e) which becomes the subject of an investigation by the Audit Agents; and
- (f) which the Audit Agents find was more likely than not;
- (g) deliberately, or negligently;
- (h) based on invalid, or erroneous, or false information, or documentation.

**“ITT”** means the suite of documents issued by the Authority through the Bravo portal which formed the invitation to participate in the competition for the award of this and other IPES Contracts for the provision of IPES Services to the Authority.

**“Joint Controllers”** has the meaning given under Article 26 of the GDPR i.e. where two or more Controllers jointly determine the purposes and means of Processing.

**“Joint Personal Data”** has the meaning set out in clause E2.1C of this Contract.

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

**“Key Worker”** means the member of the Contractor’s staff who supports a Participant with interventions to overcome barriers to work in order to help them move into employment.

**“Key Sub-contractor”** means any Sub-contractor with a Sub-contract with a contract value which at the time of appointment equal to or exceeding 15% of the maximum aggregate Fees which may be payable under this Contract.

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

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

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

**“Lower Threshold Employed Outcome”** means when a Participant receives gross earnings (excluding any Non-Qualifying Earnings) in at least the amount described at paragraph 5.6 (Employed Outcome Payment), bullet point 1, of the Specification and the Authority identifies such earnings using HMRC PAYE Data or through the Special Customer Record Procedures.

**“Lower Threshold Employed Outcome Payment”** means an Employed Outcome Payment payable in respect of a Lower Threshold Employed Outcome.

**“Lower Threshold Outcome”** means a Lower Threshold Employed Outcome or a Lower Threshold Self-Employed Outcome.

**“Lower Threshold Outcome Payment”** means a Lower Threshold Employed Outcome Payment or a Lower Threshold Self-Employed Outcome Payment.

**“Lower Threshold Outcome RNO”** means the total number of Lower Threshold Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Participant Starts in the CPA. The Lower Threshold Outcome RNO shall be calculated by the Authority on the basis of the Cohort Profiles and tMPLs set out in Schedule 2.

**“Lower Threshold Self-Employed Outcome”** means when:

- (a) a Participant is self-employed for the period described at paragraph 5.10 (Self-Employed Outcome Payment), bullet point 1, of the Specification,
- (b) the Contractor can evidence that period of self-employment to the satisfaction of the Authority, and
- (c) the Participant is not a Non-Qualifying Participant.

Any period of self-employment can only be counted once towards a Lower Threshold Self-Employed Outcome, and once towards a Higher Threshold Self-Employed Outcome, regardless of whether the Participant has one or multiple self-employed occupations during that period.

**“Lower Threshold Self-Employed Outcome Payment”** means a Self-Employed Outcome Payment payable in respect of a Lower Threshold Self-Employed Outcome.

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

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

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

**“Management Information”** means the management information specified in clause E13 and Schedule 20 (Management Information) which the Contractor is required to provide to the Authority.

**“Managing Authority”** or **“MA”** means Authority’s managing authority within the Authority’s European Social Fund Division operating on behalf of the Secretary of State which is the managing authority responsible for administering European Social Fund funds by means of which this Contract is funded (where applicable).

**“Merlin Standard”** means:

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

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

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

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

as may be updated and amended from time to time (or such other places as the Authority may notify the Contractor from time to time); and/or

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

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

**“Mini-Competition Commercial Dialogue Stage”** means the third stage of the Mini-Competition where DWP engages in structured dialogue with IPES bidders in each CPA following receipt of the Mini-Competition Initial Stage Responses.

**“Mini-Competition Initial Stage Response”** means the Contractor’s answers to the ITT evaluation questions in advance of the Mini-Competition Commercial Dialogue Stage. **“MI Admin Fees”** means the costs incurred by the Authority in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Crown Commercial Service at the following link (or such other place as the Authority notifies the Contractor from time to time):

<https://www.gov.uk/guidance/current-crown-commercial-service-suppliers-what-you-need-to-know>

**“MI Failure”** means when an MI Report:

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

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

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

**“MI Report”** means a report containing Management Information submitted to the Authority pursuant to clause E13 and Schedule 20 (Management Information).

**“Month”** means a calendar month.

**“Non-Qualifying Earnings”** means any and all earnings paid to a Participant during a Non-Qualifying Period which for the avoidance of doubt shall include any earnings paid to the Participant during the Non-Qualifying Period by the Employment Business.

**“Non-Qualifying Participant”** means:

- (a) any Participant or any Completer employed whether directly as an employee under a contract of service or on a self-employed basis in the Employment Business; or
- (b) any Participant in self-employment to whom the Contractor or any Sub-contractor or any member of the Contractor's Group or any Sub-contractor's group has made a Disallowed Financial Contribution.

**“Non-Qualifying Period”** means any period of employment (whether directly as an employee or under a contract of services) of a Participant or any Completer in the Employment Business. For the avoidance of doubt the Non-Qualifying Period shall be deemed to commence on the date that the first payment of earnings is made by the Employment Business to the Participant and shall be deemed to end on the date that the final payment of earnings is made by the Employment Business to the Participant.

**“Nil Return”** has the meaning given in paragraph 3.3 of Schedule 20 (Management Information).

**“Non Service Failure Default”** means a Default other than a Service Failure.

**“Occasion of Tax Non-Compliance”** means where:

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

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

- (a) the Contractor's costs broken down against each service category and/or deliverable under the Contract, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software; and
- (b) operating expenditure relating to the supply of the Services including an analysis showing:
  - (i) the unit costs and quantity consumables and bought-in services;

- (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
  - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor's profit margin;
  - (iv) reimbursable expenses (such as reasonable out of pocket travel and subsistence expenses properly and necessarily incurred in the supply of the Services);
  - (v) overheads;
  - (vi) all interest, expenses and any other third party financing costs incurred in relation to the supply of the Services;
  - (vii) the Contractor's profit margin achieved over the Contract Period and on an annual basis;
  - (viii) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor; and
  - (ix) an explanation of the type and value of risk and contingencies associated with the supply of the Services, including the amount of money attributed to each risk and/or contingency; and
- (c) the Contractor's most up-to-date management accounts and annual accounts.

**"Open Source Software"** means computer software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source.

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

- (a) will not affect the Fees and will not result in any other costs to the Authority;
- (b) 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; and
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority ICT System.

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

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

**"Order"** means the order for the Services in accordance with the provisions of the Umbrella Agreement.

**"Order Form"** means the order form set out on the front of these Terms and Conditions setting out the details of the Order.

**"Outcome"** means an Employed Outcome or a Self-Employed Outcome.

**“Outcome Aggregate Error Amount”** shall have the meaning set out in clause C4.5.

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

$(A/B) \times 100$  where:

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

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

expressed as a percentage.

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

**“Outcome Pass”** means an Outcome in respect of which the Authority in its absolute discretion determines that all of the relevant qualifying criteria and requirements (in respect of that Outcome) have been satisfied.

**“Outcome Payment”** means the fee as set out in Schedule 4 (Fees and Payment) payable by the Authority to the Contractor on achievement of an Outcome and which shall be payable in accordance with the requirements of the Contract.

**“Outcomes Sample”** shall have the meaning given to it in clause C4.3.

**“Paid Unable To Validate Outcome”** means an Outcome in respect of which the Authority has paid an Outcome Payment to the Contractor but which the Authority was unable to verify that all of the relevant qualifying criteria and requirements in respect of that Outcome have been satisfied prior to making the relevant Outcome Payment.

**“Partial Termination”** shall have the meaning given to it in clause H1.2.

**“Participant”** means an individual in respect of whom the Contractor provides Services who has been Referred to the Contractor by the Authority pursuant to the Contract.

**“Participant Personal Data”** means the Personal Data and Special Categories of Personal Data of each Participant, where such Personal Data and Special Categories of Personal Data is processed by either Party under, or in connection with, this Contract.

**“Participant Start”** and **“Start”** means, in respect of each Participant, the date on which the initial Face to Face meeting between the Contractor and a Participant takes place.

**“Party”** means the Authority or the Contractor, and **“Parties”** shall be construed accordingly.

**“Payment Tail Period”** means the period of 791 days starting immediately after the date of the last Participant Start.

**“Payment Validation Period”** means such period of time as the Authority notifies the Contractor from time to time for which period the Authority shall validate payments made to the Contractor in accordance with clause C4. For the avoidance of doubt such notification may be made before, during or after the Authority takes any action pursuant to clause C4.

**“Performance Improvement Admin Fees”** means the sum of **REDACTED** amounting to an estimate of the cost incurred by the Authority in initiating and managing the Performance Improvement Process.

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

**“Performance Improvement Notice”** means a written notice given by the Authority to the Contractor pursuant to clause B16.

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

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

**“Performance Improvement Plan Failure”** has the meaning set out in clause B16.11.

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

**“Performance Indicator(s)”** means the indicators set out in paragraph 3 of Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators) which shall include but not be limited to the Earnings PI.

**“Performance Indicator Review”** means a review carried out in accordance with paragraph 3 of Schedule 3.

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

**“Performance Indicator Course of Action Notice”** means a notice issued by the Authority in accordance with paragraph 3 of Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators).

**“Performance Measurement Period”** means the period in respect of which the Contractor’s achievement of the RNOs shall be measured by the Authority. Such period could be any Month, 3 Month, 12 Month or other period at the absolute discretion of the Authority.

**“Performance Measurement Point”** means the last day of the Performance Measurement Period or such other day as the Authority in its absolute discretion selects.

**“Permitted Payments”** means payments from the Contractor or any Sub-contractor to the employer of any Participant for the purpose of enabling that employer to provide training or equipment for the Participant which is integral to the ability of the Participant to carry out the role for which he or she is employed.

**“Personal Data”** shall have the same meaning as given in the GDPR.

**“Personal Data Breach”** shall have the same meaning as given in the GDPR.

**“Plans”** means any Action Plan, Employer Support Plan, IPES Exit Activity Plan, IPES Progress Report, BCDR Plan, Diversity & Equality Delivery Plan, Exit Plan, Financial Distress Service Continuity Plan, Implementation Plan, PAT Action Plan, Performance Improvement Plan, Security Plan, Step-Out Plan, Sustainable Development Plan and any other plan referred to in the Contract which the Contractor is required to submit in connection with this Contract.

**“Premises”** means any location from which the Services are delivered; Premises as at the Date of Contract are set out within the Tender a copy of which is at Schedule 1.

**“Pre-Work Support”** means individualised support provided by the Contractor to the Participant, during the period that the Contractor is delivering IPES Services to the Participant, where the Participant is neither employed nor self-employed.

**“Process”** and **“Processing”** shall have the same meaning as given in the GDPR.

**“Processor”** shall have the same meaning as given in the GDPR.

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

**“Programme Contract”** means any IPES Contract entered into pursuant to the Umbrella Agreement between the Authority and the Contractor in relation to IPES, covering any CPA.

**“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 Parties will meet the requirements of GDPR and ensure the protection rights of the Data Subject and may include (without limitation):

- Pseudonymisation and encrypting Personal Data and Special Categories of Personal Data;
- ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- measures to restore the availability and access to Personal Data and Special Categories of Personal Data in a timely manner in the event of a physical or technical incident;
- ensuring that availability of and access to Personal Data and Special Categories of Personal Data can be restored in a timely manner after an incident; and
- regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Schedule 6 (Security Requirements and Plan).

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

**“Pseudonymisation”** shall have the same meaning as given in the GDPR.

**“Purchase Order”** means any purchase order issued by the Authority to the Contractor in relation to the Services, as referred to in Schedule 4.

**“Q&A”** means the response to the Q&A Log (as defined in Schedule 1 (The Services)) published following completion of the Mini-Competition Commercial Dialogue Stage and prior to the Final Offer.

**“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.

**“Records Retention End Date”** has the meaning set out in clause E14.

**“Referral”** means the referral of an individual by the Authority to the Contractor under the Contract with the intention that the individual will become a Participant at the point of Participant Start, and **“Referred”** shall be construed accordingly.

**“Referral Period”** means the period from and including the Referral Period Start Date until the Referral Period End Date when the Authority may make Referrals.

**“Referral Period Start Date”** means 2<sup>nd</sup> December 2019.

**“Referral Period End Date”** means:

- (a) 1<sup>st</sup> December 2023; or
- (b) such later date, no more than two (2) years later than the above date, following any extension of the Referral Period End Date pursuant to clause F3.4.

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

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

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

**“Replacement Services”** means 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 of provision of the Services or the termination of the Contract, whether those services are provided by the Authority internally and/or any third party.

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

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

**“Required Action”** has the meaning set out in clause B19.1.

**“RNOs”** or **“Required Number of Outcomes”** means the number of Outcomes which the Contractor is required to achieve in a Performance Measurement Period as calculated by the Authority on the basis of the Cohort Profiles and tMPLs set out in Schedule 2 and shall include but not be limited to the Lower Threshold Outcome RNO and the Higher Threshold Outcome RNO.

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

**“Security Plan”** means the Contractor’s security plan prepared pursuant to Schedule 6 (Security Requirements and Plan).

**“Security Policy”** means the DWP’s Security Policies and Standards which are more particularly described at Schedule 6 (Security Requirements and Plan).

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

**“Self-Employed Outcome”** means a Lower Threshold Self-Employed Outcome or a Higher Threshold Self-Employed Outcome.

**“Self-Employed Outcome Payment”** means an Outcome Payment payable in respect of a Self-Employed Outcome. Self-Employed Outcome payments are either Lower Threshold Self-Employed Outcome Payments or Higher Threshold Self-Employed Outcome Payments.

**“Sell2Wales”** means the GOV.UK website for opportunities with public sector bodies in Wales.

**“Service Failure”** means a failure by the Contractor to:

- (a) supply any part of the Services in accordance with the Tender Minimum Performance Levels (TMPLs); and/or
- (b) supply any part of the Services in accordance with any of the Customer Service Standards; and/or
- (c) achieve the RNOs.

**“Service Fee”** means the amount set out in Schedule 4 (Fees and Payment).

**“Service Fee Deferral Failure”** means failure by the Contractor to meet one or more of the Customer Service Standards in any CSS Measurement Period.

**“Service Fee Periodic Payment”** means the periodic payment of the Service Fee set out in Schedule 4 (Fees and Payment).

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

**“Services Cessation Date”** means the date 639 days after the last Participant Start under the Contract.

**“Services Delivery Period”** means the period from and including the Commencement Date until the Services Cessation Date during which the Contractor shall supply the Services.

**“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

**“Special Categories of Personal Data”** shall have the meaning given in the GDPR.

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

**“Special Customer Record Participant”** means a Participant whom the Authority designates is subject to Special Customer Record Procedures. Personal Data of Special Customer Record Participants must not be held in the ICT Environment. The Authority will notify the Contractor of any Participants who are Special Customer Record Participants.

**“Special Customer Record Procedures”** means the paper-based processes, as set out by the Authority in the Specification, which must be used by the Contractor when the Contractor submits

any claim for an Outcome Payment, notifies the Authority, or carries out any other process in respect of any Special Customer Record Participant.

**“Specification”** means the Authority’s specification for the Services as set out in Appendix A to Schedule 1 (The Services) (including all amendments to, variations of, or supplements to such specification).

**“Specification Customer Service Standards”** means any customer service standards set out by the Authority in the Specification.

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

**“Staff Vetting Procedures”** means the Authority’s procedures for the vetting of personnel as detailed in the Baseline Personnel Security Standard (available at <https://www.gov.uk/government/publications/guide-for-dwp-contractors-hmg-baseline-personnel-security-standard>), the Provider Guidance, the Security Plan and/or as advised to the Contractor by the Authority from time to time.

**“Start Cohort”** means the Participant Starts recorded on the Authority ICT System in each Cohort Period.

**“Step-In Notice”** has the meaning set out in clause B19.1.

**“Step-In Trigger Event”** means:

- (a) any event which gives the Authority the right to terminate the Contract in accordance with clause H;
- (b) a Default by the Contractor that is materially preventing or materially delaying the supply of the Services or any material part of the Services;
- (c) the Authority considers that the circumstances constitute an emergency despite the Contractor not being in breach of its obligations under the Contract;
- (d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under clause B19 is necessary;
- (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- (f) a need by the Authority to take action to discharge a statutory duty.

**“Step-Out Date”** has the meaning set out in clause B19.5.

**“Step-Out Notice”** has the meaning set out in clause B19.5.

**“Sterling”** and **“£”** means the lawful currency of the United Kingdom from time to time.

**“Structural Funds Regulations”** means the relevant European Union (EU) Structural Fund Regulations as issued and updated from time to time by the EU, as well as any relevant guidance or requirements (including National Eligibility Rules) issued by the Managing Authority. The following Regulations are particularly relevant: Regulation (EU) No 1303/2013; Regulation (EU) No 1304/2013; Commission Delegated Regulation (EU) No 480/2014; Directive 2014/24/EU on public procurement, implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2015 (2015 No. 102) and any amendments or replacements; and European

Community State Aid Rules applicable at the date that the Aid is granted to the recipients of the Aid. The Managing Authority will publish information and guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

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

**“Sub-contractor”** any third party with whom:

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

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

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

**“Supplier Code of Conduct”** means the code of conduct as set out at Schedule 24 (DWP Supplier Code of Conduct).

**“Tender”** means the Contractor’s response to the ITT including but not limited to the Mini-Competition Initial Stage Response and the Final Offer and which, for the avoidance of doubt, includes any post-tender clarifications made by the Contractor to the Authority prior to the Commencement Date (**“Tender Clarification”**). **“Tender Cohort Profiles”** means the tables in the tMPLs set out in Schedule 2 which profile the number of Outcomes that the Contractor predicts it will achieve and the point in time when the Contractor predicts it will achieve such Outcomes, based on (a) an assumed number of Participant Starts and (b) an assumed point in time when each Participant Start will occur.

**“Tender Customer Service Standards”** means any customer service standards proposed by the Contractor in the Tender which must be equal to or greater than the Specification Customer Service Standards.

**“Termination Date”** means the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate.

**“Termination Notice”** means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination.

**“Termination Payment”** shall have the meaning given to it in Schedule 10.

**“Terms and Conditions”** means these terms and conditions of contract and its accompanying schedules and any appendices or annexes to the terms and conditions and schedules which together form part of the Contract.

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

**“tMPL” or “Tender Minimum Performance Levels”** means the performance levels offered by the Contractor in the Final Offer which are set out in Schedule 2 (Tender Minimum Performance Levels (tMPLs), Required Number of Outcomes (RNOs) and Customer Service Standards (CSS)).

**“Total Outcome Fails”** means in respect of Outcome Payments, and for each Payment Validation Period, shall be calculated as follows:

A + B where:

A = the number of Outcome Fails in the Outcomes Sample for that Payment Validation Period (as determined by the Authority)

B = the number of Apportioned Paid Unable to Validate Outcomes in the Outcomes Sample for that Payment Validation Period (as determined by the Authority)

**“Transferee”** means any person to whom the Authority assigns, novates or otherwise disposes of its rights and obligations under the Contract pursuant to Clause F1.7.

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

**“Umbrella Agreement”** means the umbrella agreement dated 12 January 2017 for the provision of employment related support services with contract reference number 2016/S 193-34740 Lot XXXX between the Authority and the Contractor, pursuant to which this Contract has been entered into.

**“Universal Credit”** means the Government initiative of that name.

**“Unsupported Services”** shall have the meaning set out in Clause C10.2.

**“Variation”** means any change to this Contract other than an Operational Change.

**“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.

**“Warm Handback”** means the final Case Conference at the end of the Participant’s Pre-Work Support if the Participant will not be going on to receive In-Work Support.

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

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

- (a) the singular includes the plural and vice versa;
- (b) a reference to “**writing**” or “**written**” includes fax and email;
- (c) a reference to one gender shall include a reference to the other genders;
- (d) references to a clause or schedule are references to the clauses and schedules of this Contract unless otherwise provided;
- (e) reference to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended, extended, consolidated or re-enacted from time to time;
- (f) a reference to this Contract (or any provision of it) or to any other agreement or document referred to in this Contract is a reference to this Contract, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this Contract) from time to time;
- (g) a reference to a Party shall include that Party's successors, permitted assigns and permitted transferees and this Contract shall be binding on, and enure to the benefit of, the Parties to this Contract and their respective successors, permitted assigns and permitted transferees;
- (h) references to any person include all individual, company, body, corporate, corporation, unincorporated association, firm, partnership, or other legal entity or other Government Body;
- (i) the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”; and
- (j) headings are for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **A2 Contract Period**

A2.1 This Contract shall commence on the Commencement Date; and unless terminated at an earlier date in accordance with Clause H or otherwise by operation of law, shall expire on the last day of the Payment Tail Period (“**Contract Period**”).

A2.2 This clause A2 shall be without prejudice to clause E14 (*Records Relating to the Provision of the Services*) and clause H4 (*General Provisions on Expiry or Termination*).

## **A3 Contractor’s Status**

A3.1 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 of this Contract.

## **A4 Authority’s Obligations**

A4.1 Save as otherwise expressly provided in this Contract, 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 (however 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 explicitly 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 (sent by hand, post, registered post or by the recorded delivery service) or through Bravo. 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 and Bravo or sooner where the other Party acknowledges receipt of such letters or item of electronic mail or communication via Bravo or via the Authority ICT System. 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: Department for Work and Pensions  
1 Hartshead Square Sheffield  
S1 2FD

For the attention of: **REDACTED**

Email: **REDACTED**

(b) For the Contractor:

Address: 18c Meridian East  
Meridian Business Park  
Leicester  
LE19 1WZ

For the attention of: **REDACTED**

Email: **REDACTED**

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

## **A6 Representatives of the Parties**

A6.1 The following person is the Authority's Representative:

Name **REDACTED**

Title: **Commercial Lead**

A6.2 The Authority's Representative may approve deputy Authority's Representatives to exercise the Authority's Representative's powers on his/her behalf. The Authority's Representative shall notify the Contractor of any such deputy in accordance with clause A5.

A6.3 The following person is the Contractor's Representative:

Name **REDACTED**

Title: Chief Executive Officer

A6.4 The Contractor's Representative may approve deputy Contractor's Representatives to exercise the Contractor's Representative's powers on his/her behalf. The Contractor's Representative shall notify the Authority of any such deputy in accordance with clause A5.

## **A7 Mistakes in Information**

A7.1 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 by the Authority by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Authority.

## **A8 Conflicts of Interest**

A8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be, directly or indirectly, a financial, economic or other personal interest of the Contractor or any Staff which might be perceived to compromise their impartiality and independence in the context of 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.

A8.2 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, directly or indirectly, a financial, economic or other personal interest of the Contractor or any Staff which might be perceived to compromise their impartiality and independence in the context of the duties owed to the Authority under the provisions of this Contract (and for the avoidance of doubt the provisions of clause H1 shall not apply). 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.

A8.3 Without prejudice to clause A8.1 and A8.2, the Contractor may seek Approval for matters which would otherwise constitute Default of Clause A8 and the Authority will consider whether to grant Approval in its absolute discretion.

A8.4 This clause A8 shall apply during the continuance of this Contract and for a period of two (2) years after its Expiry or termination.

## **A9 Prevention of Fraud**

A9.1 The Contractor shall establish, maintain and enforce and require that its Staff and Sub-contractors establish, maintain and enforce policies and procedures which are adequate to prevent the occurrence of Fraud and/or Irregularity in connection with any Programme Contract.

A9.2 The Contractor shall establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce:

- (a) a system that enables its Staff, Sub-contractors and any person involved in the supply of the Services to report to the Contractor, the commission or suspected

commission of Fraud or Irregularity by any person in connection with this Contract;

- (b) a personnel performance assessment system for any persons involved in the supply of the Services in which personnel performance targets are appropriately set to ensure the commission of Fraud or Irregularity is not encouraged; and
- (c) a segregation of duties between those persons directly involved in supplying the Services to Participants and those persons providing the Authority with Management Information under the Contract in respect of compliance with the Tender Minimum Performance Levels (tMPLs), Customer Service Standards (CSSs) and achievement of the RNOs.

A9.3 To the extent permitted by Law, the Contractor shall notify the Authority immediately in writing if it becomes aware of any Fraud or Irregularity, or has reason to believe that any Fraud or Irregularity has occurred, is occurring, or may occur in connection with any Programme Contract.

A9.4 If the Contractor notifies the Authority under clause A9.3, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority access to the Open Book Data and/or any other relevant records/information in accordance with clause E9.

A9.5 If the Contractor fails to comply with its obligations under this clause A9, the Authority may terminate this Contract by issuing a Termination Notice to the Contractor.

A9.6 If the Contractor, its Staff or its Sub-contractors commits Fraud or does something which constitutes an Irregularity, the Authority may:

- (a) terminate this Contract, and any other Programme Contract, by issuing a Termination Notice to the Contractor; and
- (b) recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including but without limitation, 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 resulting from any such termination.

## **A10 ESF Funding**

A10.1 The Contractor acknowledges that the Authority may at its absolute discretion, whether from the Commencement Date or from any later date prior to the Expiry or termination of this Contract, either fund the delivery of this Contract using ESF monies or use this Contract as match for contracts funded using ESF monies.

A10.2 The Contractor and any Sub-contractors appointed by it shall be bound by the ESF Requirements including but not limited to those set out in Schedule 12 (ESF Requirements).

## **B SUPPLY OF SERVICES**

### **B1 The Services**

- B1.1 The Contractor shall supply the Services during the Services Delivery Period in accordance with the Supplier Code of Conduct and Authority's requirements as set out in the Contract (including for the avoidance of doubt, in accordance with Schedule 1, the Specification and the ESF Requirements) in consideration of the payment of the Fees.
- B1.2 The Contractor shall at all times supply the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- B1.3 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information.
- B1.4 The Contractor shall not be excused from the performance of any of its obligations under this Contract as a result of any misinterpretation of the Authority's requirements and/or any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- B1.5 The Contractor shall implement the Implementation Plan to the satisfaction of the Authority and satisfy the requirement of clause C9.6 with effect from the Commencement Date in accordance with the terms of the Implementation Plan and in accordance with the timescales set out in the Implementation Plan but in any event prior to the Referral Period Start Date and if the Contractor fails to do so the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Contractor.
- B1.6 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date including the dates specified in the Specification and the Implementation Plan.
- B1.7 An obligation on the Contractor:
- (a) to do any act or thing shall include an obligation upon the Contractor to procure that all Sub-contractors and Staff also do such act or thing insofar as they are delivering the Services on behalf of the Contractor;
  - (b) to refrain from doing any act or thing shall include an obligation upon the Contractor to procure that all Sub-contractors and Staff also refrain from doing, such act or thing.
- B1.8 The Contractor shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:
- (a) any cancellation or suspension of the outstanding Service Fee or Referrals pursuant to clause B20 or clause C6;
  - (b) any deferral of the Service Fee by the Authority pursuant to clause C6; or
  - (c) any withholding of Fees by the Authority pursuant to clause H7.3;
  - (d) the existence of an unresolved Dispute; and/or
  - (e) any failure by the Authority to pay any Fees,

unless the Contractor is entitled to terminate this Contract under clause H2 for failure to pay undisputed Fees and does so terminate this Contract.

- B1.9 The Contractor shall not add or remove locations as Premises without having obtained Approval.
- B1.10 The Contractor shall at all times prepare and submit all Plans in a timely manner in good faith and with due skill, care and diligence in a form reasonably capable of acceptance by the Authority including in accordance with the Authority's requirements. Any purported Plan which does not comply with the requirements of this clause B1.10 is not a relevant Plan for the purposes of the relevant clause of this Contract.
- B1.11 The Contractor shall not commence delivery of the Services in respect of a potential Participant prior to having received a Referral in respect of that individual save for where the Contract expressly provides for a particular element of the Services to be performed prior to such Referral.

**B2 Not used**

**B3 No Guarantee of Levels, Values or Exclusivity**

- B3.1 Subject to clause B3.2 and clause B3.3, the Authority will refer prospective Participants to the Contractor during the Referral Period in accordance with the provisions of the Contract (in particular, the Specification).
- B3.2 The Contractor acknowledges and has submitted its Final Offer 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.
- B3.3 The Contractor acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Authority for Services from the Contractor and that the Authority is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

**B4 Provision and Removal of Equipment**

- B4.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- B4.2 The Contractor shall not deliver any Equipment nor provide any work on the Authority's Premises without obtaining Approval.
- B4.3 All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was wholly caused by action or inaction by the Authority. The Contractor shall provide for the haulage or carriage to the Authority's Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.
- B4.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B4.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
  - (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is hazardous, noxious or not in accordance with the Contract; and

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

- B4.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.
- B4.7 The Authority may at its option purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services similar to the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the higher of the fair market value and the net book value.
- B4.8 The Contractor shall ensure that all items of Equipment brought onto the Authority's Premises shall be marked and branded in a manner agreed with the Authority's office manager at the relevant Authority's Premises.
- B4.9 The Contractor shall indemnify and hold harmless the Authority against all actions, proceeding, losses, claims, damages, costs, charges, expenses, and liabilities suffered or incurred by the Authority as a result of or in connection with or caused by, whether directly or indirectly, the Equipment.

## **B5 Manner of Carrying Out the Services**

- B5.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of 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 all applicable Law and Good Industry Practice and deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.
- B5.2 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.
- B5.3 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.
- B5.4 To the extent required by the Authority, the Contractor shall comply and shall ensure that its Staff comply with the provisions of Schedule 8 (Welsh Language Scheme) in providing the Services in the Welsh language.
- B5.5 The Contractor shall at all times comply and shall ensure that its Staff at all times comply with the provisions of Schedule 17 (Life Chances).

## **B6 Participant Complaints**

- B6.1 The Contractor shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Contractor (and/or any of its Sub-contractors) or any aspect of the supply of the Services.
- B6.2 If the dispute between any Participant and the Contractor (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.

- B6.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Contractor shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Contractor for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Contractor or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Contractor or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Contractor (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.
- B6.4 Without prejudice to clauses B6.1 to B6.3, the Authority shall 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 materials or procedures the Contractor uses; or
  - (e) any other matter connected with the performance of the Contractor's obligations under the Contract.
- B6.5 Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold any complaint and take further action in accordance with clause B or clause H of the Contract.
- B6.6 The Contractor shall provide Management Information relating to complaints from Participants in accordance with the requirements of Schedule 20 (Management Information).

## **B7 The Merlin Standard**

- B7.1 The Contractor shall, with effect from the Commencement Date and throughout the Contract Period, comply with the Merlin Standard and key values and principles of behaviour essential for creating healthy, high performing supply chains.
- B7.2 Where the Authority has approved the appointment of a Sub-contractor, the Contractor shall, at its own expense, at all times comply with the Merlin Standard (including for the avoidance of doubt, but without limitation, any mediation and/or arbitration arising out of, or in connection with, the Merlin Standard) any other guidance and/or codes of practice issued by the Authority and shall achieve Merlin Accreditation no later than twelve (12) Months after the Commencement date and shall maintain such Merlin Accreditation throughout the Contract Period.
- B7.3 For the avoidance of doubt and without prejudice to the rest of this clause B7, the Contractor shall comply with all necessary requirements to maintain Merlin Accreditation which may include, without limitation, notifying the relevant Merlin Standard authorisation body if it changes its name or undergoes a Change of Control.
- B7.4 The Contractor acknowledges that all decisions relating to Merlin Accreditation are made by the relevant Merlin Standard authorisation body.
- B7.5 The Contractor consents to the publication by and on behalf of the Authority of all its scores relating to the Merlin Standard.

B7.6 Any breach by the Contractor of this clause B7 shall entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.

**B8 Key Personnel and Key Workers**

B8.1 The Contractor acknowledges that the Key Personnel and Key Workers are essential to the proper supply of the Services.

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

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

- (a) requested to do so by the Authority;
- (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
- (d) the Contractor obtains Approval.

B8.4 The Contractor shall:

- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover);
- (b) ensure that any vacancy for a position occupied by any Key Personnel is not vacant for any longer than ten (10) Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice; and
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services.

B8.5 Any replacements to the Key Personnel shall be subject to Approval.

B8.6 Any replacements to the Key Personnel and Key Workers shall be of at least equal status or of equivalent experience and skills to the Key Personnel and Key Workers being replaced and be suitable for the responsibilities of those persons in relation to the Services.

B8.7 The Authority will not unreasonably withhold its Approval under clauses B8.3 or B8.5. Such Approval shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B8.8 The Contractor shall have a continuing obligation to provide to the Authority an up to date organogram of Key Personnel which shall include contact details of all Key Personnel and show the first point of contact in relation to any issues arising with the Contract and further points of escalation.

## **B9 Contractor's Staff**

- B9.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- B9.2 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 date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B9.3 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 B9.2 shall be final and conclusive.
- B9.4 The Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.
- B9.5 The Contractor shall comply with all applicable Law relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B9.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the 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.
- B9.7 The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B9.8 The Contractor shall further use all reasonable endeavours to ensure that all Staff are legally entitled to work in the United Kingdom. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- B9.9 If the Contractor, in the reasonable opinion of the Authority, fails to comply with any of clauses B9.4, B9.5, B9.6, B9.7 and/or B9.8 the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Contractor.
- B9.10 The Parties agree that the Contractor shall, both during and after the Contract Period, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all Employee Liabilities caused to the Authority whether directly or indirectly in whole or in part by reason of any claims against the Authority by any person where such claim is connected to this Contract whether directly or indirectly.

## **B10 Inspection of Premises**

- B10.1 The Authority shall be entitled to inspect the Contractor's Premises at any time during the Contract Period and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract.

## **B11 Licence to Occupy Premises**

- B11.1 To the extent that any land or Premises is made available from time to time to the Contractor by the Authority in connection with this Contract this shall, subject to the provisions of any additional agreement entered into by the Parties as may be required by the Authority, be made available to the Contractor on a non-exclusive licence basis, and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B11.2 Subject to clause B11.1, the Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B11.3 Subject to clause B11.1, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B11.4 Subject to clause B11.1, the Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.
- B11.5 Subject to clause B11.1, should the Contractor request modifications to the Authority's Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Authority at the Contractor's expense. Ownership of such modifications shall rest with the Authority.

## **B12 Property**

- B12.1 Where the Authority provides Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

- B12.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise in writing within five (5) Working Days of receipt.
- B12.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- B12.4 The Contractor shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- B12.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority in writing within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### **B13 Offers of Employment**

- B13.1 For the duration of the 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.

### **B14 Employee Provisions and TUPE**

- B14.1 The provisions of Schedule 19 (Employee Provisions and TUPE) shall apply on the commencement, during and on termination (or expiry) of this Contract.

#### **Sub-contractors**

- B14.2 In the event that the Contractor enters into any Sub-contract in connection with this Contract, it shall:
- (a) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause B14;
  - (b) ensure that each Sub-contractor complies with such terms;
  - (c) within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly in whole or in part by reason of any action or inaction of a Sub-contractor in relation to such terms; and
  - (d) comply with the provisions of Schedule 15 (Sub-Contractors).

### **B15 RNOs, tMPLs, Customer Service Standards and Performance Indicators**

- B15.1 The Contractor shall ensure that, at all times from the Commencement Date, the Services are supplied in such a manner as to meet or exceed (a) the RNOs as calculated by the Authority from the tMPLs set out in paragraph 1 of Schedule 2; and (b) the Customer Service Standards set out in paragraph 2 of Schedule 2.
- B15.2 In measuring the Contractor's performance against each of the RNOs, the Authority shall have absolute discretion to choose any Performance Measurement Point and any

Performance Measurement Period. In measuring the Contractor's performance against each of the Customer Service Standards, the Authority shall have absolute discretion to choose any CSS Measurement Point and any CSS Measurement Period.

- B15.3 The Authority shall conduct regular formal Contract Performance Review meetings (“**CPRs**”) in accordance with Schedule 3 to monitor, and review, the Contractor's performance against the RNOs, the Customer Service Standards and the Performance Indicators.
- B15.4 The Contractor shall comply with the provisions of Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators) in relation to the review, monitoring and reporting of its performance against the RNOs, the Customer Service Standards and the Performance Indicators.
- B15.5 The Authority's measurement of the Contractor's performance against each of the RNOs, the Customer Service Standards and the Performance Indicators shall continue throughout the period from the Commencement Date until the later of the Services Cessation Date or the end of the Payment Tail Period.
- B15.6 The Authority may, at its sole discretion, elect to make changes to the RNOs and/or the Customer Service Standards and/or the Performance Indicators from time to time. If the Authority elects to make changes to the RNOs and/or the Customer Service Standards and/or the Performance Indicators, the Authority shall notify the Contractor in writing 2 Months prior to such changes becoming effective and shall confirm any Management Information requirements in respect of such changed RNOs and/or changed Customer Service Standards and/or changed Performance Indicators.

## **B16 Performance Improvement Process**

- B16.1 Where the Authority believes that a Service Failure has occurred, the Authority may at any time (in its absolute discretion) elect to give a Performance Improvement Notice to the Contractor in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this clause B16.
- B16.2 If the Authority initiates the Performance Improvement Process in accordance with this clause B16:
- (a) the Contractor acknowledges and agrees that the Authority has the right to invoice the Contractor for Performance Improvement Admin Fees;
  - (b) the Performance Improvement Admin Fees shall be payable by the Contractor within thirty (30) days of the date of the relevant invoice;
  - (c) the Contractor acknowledges and agrees that the Performance Improvement Admin Fees are a fair and conservative reflection of the additional costs incurred by the Authority in the initiation and management of the Performance Improvement Process;
  - (d) the Authority shall not be prevented from charging Performance Improvement Admin Fees for subsequent instances in which it initiates the Performance Improvement Process;
  - (e) any exercise by the Authority of its rights under this paragraph B16.2 shall be without prejudice to any other rights that may arise pursuant to the terms of this Contract.
- B16.3 A Performance Improvement Notice given in accordance with this clause B16 shall indicate:

- (a) that it is a Performance Improvement Notice;
- (b) the Service Failure;
- (c) whether the Contractor is required to pay Performance Improvement Admin Fees;
- (d) the actions the Authority in its absolute discretion requires the Contractor to take to satisfy the Authority that the Contractor can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure where it is capable of remedy; and
- (e) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice.

B16.4 For the avoidance of doubt, the Authority may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Authority's right to do so.

B16.5 For the avoidance of doubt, the Authority shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the Contract pursuant to any other termination rights under the Contract.

B16.6 Within such timescales as notified by the Authority to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall either:

- (a) submit a draft Performance Improvement Plan; or
- (b) inform the Authority that it does not intend to submit a draft Performance Improvement Plan,

in the event that the Contractor either fails to submit a draft Performance Plan or the Contractor informs the Authority that it does not intend to submit a draft Performance Improvement Plan the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Contractor.

B16.7 The Authority shall either approve the draft 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 clause B16.6(a), or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Authority within a period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of its receipt of the Authority's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.

B16.8 The Authority and the Contractor may agree temporary variations to the Contract in relation to the subject matter and nature of the Service Failure as part of the Performance Improvement Plan.

B16.9 Once agreed the Contractor shall immediately implement the Performance Improvement Plan.

- B16.10 If, despite the measures taken under clause B16.7a revised Performance Improvement Plan cannot be agreed within the 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 comments in respect of the Contractor's draft Performance Improvement Plan then the Authority may elect to end the Performance Improvement Process and (a) refer the matter for resolution by the dispute resolution procedure set out in clause I (Disputes and Law); or (b) to terminate the Contract by issuing a Termination Notice to the Contractor.
- B16.11 If a Performance Improvement Plan is agreed between the Parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Contractor fails to rectify the Service Failure and/or undertake all the actions specified by the Authority in the Performance Improvement Notice by the Performance Improvement End Date (a "**Performance Improvement Plan Failure**"), the Authority may, at its absolute discretion, but shall not be obliged to:
- (a) terminate the Contract by issuing a Termination Notice to the Contractor; and/or
  - (b) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Contractor's commercial director (or equivalent) under the dispute resolution procedure set out in clause I (Disputes and Law);
- and for the avoidance of doubt, this clause is without prejudice to any other rights which the Authority has under the Contract.
- B16.12 Any subsequent Service Failure, which the Authority regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this clause B16, which occurs not less than six (6) Months of the Performance Improvement End Date shall entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.

## **B17 Universal Credit**

- B17.1 The Contractor acknowledges that the Authority has altered the benefit system such that Universal Credit replaces a number of existing benefits.
- B17.2 The Contractor is required to support the ongoing implementation of the Universal Credit insofar as it may impact on the Services, including (without limitation):
- (a) assisting in notifying Participants for which it is responsible how the change to Universal Credit will impact the Services as applicable to those Participants; and/or
  - (b) notification to the Authority of the data relevant to the impact of Universal Credit on the Services.
- B17.3 At any time, as a consequence of, or in connection with the implementation of Universal Credit, the Authority reserves the right to:
- (a) review all systems and processes used and implemented by the Contractor in connection with delivery of the Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Authority's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or

- (b) require the Contractor to make such changes to the Contractor's systems and processes as the Authority may determine.

## **B18 Services Improvement**

- B18.1 The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services in accordance with this clause B18, and is required to collaborate with other IPES contractors and sub-contractors for this purpose. As part of this obligation the Contractor shall identify and report to the Authority in accordance with Schedule 3:
- (a) the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Services, and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt;
  - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk;
  - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or
  - (e) changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- B18.2 The Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority requests.
- B18.3 If the Authority wishes to incorporate any improvement identified by the Contractor the Authority shall send the Contractor a Change Request in accordance with the Change Control Procedure.
- B18.4 The Contractor shall comply with the provisions of paragraph 3 of Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators) in relation to the Performance Indicators.

## **B19 Step-In Rights**

- B19.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Contractor (a "**Step-In Notice**") that it will be taking action under this clause B19, either itself or with the assistance of a third party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to clause E4). The Step-In Notice shall set out the following:
- (a) the action the Authority wishes to take and in particular the Services that it wishes to control (the "**Required Action**");
  - (b) the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Contractor's Default;
  - (c) the date on which it wishes to commence the Required Action;

- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Authority will require access to the Contractor's premises and/or the Premises; and
- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Contractor's obligations to supply the Services during the period that the Required Action is being taken.

B19.2 Following service of a Step-In Notice, the Authority:

- (a) may take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) shall keep records of the Required Action taken and provide information about the Required Action to the Contractor;
- (c) shall co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to supply the Services in relation to which the Authority is not assuming control; and
- (d) shall act in a commercially reasonable manner in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this clause B19.

B19.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Contractor shall not be obliged to supply the Services to the extent that they are the subject of the Required Action;
- (b) the Contractor shall not be entitled to any Fees which, in the Authority's reasonable opinion, directly derive from the Authority taking the Required Action; and
- (c) where the Authority has served a Step-In Notice as a result of any Default by the Contractor, the Contractor shall pay to the Authority on demand, and on an indemnity basis, all costs, fees and expenses properly incurred by the Authority in taking the Required Action to the extent that such costs, fees and expenses exceed the Fees that would otherwise have been payable to the Contractor under this Contract in relation to the Services that are subject to the Required Action.

B19.4 If the Contractor demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-achievement of any RNO or a Customer Service Standard that which would have been achieved had the Authority not taken the Required Action,

then the Contractor shall be entitled to an agreed adjustment of the Fees.

B19.5 Before ceasing to exercise its step in rights under this clause B19 the Authority shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:

- (a) the Required Action it has actually taken; and

- (b) the date, which shall be no less than twenty (20) Working Days after the date of the Step-Out Notice, on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Contractor’s ability to resume the provision of the Services and the Contractor’s plan developed in accordance with clause B19.6.

B19.6 The Contractor shall, following receipt of a Step-Out Notice and not less than ten (10) Working Days prior to the Step-Out Date, submit for the Authority’s approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

B19.7 Subject to Clause B19.8, if the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall promptly re-submit the revised plan to the Authority for the Authority’s approval. The Authority shall not unreasonably withhold or delay its approval of the draft Step-Out Plan.

B19.8 In the event that the Parties still fail to agree a draft Step-Out Plan, having followed the steps set out in Clause B19.7, after the third draft Step-Out Plan submitted by the Contractor, the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Contractor.

B19.9 The Contractor shall bear its own costs in connection with any step-in by the Authority under this clause B19, provided that the Authority shall reimburse the Contractor’s reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

- (a) limb (c) of the definition of a Step-In Trigger Event; or
- (b) limbs (d), (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Contractor’s Default).

## **B20 Cancellation or Suspension after a Contractor Termination Event**

B20.1 At any time after a Contractor Termination Event has occurred, the Authority may, by notice to the Contractor:

- (a) cancel or suspend the outstanding Service Fee whereupon it shall immediately be cancelled or suspended; and/or
- (b) cancel or suspend Referrals whereupon Referrals shall immediately be cancelled or suspended; and/or
- (c) require the Contractor to transfer all Participants and any and all information and support to effect a smooth transition and continuation of the Service to Participants to the Authority or such third party as the Authority may direct with effect on and from such date as the Authority may elect whereupon the Contractor shall immediately cease to have any right to receive any Outcome Payments in respect of such Participants.

B20.2 Where the Authority exercises its right to cancel the outstanding Service Fee under clause B20.1(a), any Service Fee Periodic Payment amounts that are being deferred pursuant to clause C6 are also cancelled.

- B20.3 Where the Authority exercises its right to suspend the outstanding Service Fee under clause B20.1(a):
- (a) any Service Fee Periodic Payment amounts that are being deferred pursuant to clause C6 are also suspended; and
  - (b) the operation of clause C6 is not otherwise affected.

**B21 Formal Warning Notice**

- B21.1 Where the Authority considers that there has been Non Service Failure Default by the Contractor and that such Non Service Failure Default is capable of remedy by the Contractor, then the Authority may issue a Formal Warning Notice to the Contractor specifying the Non Service Failure Default and requiring that it be remedied by the Contractor at the Contractor's cost within ten (10) Working Days or such other period of time as the Authority may specify in the Formal Warning Notice. In the event that the Contractor fails to remedy the Non Service Failure Default in accordance with the Formal Warning Notice, this will entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.

**B22 Monitoring of Contract Performance**

- B22.1 The Authority (including any representative of the Authority) shall monitor the Contractor's performance in supplying the Services in accordance with the provisions of Schedule 3 (Contract Performance Reviews, Contractors Systems Assurance & Performance Indicators) or such other requirements as notified by the Authority to the Contractor from time to time.

- B22.2 The Parties shall have regular meetings to monitor and review:

- (a) the performance of the Contract;
- (b) the achievement of the RNOs;
- (c) the achievement of the Customer Service Standards;
- (d) the supply of the Services;
- (e) the Performance Indicators;
- (f) the performance by the Contractor of any of its other obligations under the Contract; and
- (g) any other matter the Parties consider appropriate,

and the Contractor shall comply with the provisions of Schedule 3 (Contract Performance Reviews, Contractors Systems Assurance & Performance Indicators) in this regard. The Authority may organise regular monitoring and spot checks of the Premises at any time to ensure the Contractor is complying with its obligations under the Contract and the Contractor shall co-operate fully, at its own cost, with the Authority. The Authority shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the supply of the Services by the Contractor.

- B22.3 The Authority may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Contractor's performance in supplying the Services and the Contractor will co-operate with the assessor and take all necessary steps to

implement recommendations made. Any changes to any Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with the Change Control Procedure.

- B22.4 The Contractor shall ensure that the Authority (and its authorised representatives) have access to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in clause B22 including putting in place arrangements to permit legal access to information as may be required.
- B22.5 With effect from the Commencement Date, the Authority and the Contractor shall meet at the times and with such frequency as specified in Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators) or as notified by the Authority to the Contractor from time to time. Such meetings shall be convened by the Authority upon the Authority giving written notice to the Contractor.
- B22.6 The Authority may monitor the Contractor's (and any Sub-contractor's) performance in supplying the Services to assess, amongst other things, compliance with Law, including without limitation in the fields of environmental, equality, social, labour and competition law. Where (in the opinion of the Authority), the Contractor (or any Affiliate or any of the Contractor's Group) has or may have engaged in any agreement, arrangement, practice or conduct which would amount to an infringement of Law, including without limitation in the fields of environmental, social, labour and competition law, without prejudice to any other rights or remedies that the Authority has under the Contract the Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Contractor.

## **C PAYMENT AND FEES**

### **C1 Fees**

- C1.1 In consideration of the Contractor carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Fees to the Contractor in accordance with the provisions of this clause C and Schedule 4 (Fees and Payment) (and for the avoidance of doubt where there is any conflict and/or ambiguity between the two the provisions of this clause C shall prevail) via a self-billing process approved by HMRC.
- C1.2 The Parties acknowledge and agree that the Fees shall be the total amount payable by the Authority to the Contractor under or in relation to the Contract.
- C1.3 If the Authority fails to pay any undisputed Fees properly invoiced under this Contract, the Contractor shall have the right to charge interest on the overdue amount at a rate of 0.01%, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- C1.4 The Authority shall have no obligation to pay any Fees to the Contractor after the last day of the Payment Tail Period.

### **C2 Service Fee**

- C2.1 Subject to clause B19.3, B20.1 and clause C6 and provided that the requirements of Schedule 4 (Fees and Payment) are met the Authority shall pay the Service Fee to the Contractor. The Authority shall make such payment in accordance with the provisions of Schedule 4 (Fees and Payment) and paragraphs 5.3 to 5.5 (Service Fee) of the Specification.

### **C3 Outcome Payments**

#### *General Provisions*

- C3.1 In order to make a claim for an Outcome Payment the Contractor shall:
- (a) input such information as specified by the Authority in the Specification onto the Authority ICT System in the format specified by the Authority; or
  - (b) where the Participant is a Special Customer Record Participant, follow the Special Customer Record Procedures.
- C3.2 The Contractor agrees and acknowledges that payment of an Outcome Payment by the Authority does not constitute confirmation by the Authority that the Outcome to which it relates is valid and is without prejudice to any of the Authority's rights under this Contract or otherwise to check, validate or otherwise verify the validity of such Outcome.
- C3.3 The Contractor agrees and acknowledges it shall be entitled to receive no more than one Lower Threshold Outcome Payment and one Higher Threshold Outcome Payment in respect of each Participant regardless of whether the Participant meets the qualifying criteria for more than one Outcome.
- C3.4 Without prejudice to anything else in this clause C, the Authority shall have no obligation to make any Outcome Payments to the Contractor:
- (a) where an Employed Outcome is identified by the Authority after the end of the Payment Tail Period, or

- (b) where a Self-Employed Outcome is identified by the Authority after the end of the Payment Tail Period.

- C3.5 Subject always to clause C3.2 and clause C4, the Authority shall pay Outcome Payments no later than a period of thirty (30) calendar days from the date on which the Authority has determined that the qualifying criteria and requirements for an Outcome have been met. Payment will be made at the rate(s) set out in Schedule 4. The Authority may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.
- C3.6 The Contractor shall notify details of the Contractor's bank account and address to the Authority via the Authority ICT System. The Authority shall send notifications of Fees paid to that address.
- C3.7 At any time and/or times (including, for the avoidance of doubt, at any time and/or times before and/or after payment has been made by the Authority to the Contractor) the Authority shall be entitled to seek to establish the validity of any Outcome. At all times the Contractor shall provide all necessary assistance as requested by the Authority to enable the Authority to establish the validity of any Outcome.
- C3.8 When the Authority has made an Outcome Payment to the Contractor in respect of an Outcome, the Authority shall refuse any requests of the Contractor to remove the claim for any such Outcome Payments from the Authority ICT System, except in exceptional cases where the Authority determines, in its sole discretion, are appropriate circumstances to permit such a request.
- C3.9 The Contractor hereby agrees to use its best endeavours to procure, if required by the Authority at any time, the written consent of the Participant for the Authority to contact the Participant's employer and the Contractor shall retain copies of such written consent or, where it has been unable to obtain such consent, detailed records of the steps it has taken to attempt to procure such consent, as part of the Contractor's record keeping obligations under the Contract including, without limitation, clauses A10 (ESF Funding) and E9 (Audit and the National Audit Office and Open Book Data). The Authority reserves the right to inspect such written consent and/ or such detailed records from time to time.
- C3.10 Where the Specification makes provision for the exclusion of Non-Qualifying Earnings:
  - (a) the Contractor acknowledges and agrees that no Outcome will arise and therefore no Outcome Payment will be payable in respect of a Non-Qualifying Participant, regardless of whether they otherwise meet the qualifying criteria for an Outcome; and
  - (b) where the Participant is employed by the Employment Business, the Contractor must notify the Authority of the circumstances of that employment at least five (5) Working Days before the Participant receives their first payment from the Employment Business.

#### *Employed Outcomes*

- C3.11 The Authority will identify Employed Outcomes:
  - (a) using HMRC PAYE Data and other information it holds; or
  - (b) where the Participant is a Special Customer Record Participant, through the evidence the Contractor provides as part of the Special Customer Record Procedures.

Subject to clause C3 and clause C4 and provided that the requirements of Schedule 4 (Fees and Payment) are met, the Authority shall pay an Employed Outcome Payment to the Contractor in respect of each Employed Outcome.

C3.12 Where the Participant is a Special Customer Record Participant the Contractor shall notify the Authority of Employed Outcomes using the Special Customer Record Procedures, and within both:

- (a) 90 days of the conditions for an Employed Outcome being met; and
- (b) 700 days of the Participant Start for the Participant to whom the Employed Outcome applies.

Where the Participant is a Special Customer Record Participant the Authority shall have no obligation to pay any Employed Outcome Payment in respect of any Employed Outcome which is not notified to it in compliance with this clause C3.12.

*Self-Employed Outcomes*

C3.13 The Contractor shall, within five (5) Working Days of a Participant commencing an activity which may lead to a Self-Employed Outcome, notify the Authority of the start date of the Participant's relevant activity by:

- (a) inputting such information onto the Authority ICT System as the Authority specifies from time to time; or
- (b) where the Participant is a Special Customer Record Participant, by following the Special Customer Record Procedures.

C3.14 The Contractor shall notify the Authority of Self-Employed Outcomes, within both:

- (a) 90 days of the conditions for a Self-Employed Outcome being met; and
  - (b) 700 days of the Participant Start for the Participant to whom the Self-Employed Outcome applies;
- by
- (i) inputting such information onto the Authority ICT System as the Authority specifies from time to time, or
  - (ii) where the Participant is a Special Customer Record Participant, following the Special Customer Record Procedures.

The Authority shall have no obligation to pay any Self-Employed Outcome Payment in respect of any Self-Employed Outcome which is not notified to it in compliance with this clause C3.14.

C3.15 Subject to the Contractor notifying the Authority of each Self-Employed Outcome in accordance with the Contract including without limitation, this Clause C3, the Authority shall pay to a Contractor a Self-Employed Outcome Payment in respect of each valid Self-Employed Outcome.

C3.16 The Contractor shall only notify the Authority of a Self-Employed Outcome where:

- (a) it has carried out sufficient checks to ensure that such Self-Employed Outcome meets all of the relevant qualifying criteria and requirements as detailed in the Specification; and

- (b) it holds sufficient and reliable evidence of such criteria and requirements being met in accordance with the Contract.

C3.17 The Contractor shall only have validly notified the Authority of a Self-Employed Outcome where the Contractor:

- (a) inputted the information onto the Authority ICT System which the Authority specified, or
- (b) where the Participant is a Special Customer Record Participant, followed the Special Customer Record Procedures.

The Contractor must have submitted the appropriate supporting information in accordance with clause C3. For the avoidance of doubt, the Authority will be unable to consider and verify eligibility of any Self-Employed Outcome until the Contractor has validly notified the Authority thereof.

## **C4 Validation & Extrapolation of Outcomes**

### *Pre-payment validation*

C4.1 Before payment of any Outcome Payment by the Authority to the Contractor, in respect of each Outcome Payment, the Authority may undertake a check(s) to verify the validity of such Outcome. For the avoidance of doubt, where the Authority has undertaken any check(s) pursuant to this clause C4.1 it reserves the right to include such Outcome Payment in the relevant Outcomes Sample for the Payment Validation Period in which it falls.

C4.2 The Authority shall be entitled to reject any claims for payment made by the Contractor which fail any check(s) undertaken by the Authority pursuant to clause C4.1 without undertaking any further check(s).

### *Post-payment validation*

C4.3 At any time during the Contract Period, for any Payment Validation Period the Authority may carry out a check(s) of all, or a sample, of the Outcomes (i) under this Contract only; or (ii) under all Programme Contracts, which have been made under Contracts or all Programme Contracts (as the case may be) during such Payment Validation Period (each such sample hereinafter being referred to as follows: an “**Outcomes Sample**”).

C4.4 For each Outcomes Sample:

- (a) the Authority will determine the types of Outcomes from which the Authority will draw the sample;
- (b) the Authority will determine whether the sample is drawn from this Contract only or from all Programme Contracts;
- (c) the Authority will determine the sample size;
- (d) the Authority will determine the Payment Validation Period and may, for the avoidance of doubt, include any period of time:
  - (i) during which the Authority carried out any check(s) in respect of Outcome Payments pursuant to clause C4.1; or
  - (ii) which formed part of a Payment Validation Period for any other Outcomes Sample;

- (e) the Authority may draw a number of random samples from the relevant population of Outcomes across the relevant Payment Validation Period which random samples shall together constitute an Outcomes Sample;
- (f) the sample size may vary between Outcomes Samples depending on the numbers of Outcome Payments in the types of Outcomes from which the sample is drawn during the Payment Validation Period;
- (g) the sample size may vary between Outcomes Samples depending on whether the Outcomes from which the sample is drawn during the Payment Validation Period are drawn from this Contract only or from all Programme Contracts;
- (h) the sample may include Outcomes in respect of which the Authority undertook a check(s) pursuant to clause C4.1, in which case the Authority may rely upon any evidence relating to that Outcome generated through such checks in order to verify the validity of such Outcome pursuant to clause C4.3 without carrying out any additional check(s) in respect of that Outcome; and
- (i) the sample may include Outcomes which were included in any other Outcomes Sample pursuant to clause C4.3, in which case the Authority may rely upon any evidence relating to that Outcome generated through such checks in order to verify the validity of such Outcome pursuant to clause C4.3 without carrying out any additional check(s) in respect of that Outcome.

C4.5 In respect of each Outcomes Sample, where any error or over claim has been identified by the Authority (in its sole opinion) in an Outcomes Sample, the Authority shall be entitled to:

- (a) recover in full from the Contractor the amount or value of all Outcome Fails;
- (b) determine (in its sole discretion) the Outcome Error Rate;
- (c) extrapolate the Outcome Error Rate across all of the Outcome Payments which have been paid by the Authority to the Contractor (in respect of any Programme Contract) in that Payment Validation Period to produce an aggregate value of monies overpaid (the “**Outcome Aggregate Error Amount**”); and
- (d) recover in full from the Contractor a sum or sums equal to the Outcome Aggregate Error Amount less the sum of any monies recovered by the Authority pursuant to clause C4.5(a).

#### *General*

C4.6 In checking either an Outcome Payment pursuant to clause C4.1 or an Outcomes Sample pursuant to clause C4.3, the Authority may (but shall not be obliged to):

- (a) carry out checks of data pertaining to the Participant arising out of or in connection with the Contract against HMRC PAYE Data;
- (b) carry out checks of data pertaining to the Participant arising out of or in connection with the Contract against the Authority’s data;
- (c) contact the Participant;
- (d) contact the Participant’s employer; and/or
- (e) carry out checks of data pertaining to the Participant from such other sources as the Authority may reasonably determine from time to time.

- C4.7 For the avoidance of doubt, the Authority's rights in this clause C4 shall be without prejudice to any other rights or remedies that the Authority has under the Contract (including for the avoidance of doubt any rights of set-off pursuant to clause C5 (Recovery of Sums Due)).
- C4.8 The Contractor shall not be entitled to the Lower Threshold Self-Employed Outcome Payment in respect of a Participant where:
- (a) the Contractor has claimed the Lower Threshold Self-Employed Outcome Payment in respect of that Participant on three separate occasions; and
  - (b) those three claims failed any check(s) undertaken by the Authority pursuant to this clause C4.
- C4.9 The Contractor shall not be entitled to the Higher Threshold Self-Employed Outcome Payment in respect of a Participant where:
- (a) the Contractor has claimed the Higher Threshold Self-Employed Outcome Payment in respect of that Participant on three separate occasions; and
  - (b) those three claims failed any check(s) undertaken by the Authority pursuant to this clause C4.
- C4.10 The Contractor shall not be entitled to the Lower Threshold Employed Outcome Payment in respect of a Special Customer Record Participant where:
- (a) the Contractor has claimed the Lower Threshold Employed Outcome Payment in respect of that Special Customer Record Participant on three separate occasions; and
  - (b) those three claims failed any check(s) undertaken by the Authority pursuant to this clause C4.
- C4.11 The Contractor shall not be entitled to the Higher Threshold Employed Outcome Payment in respect of a Special Customer Record Participant where:
- (a) the Contractor has claimed the Higher Threshold Employed Outcome Payment in respect of that Special Customer Record Participant on three separate occasions; and
  - (b) those three claims failed any check(s) undertaken by the Authority pursuant to this clause C4.

## **C5 Recovery of Sums Due**

- C5.1 The Authority may apply each Ineligible Outcome to reduce the number of Outcomes achieved in respect of the Start Cohort from which such Ineligible Outcome was achieved and the Contractor shall pay an amount to the Authority in respect of each Ineligible Outcome on demand which is equal to each Outcome Payment made in respect of an Ineligible Outcome.
- C5.2 The Authority may recover any amount due and payable under clause C5.1 in such instalments and at such times as it may decide in its sole discretion (i) during the Contract Period or (ii) during the twelve (12) Months immediately following the end of the Contract Period. The Parties acknowledge and agree that the Authority may recover an instalment equal to all or part of such amount through the Authority ICT System at one time (for the avoidance of doubt, including by way of set-off) and may subsequently at any time during the Contract Period demand one or more balancing payments from the

Contractor if the instalment recovered through the Authority ICT System is less than the amount due and payable to the Authority pursuant to clause C5.1 until such time as the Authority has received the full amount due and payable pursuant to clause C5.1.

- C5.3 Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C5.4 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 default 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.
- C5.5 The Contractor shall make any payments due to the Authority without any deduction whether by way of any 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.
- C5.6 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.

## **C6 Deferral and Forfeit of Service Fee**

- C6.1 Without prejudice to any other right or remedy available to it under this Contract (including without limitation any rights it may have under either clause B20, G1.6 or clause H1), provided by Law, in equity, or otherwise, the Authority may:
- (a) defer payment of fifty percent (50%) of all Service Fee Periodic Payments, in accordance with clause C6.5; and
  - (b) forfeit any Service Fee Periodic Payments that have been deferred for a period of six (6) Months or more, in accordance with clause C6.9.
- C6.2 The Contractor shall ensure that at all times the Customer Service Standards are met or exceeded.
- C6.3 Failure by the Contractor to meet one or more of the Customer Service Standards in any CSS Measurement Period shall constitute a Service Fee Deferral Failure.
- C6.4 The Authority will carry out a CSS Measurement Review at each CSS Measurement Point to review whether and the extent to which, during the relevant CSS Measurement Period the Contractor has met or exceeded the Customer Service Standards in order to determine whether there has been a Service Fee Deferral Failure.
- C6.5 If, at a CSS Measurement Point, the Authority in its absolute discretion is satisfied that, during the relevant CSS Measurement Period there has been a Service Fee Deferral Failure, then the Authority shall have the right to defer payment of any Service Fee Periodic Payment which is due for payment after that CSS Measurement Point. The amount of the Service Fee Periodic Payment deferred shall be in accordance with clause C6.1(a).
- C6.6 If the Authority wishes to exercise its right to implement a deferral of the Service Fee Periodic Payment, the Authority shall issue a notice (a “**Deferral Notice**”). Such deferral Notice shall set out the CSS Measurement Point, the relevant CSS Measurement Period, the Service Fee Deferral Failure and the date from which deferral shall commence.

- C6.7 Deferral of Service Fee Periodic Payments shall continue until, at a CSS Measurement Point which follows the commencement of such deferral, the Authority is satisfied that during a CSS Measurement Period which follows the commencement of such deferral there has not been a Service Fee Deferral Failure.
- C6.8 When deferral of the Service Fee Periodic Payments ceases all Service Fee Periodic Payment amounts which:
- (a) have been deferred;
  - (b) have not been forfeited in accordance with clauses C6.9 to C.13;
  - (c) have not been cancelled in accordance with clause B20; and
  - (d) are not suspended in accordance with clause B20;
- will become payable.
- C6.9 If deferral of Service Fee Periodic Payments is ongoing for a period of six (6) Months or more then the Authority shall have the right to forfeit any Service Fee Periodic Payments that have been deferred during that period.
- C6.10 If the Authority wishes to exercise its right to forfeit Service Fee Periodic Payments in accordance with clause C6.9, the Authority shall issue a notice (a "**Forfeiture Notice**"). Such Forfeiture Notice shall set out the Service Fee Periodic Payments that are forfeited.
- C6.11 The continuing deferral of Service Fee Periodic Payments, in accordance with clause C6.7, is not affected by the exercise of the right to forfeit Service Fee Periodic Payments in accordance with clause C6.9.
- C6.12 If deferral of Service Fee Periodic Payments is ongoing on the Referral Period End Date all Service Fee Periodic Payments which have been deferred are forfeited.
- C6.13 The Contractor does not have any right to receive, and the Authority does not have any obligation to pay, any Service Fee Periodic Payments that are forfeited in accordance with clauses C6.9 to C6.12.

## **C7 Currency other than Sterling**

- C7.1 Any requirement of Law to account for the Services in any currency other than Sterling (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Authority.
- C7.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C7.1 by the Contractor.

## **C8 Third Party Revenue**

- C8.1 The Contractor may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the Approval of the Authority.
- C8.2 Neither the Contractor nor its agents or Sub-contractors, shall levy any charge, fee or any other sum on the Participants in connection with the Services without Approval which may be granted or refused at the Authority's sole discretion.

## **C9 VAT**

- C9.1 The Contractor shall add VAT to the Fees at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following an eligible claim for VAT payment being notified by the Contractor.
- C9.2 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities (including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time) caused to the Authority whether directly or indirectly in whole or in part by reason of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract.
- C9.3 Without prejudice to clause C9.2, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to:
- (a) assess the VAT rate(s) and tax liability arising out of or in connection with the 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 HMRC.
- C9.4 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;
  - (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 does not provide accurate information to the Authority for it to calculate the VAT on an invoice produced by the self-billing process, the Authority will not be liable to pay any VAT for that invoice either when it falls due, or at any later date. Further, in this scenario C9.4(d), the Contractor shall be obliged to repay any overpayment by the Authority on demand.
- C9.5 The Contractor acknowledges that the Authority has advised the Contractor that the Contractor should seek specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract's VAT status with HMRC.
- C9.6 Without prejudice to clause C9.2 and C9.3, the Contractor shall comply with the Law governing self-billing contracts including, without limitation, as more particularly described in HMRC Notice 700/62 it shall:
- (a) prior to the Referral Period Start Date, confirm the rate(s) of VAT that the Authority should apply to each part of the funding model used in the Contract on the Commencement Date and on each anniversary thereof;

- (b) enter into an annual self-billing agreement with the Authority on or around the Commencement Date and on each anniversary thereof, for the duration of the Contract (a template of the current version of which is set out in Appendix 2 to Schedule 4 (Fees and Payment)); and
- (c) complete the VAT confirmation documentation as required by the Authority (a template of the current version of which is set out in Appendix 1 to Schedule 4 (Fees and Payment)).

## **C10 Methods of Payment**

- C10.1 The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment and will use reasonable endeavours to give thirty (30) days' Notice to the Contractor of any change to the method of payment. All payments of Fees are conditional upon the Contractor providing the Services in accordance with the terms of the Contract.
- C10.2 Without prejudice to the rest of this clause C, Outcome Payments are made on the condition that the Contractor's entitlement to such payments can be verified on request by the production of the records which the Contractor is required to hold and/or maintain under this Contract (including as specified in the Specification). The Authority shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that no delivery of Services has taken place and that any such purported delivery of Services constitutes "Unsupported Services". The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Services from the Contractor and the Contractor shall repay such sums on demand.

## **D STATUTORY OBLIGATIONS AND REGULATIONS**

### **D1 Prevention of Bribery and Corruption**

- D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1. For the purposes of this clause D1, a prohibited act is committed when the Contractor or any Staff:
  - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:
    - (i) induce that person to perform improperly a relevant function or activity; or
    - (ii) reward that person for improper performance of a relevant function or activity;
  - (b) 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) 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, 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 establish, maintain and enforce and require that its Sub-contractors establish, maintain and enforce an anti-bribery policy and procedures which are adequate to prevent any Staff from committing any prohibited acts as set out in clause D1.1 and shall keep appropriate records of its compliance with its obligations and make such records available to the Authority upon request.
- D1.5 To the extent permitted by Law, 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 Staff has:
- (a) been subject to an investigation or prosecution which relates to an alleged prohibited act in clauses D1.1 or D1.2;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a prohibited act as set out in clause D1.1 or D1.2; or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this 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.
- D1.6 If the Contractor notifies the Authority that it suspects or knows that there may be a Default of clauses D1.1 or D1.2, the Contractor must respond promptly to the 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 clauses D1.1 or D1.2, the Authority may;
- (a) require the Contractor to remove from performance of this Contract:
    - (i) any Staff; and/ or
    - (ii) anyone acting on the Contractor's behalf
 whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Contract.
- D1.8 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against:

- (a) all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly in whole or in part by reason of the termination of this Contract pursuant to clause D1.7, including the costs 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 clauses D1.1 or D1.2.

D1.9 Despite clause I (Disputes and Law), any dispute relating to:

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

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

D1.10 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.

## **D2 Discrimination**

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

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.

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

## **D3 The Contracts (Rights of Third Parties) Act 1999**

D3.1 Subject to clause D3.2 and to clause E4.11, 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.

D3.2 The provisions of each of Paragraph 6.9 of Schedule 10 (Exit Plan), Paragraphs 3.1 to 3.3 of Part B, Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 19 and the Pensions Annex of Schedule 19 (Employee Provisions and TUPE) confer benefits on persons named in such provisions other than the parties to this Contract and are intended to be enforceable by those third party beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999.

D3.3 Notwithstanding clause D3.1, the parties to this Contract may, without the consent of any third party vary, terminate or rescind this Contract or waive any rights under it, notwithstanding that this may extinguish or alter the benefits or rights conferred by clause D3.1.

## **D4 Environmental Requirements**

- D4.1 In delivering the 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;
  - (c) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and
  - (d) any purchase of tyres carrying a label as specified in Annex II to Regulation (EC) Number 1222/2009 of the European Parliament and of the Council of 25 November 2009 (on the labelling of tyres with respect to fuel efficiencies and other parameters) has the highest fuel energy efficiency class (as defined by that Regulation).
- D4.3 The new purchases that the Contractor makes in clause D4.2 should be cost-effective and technically suited to the 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.
- D4.4 The Contractor shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

## **D5 Health and Safety**

- D5.1 The Contractor shall promptly notify the 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 Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc. 1974 and any other Laws relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D5.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

## **D6 Tax Compliance**

D6.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

D6.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- (b) promptly provide to the Authority:
  - (i) details of the steps taken by the Contractor and any steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may require.

## **D7 Termination Rights due to any Occasion of Tax Non-Compliance**

D7.1 The Authority may terminate the Contract by issuing a Termination Notice to the Contractor in the event that:

- (a) the warranty given by the Contractor pursuant to clause D6.1 is materially untrue or misleading;
- (b) the Contractor does not notify the Authority of any Occasion of Tax Non-Compliance as required by clause D6.2; or
- (c) the Contractor notifies the Authority of any Occasion of Tax Non-Compliance as required by clause D6.2 but such steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that the Contractor notifies to the Authority are not acceptable in the reasonable opinion of the Authority.

## **D8 Supplier Code of Conduct**

D8.1 The Contractor shall at all times during the term of the Contract comply with the Supplier Code of Conduct.

D8.2 Any breach by the Contractor of this clause D8 shall entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.

## **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 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 Contractor's Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than three (3) Monthly intervals.
- 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.
- 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 or Personal Data and the Contractor shall do so as soon as practicable but not later than ten (10) calendar days following the Authority giving notice to the Contractor; and/or
  - (b) itself restore or provide for the restoration of the Authority Data or Personal Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the 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 offshore 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 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 entitle the Authority to terminate this Contract.

E1.12 In the event of an Insolvency Event, 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 and Participant Personal Data/Information; in accordance with the Authority instructions;
- (b) return all such records 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 paragraph have been completed.

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

E1.14 In the event the Contractor is put into Administration in any of the ways as outlined in which falls within the definition of Insolvency Event or otherwise the Authority will work closely with the Administrator to ensure the Contractor is able to maintain Authority, Participant and other records they have created and held in accordance with 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 up the Contractor. 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 Approval obtained. Where the Contract is assigned or novated with the Authority's Approval, the contractor must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

E1.16 In the event that through any Default of the Contractor, data transmitted or processed in connection with the 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.

## **E2 Protection of Personal Data and Special Categories of Personal Data**

E2.1A 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.

E2.1B The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a Controller in respect of the Processing of the Personal Data, under this Contract, as follows:

E2.1C The Parties agree that they shall be Joint Controllers of the Contract Personal Data listed in Schedule 23 Annex B Part 1 (the "Joint Personal Data").

E2.1D The Parties shall act as independent Controllers in relation to the Contract Personal Data listed in Schedule 23 Annex B Part 2.

## E2.2 Controller Obligations

E2.2A Each Party shall in relation to the Processing of Personal Data comply with its respective obligations under the Data Protection Legislation.

E2.2B Without limiting the generality of the obligation set out in clause E2.2A, in particular, each Party shall ensure it is not subject to any prohibition or restriction which would:

- (a) prevent or restrict it from disclosing or transferring the Participant Personal Data to the other Party, as required under this Contract;
- (b) prevent or restrict it from granting the other Party access to the Participant Personal Data, as required under this Contract; or
- (c) prevent or restrict either Party from Processing the Participant Personal Data, as envisaged under this Contract.

E2.2C Each Party shall ensure that:

- (a) all fair processing notices have been given (and/or as applicable, explicit consents obtained) and are sufficient in scope to enable each Party to Process the Contract Personal Data as required in order to obtain the benefits of its rights and to fulfil its obligations under this Contract in accordance with the Data Protection Legislation, which shall include notification to the Participants that their Personal Data may be shared by the Authority with the Contractor and by the Contractor with the Authority and with any other third party organisations envisaged within the Contract;
- (b) appropriate Protective Measures are in place to ensure and be able to demonstrate that Processing is performed in accordance with the GDPR.

E2.2D The Contractor shall ensure that it and its Staff take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and Special Categories of Personal Data and ensure that they:

- (a) are aware of and comply with the Contractor's duties under this clause E2;
- (b) are subject to appropriate confidentiality undertakings including between the Contractor and any Processor and Sub-Processor;
- (c) are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data;

- (d) only Process any Contract Personal Data for the purpose of performing its obligations and exercising its rights under the Contract;
- (e) do not share any Authority Data and /or Contract Personal Data with any third party for purposes not arising from the performance of the Services without Approval unless such data sharing is expressly permitted by the Contract or required by Law;
- (f) only process any HMRC PAYE Data for purposes which directly relate to the Authority's functions pursuant to section 127 of the Welfare Reform Act 2012.

### E2.3 Controller Obligations in relation to the Joint Personal Data

In relation to Joint Personal Data, additionally, each Party shall:

- (a) be responsible for the accuracy of any Personal Data and Special Categories of Personal Data which originates with itself at the point in time that any such Personal Data becomes Joint Personal Data;
- (b) notify the other Party promptly, and in any event within forty-eight hours (48) of receipt of any Data Subject Access Request or any correspondence or communication (whether written or verbal) from the Information Commissioner's Office ("ICO Correspondence"), in relation to the Processing of Joint Personal Data, under or in connection with this Contract, and together with such notice, provide a copy of such request or ICO Correspondence to the other Party. Each Party shall also provide the other Party with all reasonable co-operation and assistance as reasonably required by the other Party in relation to any such request or ICO Correspondence;
- (c) notify the other Party in writing without undue delay, and in any event, within twenty-four (24) hours, about any actual or suspected Personal Data Breach in relation to the Personal Data Processed under and in accordance with this Contract and shall, within such timescale to be agreed by the parties (acting reasonably and in good faith):
  - (i) implement any measures necessary to restore the security of compromised Joint Personal Data; and
  - (ii) support the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects.

### E2.4 Processor Obligations where the Contractor is a Processor

E2.4A Notwithstanding the general obligations in clauses E2.1A, E2.1B, E2.1C and E2.1D, where the Contractor is a Processor, the Contractor shall as Processor meet the obligations in clauses E2.4B – E2.4N for Personal Data and Special Categories of Personal Data.

E2.4B The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

E2.4C The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include (without limitation):-

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects;
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data and Special Categories of Personal Data; and
- (e) upon request provide a copy of the record of the processing of any Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.

E2.4D The Contractor shall, in relation to any Personal Data and Special Categories of Personal Data processed or to be processed in connection with its obligations under this Contract:

- (a) process that Personal Data and Special Categories of Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Schedule 12, unless the Contractor is required to process the Personal Data and Special Categories of Personal Data otherwise by Law. In such case, the Contractor shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measure) having taken account of the:
  - (i) nature of the Personal Data and Special Categories of Personal Data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that it and its Staff:
  - (i) do not process Personal Data and Special Categories of Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data and Special Categories of Personal Data to meet the Contractor's Processor duties under the Contract and Data Protection Legislation and only collect Personal Data and Special Categories of Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purpose(s) for which the Data Subject's Personal Data and Special Categories of Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Contractor shall not modify the format agreed with the Authority without the prior written consent of the Authority;
  - (ii) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and Special Categories of Personal Data and ensure that they:
    - (A) are aware of and comply with the Contractor's duties under this clause E2;

- (B) are subject to appropriate confidentiality undertakings including between the Contractor and any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and Special Categories of Personal Data and do not publish, disclose or divulge any of the Personal Data and Special Categories of Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Contractor shall give notice to the Authority of any disclosure of Personal Data and Special Categories of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data and Special Categories of Personal Data; and
- (d) not transfer Personal Data and Special Categories of Personal Data outside of the European Economic Area or International Organisation unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:
- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data and Special Categories of Personal Data that is transferred; and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data and Special Categories of Personal Data;
- (e) at the written direction of the Authority, delete or return Personal Data and Special Categories of Personal Data (and any copies of it) using a secure method of transfer to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data and Special Categories of Personal Data;
- (f) permit the Authority or the Authority's Representative to inspect and audit the Contractor's Processor activities (and/or those of its Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify that the Contractor is in full compliance with its obligations under the Contract.

E2.4E Subject to clause E2.4F, the Contractor shall notify the Authority immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data and Special Categories of Personal Data processed under this Contract;
  - (e) receives a request from any third party for disclosure of Personal Data and Special Categories of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Protection Breach or a Data Loss Event.
- E2.4F The Contractor's obligation to notify the Authority under clause E2.4E shall include the provision of further information to the Authority promptly.
- E2.4G Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E2.4E (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request promptly;
  - (c) the Authority, at its request, with any Personal Data and Special Categories of Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Authority following any Data Loss Event and/or Data Protection Breach to enable the Authority to mitigate the impact of the Personal Data Breach, to ensure that Personal Data Breaches of the same nature do not occur again, to notify the competent regulatory body of the Personal Data Breach and/or to notify the Data Subjects of the Personal Data Breach;
  - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- E2.4H The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with its Processor obligations under this clause E2. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines the processing is not occasional;
  - (b) the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data and Special Categories of Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.4I The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor. The Contractor shall keep a record of any processing of Personal Data and Special Categories of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.4J The Contractor shall designate a Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.

- E2.4K Before allowing any Sub-processor to process any Personal Data and Special Categories of Personal Data under this Contract, the Contractor must:
- (a) notify the Authority in writing of the intended Sub-processor and processing;
  - (b) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data and Special Categories of Personal Data under the Contract; and
  - (c) enter into a written contract with the Sub-processor which reflects the terms set out in this clause E2 such that they apply to the Sub-Processor as a Processor.
- E2.4L The Contractor shall remain fully liable for all acts or omissions of any Sub-processor and Staff.
- E2.4M The Authority may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme under Article 43 of the GDPR (which shall apply when incorporated by an attachment to this Contract).
- E2.4N The Contractor shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Office and/or any changes to Data Protection Legislation.
- E2.5 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 its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) Section 182 of the Finance Act 1989.
- E3.2 Any breach by the Contractor of this clause E3 shall entitle the Authority to terminate this Contract.
- E4 Confidential Information**
- E4.1 For the purposes of this Clause E4, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- E4.2 Except to the extent set out in this Clause E4 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

E4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause E5 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the Environmental Information Regulations;
- (b) the need for such disclosure arises out of or in connection with:
  - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
  - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
  - (iii) the conduct of a Central Government Body review in respect of this Contract; or
  - (iv) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

E4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

E4.5 The Contractor may disclose the Confidential Information of the Authority on a confidential basis only to:

- (a) Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Contractor's obligations under this Contract;
- (b) a member of the Contractor's Group, subject to Approval, where it is necessary to enable performance of the Contractor's obligations under this Contract;
- (c) its auditors; and
- (d) its professional advisers for the purposes of obtaining advice in relation to this Contract.

E4.6 Where the Contractor discloses Confidential Information of the Authority pursuant to this Clause E4, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

E4.7 The Authority may disclose the Confidential Information of the Contractor:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government 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) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause E4.7(a) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights and its step-in rights pursuant to Clause B19 (Step-In Rights), its rights pursuant to Schedule 10 (Exit Management); or
- (f) on a confidential basis to a proposed Transferee in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause E4.

E4.8 Nothing in this clause E4 shall prevent a Recipient 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 Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.9 Any breach by the Contractor of clauses E4.1 to E4.4 shall entitle the Authority to terminate the Contract by issuing a Termination Notice to the Contractor.

E4.10 Clauses E4.1 to E4.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Contractor waives any contractual right or other confidentiality agreement in connection with its performance of this Contract and agrees that the Authority may provide information to the Cabinet Office, other government departments or any other Contracting Authority for the purposes of the Public Contracts Regulations 2015 in the form of certificates of performance and answer any clarifications that such entity or anyone acting on behalf of such entity in connection with a procurement may have. The Contractor confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification from the Authority the Authority will not owe the Contractor any duty of care for or otherwise have any legal liability to the Contractor in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the Authority.

## **E5 Transparency and Freedom of Information**

E5.1 The Parties acknowledge that the content of this Contract and any changes to this Contract agreed from time to time and all performance information, supplier information

and contractual information which arises out of or in connection with this Contract, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(b) Commercially Sensitive Information;

(the “**Transparency Information**”) is not Confidential Information.

- E5.2 Notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Authority to publish to the general public any Transparency Information either in part or in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).
- E5.3 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish any Transparency Information.
- E5.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.
- E5.5 The Authority may publish the Transparency Information in any format that it considers appropriate, having regard to the context of the wider commercial relationship with the Contractor.
- E5.6 The Contractor agrees that any Information it holds and is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E4.7(c)) and Open Book Data) publish such Information. The Contractor shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- E5.7 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor shall and shall procure that its Sub-contractors shall;
- (a) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations;
  - (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control 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

- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

E5.8 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and Environmental Information Regulations.

## **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 Approval of the Authority.

E6.2 The Contractor shall ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.

E6.3 The Authority shall be entitled to publicise the Contract, and any other information, data or others items which the Authority has a right to publish pursuant to the Contract, in accordance with any legal obligation upon the Authority including any examination of the Contract by Audit Agents or otherwise.

E6.4 The Contractor shall pay the utmost regard to the standing and reputation of the Authority and shall ensure that neither it, nor any of its Affiliates or Staff does anything (by act or omission) which causes material adverse publicity for the Authority, brings the Authority into disrepute, damages the reputation of the Authority or harms the confidence of the public in the Authority, regardless of whether or not such act or omission is related to the Contractor's obligations under the Contract.

E6.5 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its Sub-contractors.

E6.6 If so requested by the Authority, the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

## **E7 Security**

- E7.1 The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with its standard security requirements. 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 procure the compliance of its Staff, 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. Any changes must be agreed in accordance with the procedure in clause F3.
- E7.5 Until and/or unless a change to the Security Policy is agreed by the Authority pursuant to clause E7.4 the Contractor shall continue to perform the Services in accordance with its existing obligations.
- E7.6 The Contractor shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out in Schedule 6 (Security Requirements and Plan).

## **E8 Intellectual Property Rights**

- E8.1 Save as granted under the 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, 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 any Sub-contractor ceases 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 The Parties agree that:
- (a) all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
  - (b) any Project Specific Intellectual Property Rights arising shall belong to the Authority and in such regard, the Contractor hereby assigns with full title guarantee and free from all third party rights, any project Specific Intellectual Property Rights to the Authority,

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any

such Authority Intellectual Property Rights (including any Project Specific Intellectual Property Rights).

- E8.5 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall grant to the Authority (or procure the grant to the Authority) of those rights a non-exclusive licence to use, reproduce, modify, develop and maintain the material. Such licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence shall also include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- E8.6 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, within three (3) Working Days of demand, indemnify fully, keep the Authority and the Crown indemnified and hold harmless the Authority and the Crown at all times from and against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority or the Crown whether directly or indirectly in whole or in part by reason of 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, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority in doing so whether directly or indirectly in whole or in part by reason of doing so. Such claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.6(a) or (b).

- E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the 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 which are acceptable to the Authority,
- and in the event that the Contractor is unable to comply with clauses E8.10(a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

## **E9 Audit and the National Audit Office and Open Book Data**

- E9.1 The Contractor shall at all times keep and maintain the Open Book Data.
- E9.2 Without prejudice to clauses A10 and E9.1, as the delivery of this Contract may be funded by, and/or may be used as match for contracts funded by the Authority using ESF monies the Contractor and any Sub-contractors appointed by it shall be bound by the additional ESF Requirements, including but not limited to the requirement to maintain the Open Book Data until at least the Records Retention End Date.
- E9.3 Without prejudice to the generality of clauses E9.1 and E9.2, the Contractor shall, at all times, upon written request by the Authority, provide written confirmation of a summary of any of the Open Book Data, including details of any funds held by the Contractor specifically to cover its on-going costs, in such other form and detail as the Authority may reasonably require, to enable the Authority to monitor the performance by the Contractor of its obligations under the Contract, its solvency and the level of profit the Contractor is making from the supply of the Services.
- E9.4 The Contractor shall provide (or procure provision of) access at all reasonable times to the Authority, its duly authorised staff or agents and any Audit Agents to inspect the Open Book Data and such records and accounts (including those of Sub-contractors) as the Authority may require from time to time. The Authority shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Authority to do so.
- E9.5 Duly authorised staff or agents of the Authority shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to Participants during the hours when the Contractor is supplying the Services with a view to verifying that the Contractor is supplying the Services in accordance with the Contract.
- E9.6 The Contractor shall provide the Open Book Data and all records and accounts referred to in this clause E9 (together with copies of the Contractor's published accounts) until the

end of the Payment Tail Period, and shall provide such records and accounts on request until the Records Retention End Date, to the Authority and the Audit Agents.

- E9.7 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Audit Agents is outside of the control of the Authority.
- E9.8 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Authority under this clause E9.
- E9.9 The Contractor shall provide the rights set out in this clause E9 to any duly authorised staff or agents of the Authority, the National Audit Office, the European Court of Auditors, the European Commission, the Audit Agents and any third parties as notified by the Authority to the Contractor from time to time.
- E9.10 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to supply of the Services, the Authority reserves for itself and any Audit Agents or any government department the right of immediate access to the Open Book Data and all records and accounts referred to in this clause E9 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract or at any time thereafter.
- E9.11 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly in whole or in part by reason of any Default by the Contractor (or any Sub-contractor) of this clause E9.

## **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 and/or the Guarantor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or
  - (iv) a breach of the Security Policy or the Security Plan has occurred under the Contract.

(each an "**Exceptional Circumstance**").

- E10.2 Subject to the provisions of clause E10.3, 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 E9.4 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours.

- E10.3 Without prejudice to clause E10.2, if the Authority notifies the Contractor of an Exceptional Circumstance to which the provisions of clause E9.10 also apply and that it wishes to conduct an Exceptional Audit, the Contractor shall provide immediate access in accordance with clause E9.10.

## **E11 Audit Costs**

- E11.1 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clauses E9 and E10 unless an audit identifies a material Default by the Contractor in which case:
- (a) the Contractor shall reimburse the 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 Audit Agents appoint another a Contracting Authority identified in the OJEU Notice to conduct an audit under clauses E9 and E10, 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 Authority.

## **E12 Malicious Software**

- E12.1 The Contractor shall ensure all anti-virus software within the Contractor's Software and the Contractor's System is updated as frequently as is necessary in order to provide protection for the Authority's ICT System and the Authority's Data against the latest threats including any Malicious Software.
- 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 losses 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, Third Party Software licenced to the Contractor (and/or any Sub-contractor) 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, Third Party Software licenced to the Authority or the Authority Data (whilst the Authority Data was under the control of the Authority).

## **E13 Provision of Management Information**

- E13.1 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Authority in accordance with the provisions of this clause E13 and Schedule 20 (Management Information).

## **E14 Records Relating to the Provision of the Services**

- E14.1 Notwithstanding the provisions of clause A2 or clause E9 in respect of Open Book Data, the Contractor shall, during the Contract Period and the later of a period of at least six (6) years following the expiry or termination of this Contract or until 31 December 2031 if later (the last date of such period being the “**Records Retention End Date**”), maintain or cause to be maintained, complete and accurate documents and records in relation to the provision of the Services.

## **F CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

- F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without 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 In the event that the Contractor enters into any Sub-contract in connection with this Contract, it shall:
- (a) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause F1;
  - (b) ensure that each Sub-contractor complies with such terms;
  - (c) as an independent obligation, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority by any act or omission of a Sub-contractor in relation to such terms whether directly or indirectly or in whole or in part; and
  - (d) comply with the provisions of Schedule 15 (Sub-contractors).
- F1.3 Notwithstanding clause F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Fees or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C5;
  - (b) deferral of any sums in respect of which the Authority exercises its right under clause C6;
  - (c) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
  - (d) the Authority receiving notification under both clauses F1.4 and F1.5.
- F1.4 In the event that the Contractor assigns the right to receive the Fees under clause F1.3, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.5 The Contractor shall ensure that the Assignee notifies the Authority, at least five (5) Working Days prior to submission of any invoice, of the Assignee’s contact information and bank account details to which the Authority is requested to make payment.
- F1.6 The provisions of clause C3 shall continue to apply in all other respects after any such assignment and shall not be amended without Approval.

- F1.7 Subject to clause F1.8, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.8 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F1.7, 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.
- F1.9 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.7 to a Transferee which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Extraordinary Transferee**"):
- (a) the rights of termination of the Authority in clauses H1.1(b) (Termination by the Authority) shall be available to the Contractor in the event of respectively, the Insolvency Event, or Default of the Extraordinary Transferee; and
  - (b) the Extraordinary 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.
- 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 under this Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of the same.
- F2.2 The performance by either Party of any of its obligations under this Contract after a failure by the other Party to perform any provision of this Contract strictly in accordance with its terms shall not constitute a waiver of any right or remedy under this Contract or by Law nor shall it prevent or restrict further exercise of the same.
- F2.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices) and in a manner that expressly states that a waiver is intended.
- F2.4 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 Changes to the Contract**

F3.1 No change, amendment, variation, restatement or supplement to this Contract shall be effective unless it is made in writing in accordance with the Change Control Procedure and signed on behalf of the Parties.

F3.2 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 this Contract as at the Commencement Date;
- (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 Commencement Date; or
- (c) extending the scope of this Contract considerably

unless such Contract Change or Operational Change is permitted under regulation 72 of the Public Contracts Regulations 2015.

F3.3 The Parties may agree to make a Contract Change or Operational Change or Substantial Change to this Contract where such change is provided for in the Contract and/or in the ITT including (but not limited to):

- (a) increase the contract value by an amount equal to any ESF funding, or funding from domestic or other sources leading up to and/or following the UK's exit from the European Union, which is available to the Authority to purchase the Services;
- (b) any modification to the Referral Period Start Date and any consequential modifications to this Contract required to ensure that the economic balance of this Contract is not changed in favour of the Contractor;
- (c) adding or revising any Cohort Profile as a consequence of, or in connection with, changes in volumes of Participant Starts or the addition or removal of any groups of Participants;
- (d) any modification required as a consequence of, or in connection with, changes from time to time to the Authority's administrative or operational structures or procedures;
- (e) any modification required as a consequence of, or in connection with, changes from time to time to any of the Authority's:
  - (i) DWP Information Security Policy;
  - (ii) DWP Physical Security Policy; or
  - (iii) DWP Acceptable Use Policy
- (f) any modification required as a consequence of, or in connection with, any Transfer of Functions Order;
- (g) any modification which is a consequence of, or arising in connection with, any recommendation made by an assessor appointed pursuant to clause B22.3;

- (h) any modification which is a consequence of, or arising in connection with, any notification given by the Authority's Representative to the Contractor pursuant to clause F6.4;
- (i) any modification required as a consequence of, or in connection with, the implementation of Universal Credit;
- (j) any waiver (whether permanent or temporary or conditional or unconditional) by a Party of any of its rights under this Contract;
- (k) any temporary modification made pursuant to a Performance Improvement Plan;
- (l) any settlement and/or compromise agreement entered into in respect of this Contract;
- (m) any modification required as a consequence of, or in connection with, changes in applicable Law; and
- (n) any consequential modifications to this Contract required to give effect to any Contract Change, Operational Change or Substantial Change made pursuant to this clause F3.3.

F3.4 The Authority may unilaterally extend the Referral Period by one (1) or more extensions up to a maximum of twenty-four (24) Months in total. Where the Authority chooses to extend the Referral Period pursuant to this clause F3.4, the Authority will give written notice to the Contractor of not less than six (6) Months (or on such shorter notice period as may be agreed by the Parties) prior to the Referral Period End Date. In accordance with any extension of the Referral Period pursuant to this clause F3.4, the Authority may unilaterally amend the Services Cessation Date and extend the Services Delivery Period and the Contract Period. The provisions of this Contract shall continue to apply throughout any extended Contract Period subject to:

- (a) any Contract Change, Operational Change, Substantial Change or adjustment to the Fees made pursuant to this clause F3;
- (b) the right of the Authority in its absolute discretion to amend the funding and payment model for such extended Contract Period, including but not limited to, amending the proportion of the Fees constituted by each of the Service Fee and the Outcome Payments;
- (c) the tMPLs for any Start Cohorts during such extended Contract Period shall be set at the same level or higher as the tMPL for the last Start Cohort prior to the initial Referral Period End Date.

F3.5 If the Authority serves written notice to the Contractor to extend the Referral Period pursuant to clause F3.4 above, the Contractor undertakes to do all acts and execute all documents which may be necessary to give effect to such extension.

F3.6 If the Parties agree to make a Contract Change or Operational Change or Substantial Change, the Contractor undertakes to procure the consent of the Guarantor to such Contract Change, Operational Change or Substantial Change.

F3.7 Subject to clause F3.9, the Authority may modify Appendix A to Schedule 6 (Security Requirements and Plan) unilaterally at any time during the Contract Period as a consequence of, or in connection with, changes to the Authority's administrative or operational structures or procedures and such modification shall become effective on and from the date notified to the Contractor.

- F3.8 Subject to clause F3.9, the Authority may modify the format of Appendix 1 to Schedule 17 (Life Chances) unilaterally at any time during the Contract and such modification shall become effective on and from the date notified to the Contractor.
- F3.9 If the Contractor reasonably believes that a modification made pursuant to clause F3.7 or F3.8 will have an economic effect on the Contractor and therefore wishes such modification to be made via the Change Control Procedure, the Contractor shall so notify the Authority within ten (10) days of receiving notification under clause F3.7. Such notification shall include:
- (a) why the Contractor reasonably believes that there will be an economic impact; and
  - (b) the quantum of such economic impact accompanied by supporting calculations and assumptions.
- F3.10 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Fees as the 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.
- F3.11 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.10(b)):
- (a) the Contractor shall notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
    - (i) whether any Contract Change, Operational Change or Substantial Change is required to the Services, the Fees or this Contract; and
    - (ii) whether any relief from compliance with the Contractor's obligations is required; and
  - (b) the Contractor shall 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-contractors;
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
    - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Fees; and
  - (c) any variation in the Fees or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in clause F3.10(b)) shall be implemented in accordance with the Change Control Procedure. For the avoidance of doubt, the Authority shall not be obliged to accept any variation in the Fees requested pursuant to this clause F3.11 and the Authority shall not be obliged to accept any Contract Change, Operational Change or Substantial Change except to the extent that such Contract Change, Operational Change or Substantial Change is necessary for the Contractor or the Services to comply with any Change in Law.

#### **F4 Severability**

- F4.1 In the event that the Authority considers that there has been a Default by the Contractor, then the Authority may, at its sole discretion, and without prejudice to its other rights and remedies under the Contract including under clause H1 (Termination by the Authority), without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Fees shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

#### **F5 Remedies Cumulative**

- F5.1 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 and do not exclude any rights or remedies provided by Law, in equity or otherwise. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **F6 Entire Agreement**

- F6.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This 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.
- F6.2 Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- F6.3 Subject to clause F6.4, in the event of, and only to the extent of, any conflict or inconsistency between the provisions of the Contract including any document referred to in the Contract with contractual effect, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:
- (a) the Terms and Conditions;
  - (b) the Specification;
  - (c) the Q&A;
  - (d) the Tender;
  - (e) the Tender Clarification;
  - (f) the Umbrella Agreement; and
  - (g) any other document referred to in the Contract.
- F6.4 Notwithstanding clause F6.3, in the event that the Contractor becomes aware of any conflict or inconsistency between the requirements contained in the above documents, the Contractor shall immediately notify the Authority's Representative in writing of such inconsistency and the Authority's Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

- F6.5 Subject to clause F6.6, in the event of, and only to the extent of, any conflict or inconsistency between the provisions of Schedule 24 (DWP Supplier Code of Conduct) and any other provision in the Terms and Conditions, the conflict or inconsistency shall be resolved in favour of the provision not found in Schedule 24.
- F6.6 Notwithstanding clause F6.5, in the event that the Contractor becomes aware of any conflict or inconsistency between the provisions of Schedule 24 (DWP Supplier Code of Conduct) and any other provision in the Terms and Conditions, the Contractor shall immediately notify the Authority's Representative in writing of such inconsistency and the Authority's Representative shall, as soon as practicable, notify the Contractor which provision the Contractor shall comply with.

## **F7 Counterparts**

- F7.1 This 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.

## **F8 Further Assurance**

- F8.1 Each Party undertakes at the request of the other to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.
- F8.2 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clause F8.1.

## **G LIABILITIES**

### **G1 Liability and Indemnity**

- G1.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence;
  - (b) Fraud;
  - (c) fraudulent misrepresentation; or
  - (d) any Default of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- G1.2 Subject to clause G1.4, the Contractor shall as an independent obligation, within three (3) Working Days of demand, indemnify fully, keep the Authority indemnified and hold harmless the Authority at all times:
- (a) in respect of any personal injury, death or loss or destruction of or damage to property caused to the Authority or its employees and agents to the extent that such personal injury, death or loss or destruction of or damage to property is caused whether directly or indirectly in whole or in part by:

- (i) any Default of the Contractor, its employees, agents or Sub-contractors; or
  - (ii) 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), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority in respect of any personal injury, death or damage arising from or incurred by reason of the use of the Services by any Participant whether directly or indirectly or in whole or in part; and
- (c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly or in whole or in part by reason of:
  - (i) the supply (or the late or purported supply) of the Services;
  - (ii) the performance or non-performance by the Contractor of its obligations under the Contract including, without limitation, any or all Service Failure Defaults and any or all Non Service Failure Defaults;
  - (iii) the presence of the Contractor or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Contractor to the Authority; or
  - (iv) any other claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority by any act or omission of the Contractor whether directly or indirectly or in whole or in part; and
- (d) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Authority whether directly or indirectly or in whole or in part resulting from any Default by the Contractor of clause A10 which, for the avoidance of doubt, include any claims, demands, actions, costs (including legal costs and disbursements) and losses which relate to the Authority's obligations as on an ESF Co-Financing Organisation or connected with the ESF Requirements.

G1.3 Each and every indemnity in any document which forms part of this Contract:

- (a) is a separate and independent obligation from the other obligations in this Contract;
- (b) gives rise to a separate and independent cause of action;
- (c) applies whether or not any indulgence is granted by the Authority;
- (d) shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Contract, or any other judgment or order;
- (e) notwithstanding clause G1.9, shall not be subject to any duty for the Authority to mitigate;

- (f) shall not be limited or capped under clauses G1.7 or G1.8;
- (g) shall not count towards the liabilities of the Contractor which are limited or capped under clauses G1.7 or G1.8; and
- (h) for the avoidance of doubt in respect of any amount due to the Authority under such indemnity, such amount shall be reduced by an amount equal to any amount that the Authority actually receives pursuant to clause G1.6 in respect of the same cause of action as gives rise to the cause of action under the relevant indemnity.

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

G1.5 Subject to clause G1.4, responsibility for the control, management and supervision of all Participants shall rest entirely with the Contractor subject to the Participant complying with all reasonable instructions and directions which the Contractor may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant.

G1.6 The Parties agree that, without prejudice to any of, and in addition to, the Authority's rights under this Contract or otherwise:

- (a) if a Default occurs under any of:
  - (i) clause A9 (*Prevention of Fraud*);
  - (ii) clause A10 (*ESF Requirements*);
  - (iii) clause B7 (*The Merlin Standard*);
  - (iv) clause D1.1 (*Prevention of Bribery and Corruption*);
  - (v) clause D1.3 (*Prevention of Bribery and Corruption*);
  - (vi) clause D1.4 (*Prevention of Bribery and Corruption*);
  - (vii) clause D1.5 (*Prevention of Bribery and Corruption*);
  - (viii) clause D1.6 (*Prevention of Bribery and Corruption*);
  - (ix) clause D2 (*Discrimination*);
  - (x) clause D4 (*Environmental Requirements*);
  - (xi) clause D5.3 (*Health and Safety*);
  - (xii) clause D5.5 (*Health and Safety*);
  - (xiii) clause D6.2 (*Tax compliance*);
  - (xiv) clause E2 (*Protection of Personal Data and Special Categories of Personal Data*);
  - (xv) clause E3 (*Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989*);

- (xvi) clause E9.10 (*Audit and the National Audit Office and Open Book Data*);
- (xvii) clause E10 (*Exceptional Audits*); or
- (xviii) Schedule 8 (*Welsh Language Scheme*),

and

(aa) if the Authority considers, acting reasonably, that such Default is capable of remedy; and

(bb) such Default is not remedied within 5 Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Contractor of the Default and the remedy required or within 25 Working Days of the Contractor notifying the Authority of the Default;

then in respect of each and every such Default the Contractor shall pay the Authority, as liquidated damages, an amount equal to one Service Fee Periodic Payment for each Month or each part Month during which such Default has not been remedied by the Contractor provided that if such Default is remedied by the Contractor the Authority shall pay to the Contractor an amount equal to the liquidated damages actually paid to it by the Contractor in respect of such Default pursuant to this clause G1.6;

- (b) if a Default occurs under any of:
  - (i) clause B1.5 (*The Services*);
  - (ii) clause B1.6 (*The Services*);
  - (iii) Schedule 1A (*Implementation Plan*);
  - (iv) clause E5.6 (*Transparency and Freedom of Information*);
  - (v) clause E5.7(b) (*Transparency and Freedom of Information*);
  - (vi) clause E5.7(c) (*Transparency and Freedom of Information*);
  - (vii) Schedule 1 (*The Services*);
  - (viii) paragraph 3.3 of Schedule 6 (*Security Requirements and Plan*);
  - (ix) paragraph 3.4 of Schedule 6 (*Security Requirements and Plan*);
  - (x) paragraph 3.10 of Schedule 6 (*Security Requirements and Plan*);
  - (xi) paragraph 4.1 of Schedule 6 (*Security Requirements and Plan*);
  - (xii) paragraph 4.4 of Schedule 6 (*Security Requirements and Plan*);
  - (xiii) paragraph 2.1 of Schedule 7 (*Sustainable Development Requirements*);
  - (xiv) paragraph 23 of Schedule 12 (*ESF Requirements*);
  - (xv) paragraph 24 of Schedule 12 (*ESF Requirements*);
  - (xvi) paragraph 2.1 of Schedule 18 (*Business Continuity and Disaster Recovery*);

- (xvii) paragraph 2.4.2 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xviii) paragraph 6.1 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xix) paragraph 6.4.2 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xx) paragraph 7.5 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xxi) paragraph 7.2 of Schedule 21 (*Insurance Requirements*),

and

(aa) if the Authority considers, acting reasonably, that such Default is capable of remedy; and

(bb) such Default is not remedied within 5 Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Contractor of the Default and the remedy required or within 25 Working Days of the Contractor notifying the Authority of the Default;

then in respect of each and every such Default the Contractor shall pay the Authority, as liquidated damages, an amount equal to 5 per cent of the Service Fee Periodic Payment for each Working Day's delay (exclusive of VAT) in remedying the Default;

(c) if a Default occurs under any of:

- (i) paragraph 2.1(a)(ii) of Schedule 10 (*Exit Management*);
- (ii) paragraph 2.2 of Schedule 10 (*Exit Management*);
- (iii) paragraph 4.1 of Schedule 10 (*Exit Management*);
- (iv) paragraph 4.5 of Schedule 10 (*Exit Management*),

and

(aa) if the Authority considers, acting reasonably, that such Default is capable of remedy; or

(bb) such Default is not remedied within 5 Working Days (or such longer period as the Authority may specify in each case) of the Authority notifying the Contractor of the Default and the remedy required or within 25 Working Days of the Contractor notifying the Authority of the Default;

then in respect of each and every such Default the Contractor shall pay the Authority, as liquidated damages, an amount equal to ten percent (10%) of the Service Fee Periodic Payment for each Working Day's delay (exclusive of VAT) in remedying the Default;

- (d) the Contractor shall pay these liquidated damages on demand or the Authority may deduct them from its payments to the Contractor; and
- (e) the Parties confirm that these liquidated damages are reasonable and proportionate to protect the Authority's legitimate interest in the performance of this Contract by the Contractor.

- G1.7 Subject always to clauses G1.1 and G1.3 and without prejudice to section H, the liability of either Party for Defaults shall be subject to the following financial limits:
- (a) the aggregate liability of either Party for Defaults that result in direct loss of or damage to the property of the other under or in connection with the Contract (including the Authority Premises unless a higher limit has been agreed in a separate document) shall in no event exceed one-hundred (100%) of the Average Annual Contract Value; and
  - (b) the annual aggregate liability under the Contract of either Party for all Defaults (including any liability incurred under G1.7(a) but excluding any liability under G1.7(c) or G1.7(d)) shall in no event exceed one-hundred and fifty percent (150%) of the Average Annual Contract Value;
- provided that:
- (c) the liability of the Contractor under clause E1 (Authority Data), clause E2 (Protection of Personal Data and Special Categories of Personal Data) or clause E8 (Intellectual Property Rights) shall not be limited or capped; and
  - (d) for the avoidance of doubt, the liability of the Contractor under any indemnity in any document which forms part of this Contract shall not be limited or capped and shall not count towards the limits or caps imposed on the liability of the Contractor for Defaults by this clause G1.7.
- G1.8 Subject always to clause E2.5, G1.1, G1.3 and G2 and other than (i) pursuant to any indemnity in any document which forms part of this Contract or (ii) as expressly set out in this Contract, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and
  - (b) indirect or consequential loss or damage.
- G1.9 Subject to clause G1.3, each Party shall use reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.
- G2 Insurance**
- G2.1 The Contractor shall comply with the provisions of Schedule 21 (Insurance Requirements) in relation to obtaining and maintaining insurance.
- G3 Warranties and Representations**
- G3.1 The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the 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;

- (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 ongoing business concern or its ability to fulfil its obligations under the Contract; and
- (i) it has not made any payment, or entered into any transaction which has the economic effect of making a payment, and no Sub-contractor has made any payment, or entered into any transaction which has the economic effect of making a payment, to any employer of any Participant (other than Permitted Payments).

G3.2 The Contractor repeats the representations and warranties in clause G3.1 (except for those in clauses G3.1(c) and G3.1(h)) on the first day of each Month during the Contract Period by reference to the facts and circumstances existing on each such date.

G3.3 If at any time a Party becomes aware that a representation or warranty given by it under this Contract been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

G3.4 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.

#### **G4 Deed of Guarantee**

G4.1 Unless otherwise agreed by the Authority in writing, this Contract is conditional upon the Contractor procuring that the Guarantor shall:

- (a) execute and deliver to the Authority the Guarantee; and
- (b) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee in accordance with the provisions of Schedule 20 (Management Information).

- G4.2 On satisfaction of clause G4.1, the Authority shall promptly notify the Contractor that those conditions have been satisfied.
- G4.3 The conditions specified in this clause G4 are inserted solely for the Authority's benefit. The Authority may waive them, in whole or in part and with or without conditions, without prejudicing the Authority's right to require subsequent fulfilment of such conditions.
- G4.4 Subject to clause G4.5, and for the avoidance of doubt, if clause G4.1 has not been satisfied, on or before the day falling four weeks after the Commencement Date this Contract shall not take effect.
- G4.5 Notwithstanding clauses G4.1 to G4.4, the Authority reserves the right (in its absolute discretion) to waive the requirement for a Guarantee in its entirety.

## **H TERMINATION RIGHTS AND DISRUPTION**

### **H1 Termination by the Authority**

- H1.1 The Authority may terminate this Contract by issuing a Termination Notice to the Contractor:
- (a) for convenience at any time, including where the Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
  - (b) if a Contractor Termination Event occurs;
  - (c) if a Force Majeure Event endures for a continuous period of more than 90 days;  
or
  - (d) if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Contract shall terminate on the date specified in the Termination Notice.
- H1.2 Where the Authority:
- (a) is terminating this Contract under Clause H1.1(b) due to the occurrence of limb (b) of the definition of Contractor Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
  - (b) has the right to terminate this Contract under Clause H1.1(b) or Clause H1.1(c),
- it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any

part of the Services which are materially affected by the relevant circumstances (a "Partial Termination").

## **H2 Termination by the Contractor**

H2.1 The Contractor may, by issuing a Termination Notice to the Authority, terminate:

- (a) this Contract if the Authority fails to pay an undisputed sum due to the Contractor under this Contract which in aggregate exceeds two percent (2%) of the Anticipated Contract Value and such amount remains outstanding sixty (60) Working Days after the receipt by the Authority of a notice of non-payment from the Contractor, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C5; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause H2.1(b) would result in a Partial Termination, the provisions of Clause H3 (Partial Termination) shall apply.

## **H3 Partial Termination**

H3.1 If the Contractor notifies the Authority pursuant to Clause H2.1(b) (Termination by the Contractor) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Contractor within 1 month of receiving the Contractor's Termination Notice. For the purpose of this Clause H3.1, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

H3.2 The Parties shall agree the effect of any change to this Contract necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Fees, provided that:

- (a) the Contractor shall not be entitled to an increase in the Fees in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Contractor Termination Event; and
- (b) the Contractor shall not be entitled to reject the change to the Contract.

## **CONSEQUENCES OF EXPIRY OR TERMINATION**

## **H4 General Provisions on Expiry or Termination**

H4.1 Unless otherwise expressly provided in the Contract:

- (a) the provisions of Clauses A8 (Conflicts of Interest), B13 (Offers of Employment), , C4 (Validation & Extrapolation of Outcomes), C5 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data and Special Categories of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential

Information), E5 (Transparency and Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and the National Audit Office and Open Book Data), F5 (Remedies Cumulative), G1 (Liability, Indemnity), G2 (Insurance), H4 (General Provisions on Expiry or Termination), I1 (Governing Law and Jurisdiction) and Schedule 10 (Exit Management), shall survive the termination or expiry of this Contract; and

- (b) 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.

## **H5 Exit Management**

- H5.1 The Parties shall comply with the provisions of Schedule 10 (Exit Management) and any current Exit Plan in relation to orderly expiry or termination of the Contract and the transition of the Services to the Authority or a Replacement Contractor.

## **H6 Payments by the Authority**

- H6.1 If this Contract is terminated by the Authority pursuant to Clause H1.1(a) (Termination by the Authority) or by the Contractor pursuant to Clause H2.1(a) (Termination by the Contractor), the Authority shall pay the Contractor the following payments (which shall be the Contractor's sole remedy for the termination of this Contract):

- (a) the Termination Payment; and
- (b) the Compensation Payment, if either of the following periods is less than three-hundred and sixty-five (365) days:
  - (i) the period from (but excluding) the date that the Termination Notice is given by the Authority pursuant to Clause H1.1(a) (Termination by the Authority) to (and including) the Termination Date; or
  - (ii) the period from (and including) the date of the non-payment by the Authority referred to in Clause H2.1(a) (Termination by the Contractor) to (and including) the Termination Date.

- H6.2 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses H1.1(b), H1.1(c) and/or H1.2 (Termination by the Authority), or the term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 10 (Exit Management); and
- (b) payments in respect of unpaid Fees for Services received up until the Termination Date.

- H6.3 The costs of termination incurred by the Parties shall lie where they fall if:

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses H1.1(c) or H1.2(b) (Termination by the Authority) or H2.1(b) (Termination by the Contractor); or
- (b) the Authority terminates this Contract under Clause H1.1(d).

- H6.4 If this Contract is terminated in whole by the Authority pursuant to Clauses H1.1(b), H1.1(c) and/or H1.2 (Termination by the Authority), or the term expires, the Contractor shall not have any right to receive any Outcome Payment in respect of any Participant.
- H6.5 If this Contract is terminated in part by the Authority pursuant to Clauses H1.1(b), H1.1(c) and/or H1.2 (Termination by the Authority), the Contractor shall not have any right to receive any Outcome Payment in respect of any Participant who receives or has received any Services which are subject to such partial termination.

## **H7 Payments by the Contractor**

- H7.1 In the event of termination or expiry of this Contract, the Contractor shall repay to the Authority all Fees it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination.
- H7.2 Where the Authority terminates the Contract under clause H1.1(b) (Termination by the Authority) and then makes other arrangements for the supply of Services ("**Other Arrangements**"), the Authority may recover from the Contractor the cost of making such Other Arrangements and any expenditure incurred (including but not limited to legal costs) by the Authority in connection with such Other Arrangements in accordance with Schedule 11 (Allocation of Costs on Termination). The Authority shall take all reasonable steps to mitigate such cost and expenditure.
- H7.3 Where a Contract is terminated under clause H1.1(b), the Authority shall be entitled to withhold payment of any amount otherwise due to the Contractor under this Contract until such time as the Authority has been able to establish the cost of making such Other Arrangements. For the avoidance of doubt, no interest shall accrue on any payments that are withheld under this clause H7.3.

## **H8 Disruption**

- H8.1 The Contractor shall take all reasonable care to ensure that in performing of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H8.2 The Contractor shall immediately notify 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.
- H8.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H8.4 If the Contractor's proposals referred to in clause H8.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect by notice in writing.
- H8.5 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.
- H8.6 The Contractor shall have a Business Continuity and Disaster Recovery Plan in place, prepared by the Contractor and agreed with the Authority in accordance with Schedule 18 (Business Continuity and Disaster Recovery), to ensure that the Services to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor's operations, and those of Sub-contractors to the Contractor, however caused. Such contingency plans shall be

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

- H8.7 The Contractor and the Authority shall at all times comply with the provisions in Schedule 18 (Business Continuity and Disaster Recovery).

## **I Disputes and Law**

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

- I1.1 This Contract and any dispute or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and interpreted in accordance with English law and the Parties irrevocably submit to the jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

### **I2 Dispute Resolution**

- I2.1 Subject to clause B6 and clause D1.9, the Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- I2.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

