

IT Supplies and or Services General Terms and Conditions of Contract (Invitation to Quote)

This Contract is dated TBC

Parties:

1. **Advisory, Conciliation and Arbitration Service**, 8th floor Windsor House, 50 Victoria Street, Westminster, London SW1H 0TL (**the Authority**)

2. **Contractor(s) Name – [TBC]**, a company incorporated and registered in [COUNTRY TBC] with company number [NUMBER - TBC] and registered VAT number [NUMBER - TBC] whose registered office is at [REGISTERED OFFICE ADDRESS - TBC] a partnership under the laws of [COUNTRY - TBC] whose address is [ADDRESS - TBC] a business with its trading address at [ADDRESS - TBC] (**the Contractor**).

Background:

The Authority requires the Contractor to supply the software, supplies and services (as defined below) in accordance with the terms of this contract.

Contract Term [3 years – dates TBC]:

Contract Value: £150,000.00 excl.vat

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Part 1 – General Provisions

1. Definitions and Interpretations

1.1. In the Contract, unless the context otherwise requires, the following terms shall have the meanings given to them below:

“Acceptance or Accepted”	means in relation to the Deliverables (or any of them) successful completion of the Acceptance Tests or deemed acceptance in accordance with clause 41
“Acceptance Date”	means the date upon which the relevant Deliverables are Accepted by the Authority in accordance with clause 41
“Acceptance Tests”	means the mutually agreed tests in accordance with clause 41 to assess whether the Deliverables conform with the Specification
“Agent”	means where UK Shared Business Services is not the named Party (1), UK SBS has been nominated as agent on behalf of the Authority and therefore all communications both written and verbal will be received as issued by the Authority.
“Annual Service Plan”	means a written statement containing the Contractor’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice
“Annual Service Report”	means a written report provided to the Authority to the reasonable satisfaction of the Authority
“Approval” and “Approved”	means the written consent of the Contract Manager.
“Associated Bodies and Authorised Entities”	means the Advisory, Conciliation and Arbitration Service http://www.uksbs.co.uk/services/procure/contracts/Pages/default.aspx
“Authorised Third Party”	means any third party (including agents and contractors) engaged to provide services to the Authority which require use of the Software including any supplier to whom the Authority has outsourced any part of its business and “Authorised Third Parties” shall be construed accordingly.
“Authority / Customer”	Means Advisory, Conciliation and Arbitration Service being the parties to the contract as named in (1) and any replacement successors and assigns.
“Authority Data”	means all information provided by the Authority to the Contractor when using the Software, where the Software is delivered as SAAS.
“Authority Property”	means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract
“Authority Network”	means the current and future Information and Communications Technology network, systems, equipment, hardware, and software used by the Authority
“Authority Support Service”	means the support service provided by the Contractor to the Authority where the Software is delivered as SAAS
“Background IPR”	Excluding the Foreground IPR, Background IPR means: the Intellectual Property Rights created by the Contractor (or it’s sub-contractors) prior to the Commencement Date; Intellectual Property

	Rights in the Software; Intellectual Property Rights created by the Contractor independently of this contract (including, for example, software updates created to be applied on a system wide basis by the Contractor); amendments made to the source code of the Software; general system development by the Contractor; the Intellectual Property Rights in any manual, template, information or training aid created by the Contractor.
“Bespoke Deliverables”	means bespoke software or a defined level of functionality identified in the Specification which is created exclusively for the Authority
“Business day”	means a day (other than a Saturday, Sunday, or public holiday) when banks in London are open for business.
“Code”	means Code of Practice for Employment published by the Equality and Human Rights Commission as published from time to time or any code which may replace it.
“Consultant”	means an employee or sub-contractor of the Contractor tasked with undertaking duties in respect of the Specification
“Contract”	means this agreement between the Authority and the Contractor consisting of these clauses (Terms and Conditions) and any attached Schedules, the Invitation to Quote, the Tender and any other documents (or parts thereof) specified by the Authority. within the Form of Contract.
“Contractor Personnel”	means all directors, officers, employees, agents, consultants, and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract
“Commencement Date”	means the [Day, Month, Year - TBC] and any specified time that the Contract starts
“Commercially Sensitive Information”	means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: <ul style="list-style-type: none"> (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret.
“Commercially Sensitive Information Schedule”	Means the Schedule containing a list of the Commercially Sensitive Information.
“Conditions”	means the terms and conditions set out in this document, as amended from time to time in accordance with any permitted provisions of Variation
“Confidential Information”	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA and the Commercially Sensitive Information (if any).
“Contract Manager”	means the person for the time being appointed by the Authority as being authorised to administer the Contract on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

“Contracting Authority”	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015, other than the Authority.
“Contractor or Contractors”	means the person, firm, organisation or company with whom the Contract is made the named parties to the contract as named in (2).
“Contractor’s Representative”	means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of the Contract.
“Contract Year”	means a consecutive period of twelve (12) Months commencing on the Commencement Date or each anniversary thereof.
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach Data Protection Officer”	Each term shall have the meaning set out in the GDPR
“Customer Satisfaction Survey”	means a Customer satisfaction survey, the purpose of which shall include: (a) assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services. (b) assisting in the preparation of the Contractor’s Annual Service Report and Annual Service Plan;
“Customer Satisfaction Survey Date”	means the rolling date 12 months after completion of implementation in each year of the Term.
“Data Loss Event”	Means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
“Data Protection Legislation”	i. the GDPR, the LED and any applicable national implementing Laws as amended from time to time ii. the DPA 2018 to the extent that it relates to processing of personal data and privacy; iii. (iii) all applicable Law about the processing of personal data and privacy;
“Data Processing Schedule”	means that document, scheduled to this Contract, that sets out (among other things) the types of processing to be carried out by the Contractor;
“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Subject 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.
“DPA 2018”	Data Protection Act 2018
“Data Protection Officer”	means the officer of the Authority holding the post of “Data Protection Officer”, or such other person as the Authority may elect.
“Database”	means any database created by the Contractor for the Authority using the Software or through the provision of the Services.

“Database Rights”	means the rights of ownership to the software structure and design of the Database. For the purposes of clarity this does not include any data stored in the Database.
“Default”	means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents, or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
“Deliverables”	means all Software, Documentation developed by the Contractor, its sub-contractors as a part of, or in relation to the Services in any form including computer programs, data, reports and specifications (including drafts), including Bespoke Deliverables (if any) specified in the Specification to be developed, produced, provided or undertaken by the Contractor for the Authority in the performance of this Contract
“Delivery date” (Supplies)	means the date or dates for delivery of the Supplies specified in the Contract or any such associated document provided by the Authority.
“Delivery date” (Services)	means the date or dates specified in the Contract, delivery of the Supplies specified in the Contract or any such associated document provided by the Authority, when the Services shall commence as set out and until the end of the Initial Term or any such agreed extension, if not Terminated prior.
“Dependencies”	means the dependencies or requirements (if any) set out in the Specification
“Documentation”	means any documentation to be delivered by the Contractor to the Authority in accordance with the Specification in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
“EIR”	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.
“Error”	means a verifiable and repeatable failure of the Software to conform to the Specification
“Environmental Information Regulations”	means the Environmental Information Regulations 2004.
“Exit Plan”	means the plan to be initiated in the event of termination of the Contract and which will contain a detailed description of the strategy to be undertaken to ensure the safe, lawful, and successful transition of the Services, the supply of all the Software, any relevant associated software and all Authority data to a third party named by the Authority and to the Authority if required.
“Estimated Year 1 Price”	means the sum of £TBC pounds estimated by the Authority to be payable by it to the Contractor as the total aggregate price payable from the Commencement Date until the end of the first Contract Year;
“Excess”	means any Supplies delivered in excess of the quantity ordered

“Expiry Date”	means the [Day, Month, Year - TBC] or such other date where the Contract is terminated or there is an Extension.
“Extension”	means the extension of the duration of the Contract agreed in accordance with clause 2.2.
“Extended Test Period”	means any additional Working Days added on to the Test Period as agreed by the Parties.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster but does not include any industrial action occurring within the Contractor’s organisation or any sub-contractor’s organisation
“Foreground IPR”	means the Intellectual Property Rights created by the Contractor (or it’s sub-contractors) in connection with this Contract after the Commencement Date excluding any Intellectual Property Rights created by Software (or associated software updates) applicable to other customers of the Contractor.
GDPR	the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>)
“General Change in Law”	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.
“Go or Gone Live”	means the Software and all associated systems and connectivity being fully operational and operating in a live environment.
“Go Live Date”	means the [Day, Month, Year - TBC] the date that the system has Gone Live.
“Good Industry Practice”	means in relation to any undertaking and any circumstances, the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional, and experienced person engaged in the same type of undertaking under the same or similar circumstances
“Guarantee”	Means a parent company guarantee in the form set out by the Authority correctly executed by the parent company of the Contractor identified in the Contractor’s Tender (being the ultimate parent company of the Contractor or a parent company with substantial United Kingdom assets).
“Hosting”	Means Virtual servers to host the applications
“including, include, in particular”	Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
“Information”	has the meaning given under section 84 of the FOIA.
“Initial Term”	means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the Contract in accordance with clause 2.1 of the Contract.

“Installation Date”	means the time and date stated in the Specification for the installation of the Software however if no time and date are stated in the Specification then this will be a time and date requested by the Authority.
“Intellectual Property Rights”	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Quote”	means the procurement documents including specifications attachments and associated documentation provided by the Authority, plus any and all information provided verbally, or through formal clarifications up and to the award decision stage
“Key Personnel”	means those persons named in the Specification as being key personnel.
“Law”	means any law, any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, byelaw, regulation, order, regulatory policy, guidance or industry code, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply;
“LED”	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
“Licence Term”	means the term of the licence to use the Software which, for the avoidance of doubt, shall not be less than the Term of this Contract.
“Local Commissioner”	means the Local Commissioner/Ombudsman as appointed by the Commissioner for Local Administration in England or any successor body
“Long Stop Date”	means the [Day, Month, Year - TBC]
“Losses”	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest, and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and Loss shall be interpreted accordingly.
“Monitoring Schedule”	means the Schedule containing details of the monitoring arrangements.
“Month”	means calendar month.
“Notice of Termination Date”	means the date any notice of termination of the Contract is given by one Party to the other Party
“Order”	means the Authority’s order for the Supplies and or the Services.
“Party”	means a party to the Contract and “Parties” shall be construed accordingly.
“Premises”	means the location where the Services are to be performed, as specified in the Specification.
“Price”	means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking

	into account the effect of any adjustment of price in accordance with clause 49.
“Pricing Schedule”	means the Schedule containing details of the Price.
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract
“Project Plan”	means the outline timetable and sequence of events (if any) as set out in the Specification, as may be amended from time to time under the Change Control Procedure
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.
“Public Contracts Directive”	means Public Contracts Directive 2014/24/EU
“Purchase Order”	means as set out in the Authority’s completed purchase order form (including any Specification) which is in the format of the pro forma order form attached at Schedule [X - TBC]. For the avoidance of doubt, if the Authority’s purchase order form is not in the format of the pro forma order form at Schedule [X - TBC], it will not constitute an Order.
“Quality Standards”	means the quality standards relating to the Services published by the British Standards Institute, the International Organisation for Standardisation, or any other equivalent body, with which a skilled and experienced operator engaged in the same type of industry or business as the Contractor’s would reasonably and ordinarily be expected to comply as supplemented by the Specification.
“Relevant Action”	means a challenge being made under Public Regulations 2015 (as amended), European Directive 2004/18/EC or any other legislation which amends or replaces that directive and those regulations in relation to the award or performance of this Contract; a decision made by the courts of the United Kingdom and/or the European Union which upholds any challenge made or which results in the Contract being declared ineffective; the receipt of advice from a barrister instructed by the Authority that the Contract is likely to be in breach of the aforementioned legislation or that the Contract is likely to be declared ineffective by the courts.
“Replacement Contractor”	means any third party appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract, whether those services are provided by the Authority internally and/or by any third party.
“Request for Information”	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.
“SAAS”	For the purposes of this procurement Software as a Service (SaaS) means: A software licensing and delivery model in which software is licensed on a subscription basis;

	The model includes all upgrades, service updates, security patches, and support and maintenance.
“Schedule”	means a schedule attached to the Contract.
“Services”	means the services to be provided as specified in the Tender.
“Service Hours”	means the hours the Software and Services shall be available to the Authority in accordance with item 3.3.1 of the Tender where the Software is delivered as SAAS – 365 Days a year, 24 hours a day, subject to any planned maintenance and emergency maintenance.
“Services Improvement Notice”	means a written notice stating the nature and timing of changes to the provision, performance, or delivery of the Services (or the relevant part) which the Authority desires
“Single Use Plastics”	means disposable plastic items which are designed to be used only once
“Software”	means any such software and/or systems to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification
“Special Conditions”	N/A
“Specification”	means the description of the Software and or the Services to be provided, including any related plans and drawings that are supplied to the Contractor by the Authority, or produced by the Contractor and agreed in writing by the Authority, under the Contract and attached as the Specification Schedule.
“Specification Schedule”	means the Schedule containing details of the Specification.
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of Supplies and or services of the same or a similar nature to the supply of the Supplies and or Services.
“Staff”	means all persons employed by the Contractor to perform the Contract together with the Contractor’s servants, agents, volunteers, suppliers, and sub-contractors used in the performance of the Contract.
“Subject Access Request”	means a request made under section 7 of the DPA
Sub- Processor	means any third Party appointed to process Personal Data on behalf of that Processor related to this Contract
“Supplies”	means any such Supplies as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification.
“Statute or statutory provision”	Means reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
“Tax”	means Value Added Tax or any tax of a similar nature which replaces it
“Tender”	means the Contractor’s response to the Invitation to Quote (and any subsequent clarifications).
“Term”	means the period beginning on the Commencement Date and finishing on the Expiry Date

“Test Data”	means test data suitable to assess whether the Deliverables operate in accordance with the Specification.
“Test Period”	means the period of 30 days leading up to User Acceptance Sign Off or such other period as the Authority may reasonably require from the provision of the relevant Deliverables (or part thereof) by the Contractor to the Authority.
“Third Party Software”	means any software or intellectual property which is owned by any party other than the Authority or the Contractor and is used in any way by the Authority or the Contractor in connection with the Contract
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.
“Update”	means all Software releases except those constituting an Upgrade.
“UK SBS”	UK SBS: UK Shared Business Services Limited (a limited company registered in England and Wales with company number 06330639). Where UK SBS is not named as the Contracting Authority in statutory terms or Authority within the Parties section (1), UK SBS will be acting as an Agent on behalf of the Authority.
“Upgrade”	means a major new version of the Software intended to have new or improved functionality
“User Manual”	means the documentation (including all updates) provided by the Contractor setting out step-by-step instructions on how to use all the features and functionality of the Software and providing any other relevant operational or technical information to assist the Authority’s use and understanding of the Software.
“Users”	means the users that are authorised to use the Services as specified in the Specification and including any users from Authorised Third Parties where the Software is delivered as SAAS.
“Variation”	means any addition to, or modification of, any provision of the Contract
“Virus”	means any type of malware, program, piece of code or script that constitutes a threat to the Authority’s Authority Network, operating systems, applications, hardware, software or data and includes but is not limited to: Viruses that infect other programs; Worms that use network resources for spreading; Trojans that execute on infected systems, unauthorised by user actions; Spyware that allows the collection of data about a specific user or organisation, who are not aware of it and/or that allows unauthorised control of the system; Phishing that attempts to fraudulently acquire sensitive and/or confidential information; Adware that allows unauthorised gathering and/or transferring of data; Riskware that allows unauthorised remote administration or connection; Jokes that display malicious messages; Rootkit used to conceal and/or disguise malicious activity; other malware developed to create other Malware, organise attacks or intrude other systems.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the United Kingdom City of London.

2. Interpretation

In the Contract, except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees.
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”
- (h) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

3. Term

- 3.1. The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with this Contract, or otherwise lawfully terminated.
- 3.2. The Authority may seek to extend the duration of the Contract in accordance with clause 82. During the Extension, the obligations under the Contract shall continue (subject to any Variation or any earlier termination) until the expiry of the period specified in accordance with clause 82.

4. Authority's Obligations

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

5. Entire Contract

- 5.1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, to the exclusion of all other terms and conditions, including any other terms that the Contractor seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom,

practice or course of dealing, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

- 5.2. In the event of and only to the extent of any conflict between the body of the Contract, Specification, Invitation to Quote, Tender and other documents referred to or attached to the Contract, the conflict shall be resolved in accordance with the following order of precedence:

- (a) these IT General Conditions of Contract including special conditions, Annex(s);
- (b) Clarifications
- (c) the Schedules;
- (d) the Invitation to Quote;
- (e) the Tender
- (f) any other document referred to in the Contract

except where the Tender offers a higher service level or standard of services compared to the requirements of the specification, in which case the Tender shall to that extent only take precedence over the Specification. Unless expressly agreed, a document varied pursuant to clause 74 shall not take higher precedence than specified here.

- 5.3. The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 5.4. Without prejudice to any other term of this Contract no omission from, addition to, or Variation of these terms and conditions shall be valid or of any effect unless it is agreed in writing and signed by the Authority's Representative.

6. Scope of Contract

- 6.1. Nothing in the Contract shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor as defined by the Partnership Act 1890.
- 6.2. In carrying out its obligations under the Contract, the Contractor shall be acting as principal and not as the agent of the Authority and the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority.
- 6.3. Where UK SBS is not the Authority, UK SBS is the agent of the Authority for the purpose of procurement and is authorised to negotiate and enter contracts for the supply of Supplies and or services on behalf of the Authority. UK SBS will not itself be a party to, nor have any liability under, the Contract unless it is expressly specified as an Authority.
- 6.4. The terms of this Contract, any Special Conditions, Schedules, Annex and the Purchase Order (if issued to the exclusion of the terms and conditions referenced as a link in the purchase order) apply to the Contract to the exclusion of all other terms and conditions, including any other terms that the Contractor seeks to impose or incorporate (whether in any quotation, confirmation of order, in correspondence or in any other context), or which are implied by trade, custom, practice or course of dealing.
- 6.5. The Order constitutes an offer by the Authority to purchase the Supplies and or the Services in accordance with the terms of this Contract (and any Special Conditions, Annex or Schedules). This offer shall remain valid for acceptance by the Contractor for a period of 60 days. Notwithstanding that after [60] days the offer will have expired, the Authority may, at its discretion, nevertheless treat the offer as still valid

and may elect to expedite signature of acceptance by the Contractor. Any and all Supplies and or the Services undertaken outside of signature by the Contract by one of the Parties, that has already signed the Contract shall be understood and agreed by the Parties, as if the Contract had already been signed and shall provide no exemptions or waiver to any of the obligations of the Contract on either party.

- 6.6. The Order shall be deemed to be accepted on the date on which authorised representatives of both parties have signed a copy of this Contract, at which point the Contract shall come into existence. The Contract shall remain in force until all the parties obligations have been performed or post completion of the Supplies and or Services obligations duly expire.

7. Notices

- 7.1. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 7.2. Any notice or other communication, which is to be given by either Party to the other shall be given by letter (sent by hand or post), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given:
- (a) in the case of a letter 2 Working Days after the day on which the letter was posted; or
 - (b) in the case of a letter delivered by hand, electronic mail or facsimile transmission:
 - (i) where it is delivered or transmitted on a Working Day before 16:00 hours, on that day
 - (ii) in any other case, on the first Working Day after the day on which it is delivered or transmitted; or
 - (c) such sooner time where the other Party acknowledges receipt of such letters, facsimile transmission, or item of electronic mail.
- 7.3. For the purposes of clause 7.2, the address of each Party shall be:

- (a) For the Authority:

For the attention of	Advisory, Conciliation and Arbitration Service
Address	8th floor Windsor House
	50 Victoria Street
	Westminster
	London
Postcode	SW1H 0TL
Tel	0300 123 1150
Email	library@acas.org.uk

- (b) For the Contractor:

For the attention of	TBC
Address	TBC
	TBC
	TBC
Postcode	TBC

Tel	TBC
Email	TBC

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

8. Authorised Representatives

- 8.1. The Contract Manager shall be as defined in clause 7.3(a). The Contractor will be notified in writing if there is a change to the person who is its Contract Manager.
- 8.2. The Contractor's Representative shall be as defined in the clause 7.3(b) and who shall have the power on behalf of the Contractor in connection with any matter relating to the performance of the Contract. The Contractor shall notify the Authority's Representative in writing if there is a change in the person who is the Contractors Representative.
- 8.3. The Contract Manager and the Contractor's Representative will hold review meetings quarterly to monitor the Contractor's performance under the Contract.
- 8.4. The Authority reserves the right to change the Contractors Representative at any time by giving notice as per clause 8.

9. Mistakes in Information

- 9.1. 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 provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors, or omissions therein.

10. Conflicts of Interest

- 10.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier, or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest, which may arise.
- 10.2. The provisions of this clause shall apply during the continuance of the Contract and for a period of 1 year after its termination or expiry.

11. Fraud

- 11.1. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's sub-contractors or suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Part 2 – The Provision of Supplies- This section is N/A

12. The Specification

12.1. Not Applicable

13. The Supplies

- 13.1. Not Applicable
- 13.2. Not Applicable
- 13.3. Not Applicable
- 13.4. Not Applicable
- 13.5. Not Applicable
- 13.6. Not Applicable
- 13.7. Not Applicable
- 13.8. Not Applicable

13A. Sufficiency of Information

13A.1 Not Applicable.

13B. Free Issue of Materials

- 13B.1 Not Applicable
- 13B.2 Not Applicable

14. Delivery

- 14.1. Not Applicable
- 14.2. Not Applicable
- 14.3. Not Applicable
- 14.4. Not Applicable
- 14.5. Not Applicable
- 14.6. Not Applicable
- 14.7. Not Applicable.
- 14.8. Not Applicable
- 14.9. Not Applicable

15. Inspection of Premises

- 15.1. Not Applicable
- 15.2. Not Applicable

16. Property and Risk

16.1. Not Applicable

17. Damage in Transit

- 17.1. Not Applicable
 - (a) Not Applicable
 - (b) Not Applicable
 - (i) Not Applicable
 - (ii) Not Applicable

18. Inspection, Rejection and Guarantee

- 18.1. Not Applicable
- 18.2. Not Applicable
 - (a) Not Applicable
 - (b) Not Applicable
- 18.3. Not Applicable
- 18.4. Not Applicable
- 18.5. Not Applicable

19. Labelling and Packaging

- 19.1. Not Applicable
- 19.2. Not Applicable
- 19.3. Not Applicable

20. Training

- 20.1. Not Applicable.

21. Manner of Carrying out the Installation Work

- 21.1. Not Applicable
- 21.2. Not Applicable
- 21.3. Not Applicable
 - (a) Not Applicable
 - (b) Not Applicable
 - (c) Not Applicable
- 21.4. Not Applicable

20A. Quality and Standards

- 20A.1 Not Applicable
- 20A.2 Not Applicable
- 20A.3 Not Applicable
- 20A.4 Not Applicable

20B. Non-Exclusivity

- 20B.1 Not Applicable

Part 3 – The Provision of Services

22. The Services

- 22.1. The Contractor shall provide the Services during the Term and any such extension in accordance with the Authority's requirements as set out in the Specification and the terms of the Contract. The Authority shall have the power to inspect and examine the performance of the Services at the Premises at any reasonable time.
- 22.2. The Contractor shall at all times deliver the Services in accordance with the Law.
- 22.3. If the Authority informs the Contractor that the Authority considers that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- 22.4. Subject to the Authority providing Approval in accordance with clause 23.2, timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- 22.5. Subject at all times to clause 46A and without prejudice to any other rights and remedies the Authority may have pursuant to the Contract, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor's delay in the performance of its obligations under the Contract and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor's obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 23.2.

23. Manner of Carrying Out the Services

- 23.1. The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 23.2. The Contractor shall make no delivery of Equipment nor commence any work on the Authority's Premises without obtaining the Authority's prior Approval.
- 23.3. All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.
- 23.4. The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable, and clean condition.
- 23.5. All Equipment shall be at the risk of the Contractor. The Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 23.6. The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor remove from the Authority's Premises, any Equipment which in the opinion of the Authority is either hazardous, noxious, or not in accordance with the Contract and if the Authority has ordered the Contractor to remove any item of Equipment, to replace such item with a suitable substitute item of Equipment.

- 23.7. On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services in order to leave the Authority's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers, or sub-contractors.
- 23.8. Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's sub-contractors or suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require and shall not impede in any way the Authority or its officers, contractors, or agents in the exercise of the Authority's rights of possession and control over the Premises (if any).

24. Sufficiency of Information

- 24.1. The Contractor shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates, prices and discount structures stated by it in the Tender which shall (except insofar as it is otherwise provided in the Contract) cover all its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

25. Free Issue of Materials

- 25.1. Where the Authority, for the purposes of the Contract, issues materials free of charge to the Contractor such materials shall be and remain the property of the Authority. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Contractor shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Authority discretion.
- 25.2. The Contractor shall be afforded a reasonable opportunity to inspect the issued materials on delivery and carry out such tests as are reasonably practicable or are specified in the Specification to satisfy himself as to the suitability of the issued materials. The Authority shall have no liability in respect of any defect in the issued materials which such inspection or testing would have revealed.

26. Quality and Standards

- 26.1. 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 the standard of the Services has not been specified in the Contract, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution and shall execute the Contract with reasonable care and skill and in accordance with best industry practice.
- 26.2. The introduction of new methods or systems, which impinge on the provision of the Services shall be subject to prior Approval in writing by the Contract Manager.

- 26.3. The signing by the Contract Manager (or their representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.
- 26.4. Where an appropriate European or British Standard or Code of Practice issued by the European Commission or British Standards Institution is current at the Commencement Date of this Contract or of any tender relating to this Contract, all Goods, Software, Services and Materials supplied shall be at least in accordance with that Standard in the absence of any direction to the contrary.

27. Non-Exclusivity

- 27.1. This Contract shall be awarded on a non-exclusive basis and the Authority reserves the right to seek to purchase any or all items from other sources.
- 27.2. Where the Authority has provided information regarding data, volumes or forecast quantities, then the Authority does not guarantee any specific quantity unless otherwise stated within the Specification.

28. Key Personnel

- 28.1. Any changes to Key Personnel shall be notified to the Authority in writing as soon as is reasonably practicable.
- 28.2. Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

29. Contractor's Staff

- 29.1. The Authority reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:
 - (a) any member of the Staff; or
 - (b) any person employed or engaged by a sub-contractor, agent, or servant of the Contractorwhose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.
- 29.2. If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire.
- 29.3. The Contractor's Staff, engaged within the boundaries of any 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 that establishment and when outside that establishment.
- 29.4. The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.
- 29.5. The Contractor shall bear the cost of any notice, instruction, or decision of the Authority under this clause.

30. Inspection of Premises- N/A

- 30.1. Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submission of its Tender and to have made appropriate enquiries so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.
- 30.2. The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 30.1.

31. Agreement to Occupy Authority's Premises- N/A

- 31.1. Where any land or Premises (including temporary buildings) are made available by the Authority for occupation by the Contractor in connection with the Contract, those Premises shall be made available to the Contractor on the terms contained in an agreement regulating the occupation of those Premises.

31A. Due Diligence

- 31A.1 The Contractor is deemed to have confirmed their ability to provide the Services in the Specification before submitting their Invitation to Quote and to have carried all necessary due diligence checks to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.

32. Authority Property

- 32.1. Where the Authority for the purpose of the Contract issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all suppliers, sub-contractors and other persons dealing with the Contract.
- 32.2. Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within **[5]** Working Days of receipt.
- 32.3. The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Contract and for no other purpose without prior Approval.
- 32.4. The Contractor shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) the Contract and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's employees, servants, agents, suppliers, or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up Authority Property whether processed or not to the Authority on demand.
- 32.5. The Contractor shall ensure the security of all Authority Property, whilst in the Contractor's possession, either on its Premises or elsewhere during the performance of the Contract, in accordance with the Authority's reasonable security requirements as required from time to time.

- 32.6. The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within 2 two Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Contract.

33. Sub-Contracting for the Delivery of the Services

- 33.1. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements. The Authority reserves the right with reasonable notice, to audit the Contractor so as to ascertain that this is occurring. For the avoidance of doubt, in any situations that the Authority is making payments to the Contractor without being presented with an invoice, the absence of an invoice does not waiver any obligation regarding payments made by the Contractor to its subcontractors or supply chain.

34. Offers of Employment

- 34.1. For the duration of the Contract and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without the Authority's prior formal Approval.

Part 4 – The Software**35. The Specification**

- 35.1. The quantity, quality and description of the Software shall be as specified by the Authority in the Specification Schedule.

36. The Software

- 36.1. If required by the Authority, samples of Software shall be submitted by the Contractor to the Authority for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Software shall be equal in quality to or better than approved samples.
- 36.2. The Authority reserves the right to request samples at any time. Samples are to be provided to the Authority free of charge.
- 36.3. The Software shall be fully compatible with the Authority Network and all relevant Authority Property.
- 36.4. The Authority relies on the skill and judgment of the Contractor in the supply of the Software and the carrying out of all the Contractor's obligations under this Contract.
- 36.5. The Contractor must undertake its obligation in the Contract in accordance with the Law.
- 36.6. The Authority reserves the right for any Software procured under the terms of this Contract, to be used by its agents, contractors, sub-contractors, or partners.
- 36.7. Where the Authority has provided information regarding data, volumes or forecast quantities then the Authority does not guarantee any specific quantity unless otherwise stated within the Specification.
- 36.8. The Contractor warrants and represents that all third-party software used in or supplied with the Software is listed in the Tender.
- 36.9. The Authority shall be entitled to receive any Updates at no additional cost
- 36.10. The Authority shall be entitled to receive Upgrades at no additional cost where such Upgrades are required to comply with existing or new Law. All other Upgrades will be charged in accordance with the fees in this Contract.
- 36.11. Any Updates or Upgrades provided to the Authority under this Contract shall:
- (a) Result in the Software having at least the same functionality, performance, and compatibility with the Authority Network as the Software as it was immediately prior to the relevant Update or Upgrade; and
 - (b) Not have any adverse effect on the functionality, performance, or compatibility of either the Software or the Authority Network.
- 36.12. On or before the Installation Date the Contractor shall provide the Authority with such copies of the User Manual in electronic format as the Authority may reasonably require
- 36.13. The User Manual shall be updated by the Contractor on a regular basis (including on or before the release of any Update). The Contractor will notify the Authority when the User Manual has been updated and provide copies in the manner set out in clause 36.12
- 36.14. The Authority shall be entitled to use and make such number of copies of the User Manual as it may reasonably require.
- 36.15. The Contractor warrants that it has and shall continue to have for the duration of the Term all necessary consents, licences, and approvals to provide the Services, including without limitation the right to provide and install on the

Authority's systems and Upgrades and Updates to the Software in accordance with the requirements of this Contract.

36A. Software Licenses

- 36A.1 The Contractor grants the Authority and, subject to clause 36A.2, the Authorised Third Parties an irrevocable (except in the event of termination or expiry of this Contract), non-exclusive licence to install and use the Software for the Licence Term.
- 36A.2 The rights of Authorised Third Parties to install and use the Software under clause 36A.1 shall be limited to those Authorised Third Parties who need to install and use the Software for the purpose of providing services to the Authority and their use of the Software shall be for that purpose only
- 36A.3 Save as provided in clause 36A.2, each Authorised Third Party licenced to use the Software under clause 36A.1 may exercise each of the rights and be subject to each of the restrictions expressed as applying to the Authority under this Contract in respect of the Software and User Manual.
- 36A.4 The right to install and use the Software under clause 36A.1 includes the right to:
- (a) Make such back-up or archive copies of the Software as the Authority reasonably requires.
 - (b) Install and use the Software at any disaster recovery facilities, including those operated by a third party.
 - (c) Install and use the Software at any help desk or support facilities, including the right to access the Software remotely from any location.

36B. Third Party Software

- 36B.1 The Contractor warrants that;
- (a) Any Third-Party Software is fully licensed for use by both the Authority and the Contractor for the duration of the Contract (including any extension under clause 82)
 - (b) The Authority has been provided with a written copy of any Third-Party Software licence conditions by the Contractor prior to the Commencement Date
 - (c) In the event of any termination of the Contract before the Expiry Date (or before any agreed extension under clause 82) the Authority will, at their discretion, have the right to transfer all Third-Party Software to the Authority to allow its continued use

37. Sufficiency of Information

- 37.1. The Contractor shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates, prices and discount structures stated by it in the Tender which shall (except insofar as it is otherwise provided in the Contract) cover all its obligations under the Contract and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

38. Free Issue of Materials

- 38.1. Where the Authority, for the purposes of the Contract, issues materials free of charge to the Contractor such materials shall be and remain the property of the Authority. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and

- tear. The Contractor shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Authority discretion.
- 38.2. The Contractor shall be afforded a reasonable opportunity to inspect the issued materials on delivery and carry out such tests as are reasonably practicable or are specified in the Specification to satisfy himself as to the suitability of the issued materials. The Authority shall have no liability in respect of any defect in the issued materials which such inspection or testing would have revealed.

39. Installation of Software

- 39.1. The Software shall be installed in the manner specified in the Specification on the Installation Date
- 39.2. If the Software is to be delivered to the Authority on physical media, the Contractor warrants and represents that the media will be free from defects.
- 39.3. If the Software is to be made available for download by the Authority, the download shall occur on the Installation Date and the Contractor shall notify the Authority when the Software is ready to be downloaded and will provide all necessary instructions including activation codes or licence keys.
- 39.4. Where any access to the Authority's Premises is necessary in connection with delivery or installation, the Contractor and the Contractor's sub-contractors or suppliers shall at all times comply with the reasonable requirements of the Authority's security procedures.
- 39.5. Time of installation shall be of the essence and failure to deliver within the time promised or specified shall enable the Authority (at the Authority's option) to release itself from any obligation to accept and pay for the Software and/or cancel all or part of the Contract, in either case without prejudice to other rights and remedies.
- 39.6. The Authority shall be under no obligation to accept or pay for any Software supplied earlier than the Installation Date.
- 39.7. Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- 39.8. If the Authority is affected by circumstances of Force Majeure, the Authority shall be entitled to suspend partially or totally the date or dates for delivery of the Software until such time as the circumstances of Force Majeure have ceased and such suspension shall not give rise to any claim by the Contractor against the Authority nor entitle the Contractor to terminate the Contract.

40. Inspection of Premises and Compatibility

- 40.1. Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submission of its Tender and to have made any additional appropriate enquiries regarding the Software compatibility with the Authority Network so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract.
- 40.2. The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 40.1.

41. Guarantee

- 41.1. It shall be a material condition of the Contract that the Contractor shall within [15] days of a request by the Authority to do so, procure and deliver to the Authority the Guarantee duly executed.

42. Acceptance Tests

- 42.1. Within [7] days following the acceptance of the Contract, the Parties shall work together to agree a set of Acceptance Tests which shall be sufficient to test whether or not the Deliverables have the facilities and functions specified in, and performs in accordance with, the Specification, such agreement is not to be unreasonably withheld or delayed.
- 42.2. The Authority shall perform the Acceptance Tests within the Test Period. The Contractor shall be given reasonable notice of and be entitled to attend the Acceptance Tests.
- 42.3. If the Deliverables process the Test Data to the Authority's satisfaction, then they shall be deemed to have passed the Acceptance Tests.
- 42.4. If the Deliverables fail to pass the Acceptance Tests, the Contractor shall attempt to identify the reason why the Deliverables failed to pass, correct any problems, and then re-commence the Acceptance Tests.
- 42.5. If the Deliverables repeatedly fail to pass the Acceptance Tests within the Test Period (and the Extended Test Period if applicable) this shall be deemed a material breach of the Contract.
- 42.6. A written statement of Acceptance will be issued by the Authority when the relevant Deliverables have passed all the Acceptance Tests within the Test Period (or Extended Test Period if applicable).

43. Rejection and Guarantee

- 43.1. The Contractor shall permit the Authority or the Authority's Representative to continue to make additional inspections and tests, which may reasonably be required. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests of the Software or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Software and, in particular, the Authority retains the right to reject the Software.
- 43.2. The Authority may by written notice to the Contractor reject any of the Software, which fails to continue to conform to the approved sample or fails to continue to meet the Specification at any time during the Contract and after successful completion of the Acceptance Tests. If the Authority shall reject any of the Software pursuant to this clause the Authority shall be entitled (without prejudice to other rights and remedies) either:
- (a) to have the Software concerned as quickly as possible and in any event within 5 Working Days of receipt or deemed receipt of written notice given pursuant to this clause either repaired by the Contractor or (as the Authority shall elect) replaced by the Contractor with Software which conforms in all respects with the approved sample or with the Specification.
 - (b) to treat the Contract as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Software concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Authority in obtaining other Software in replacement.

- 43.3. The issue by the Authority of a receipt note for the Software shall not constitute any acknowledgement of the condition or nature of the Software.
- 43.4. Unless otherwise required in the Authority's Invitation to Quote, the Contractor shall guarantee the Software for a minimum of 5 years from the Installation Date. If the Authority shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Software as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority.
- 43.5. Any Software rejected or returned by the Authority as described in clause 43.2 shall be returned to the Contractor at the Contractor's risk and expense.

44. Error Reporting

- 44.1. The Authority shall provide the Contractor with all information and materials reasonably required by the Contractor for the purpose of investigation, diagnosis and correction of each Error.
- 44.2. In relation to each Error notified to the Contractor by the Authority, the Contractor shall:
 - (a) assign a unique reference number.
 - (b) record in a log the following details:
 - (i) the date and time of notification.
 - (ii) the name and contact details of the Authority's representative reporting the Error;
 - (iii) the details of the Error; and
 - (iv) the date, times and details of follow up responses and the resolution of each Error.
 - (c) respond to the Authority by confirming notification has been received within 48 hours of receipt of the information.

45. Training

- 45.1. Where indicated in the Invitation to Quote the Price shall include the cost of instruction of the Authority's personnel and/or agents and principals in the use and maintenance of the Software, such instruction to be in accordance with the training specified in the Specification.

46. Manner of Carrying out the Installation Work

- 46.1. The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Authority's Premises without obtaining prior Approval.
- 46.2. Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and Contractor's sub-contractors or suppliers as are necessary to enable the performance of the Contract concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Authority may reasonably require.
- 46.3. The Authority shall have the right at any time during the progress of the Contract to order in writing:
 - (a) the removal from the Authority's Premises of any materials which in the opinion of the Authority are either hazardous, noxious, or not in accordance with the Contract; and/or

- (b) the substitution of proper and suitable materials; and/or
- (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Software which, in respect of material or workmanship, is not in the opinion of the Authority in accordance with the Contract.

46A. Go Live and Longstop Dates

- 46A.1 In the event that the Contractor is unable meet the Go Live Date, the Authority may, at its absolute discretion, extend the Go Live Date.
- 46A.2 In the event that the failure by the Contractor to meet the Go Live Date or the Longstop Date has been caused solely by an Authority Default then to the extent that that Authority Default has caused a delay, the Authority shall amend the Go Live Date and/or the Longstop Date accordingly.
- 46A.3 The Parties acknowledge that in the event that the Software, systems, connectivity and services have not Gone Live by the Go Live Date (as such may be amended in accordance with clause 46A.1 above), the Authority will incur Losses, in particular in relation to the need to extend existing software arrangements.
- 46A.4 Save to the extent that the failure has been caused by an Authority Default, in the event that the Contractor has not achieved Go Live by the Longstop Date, this shall be a material breach of contract and, without prejudice to any other right or remedy that the Authority may have, the Authority shall be entitled to terminate this Contract immediately by written notice and the Contractor shall repay to the Authority all sums already paid to the Contractor, by the Authority in connection with the Contract , within [14] days of termination.

47. Quality and Standards

- 47.1. 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 the standard of the Software and Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Software and Services with the Authority Representative prior to execution and shall execute the Contract with reasonable care and skill and in accordance with best industry practice.
- 47.2. The introduction of new methods or systems, which impinge on the provision of the Software and Services, shall be subject to prior Approval in writing by the Authority Representative.
- 47.3. The signing by the Authority Representative (or their representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.
- 47.4. Where an appropriate European or British Standard or code of practice issued by the European Commission or British Standards Institution is current at the Commencement Date or of any tender relating to this Contract, all Software, Services and Materials supplied shall be at least in accordance with that Standard in the absence of any direction to the contrary.

48. Non-Exclusivity

- 48.1. This agreement shall be awarded on a non-exclusive basis and the Authority reserves the right to seek to purchase any or all items from other sources.

49. SAAS

- 49.1. The Contractor shall make the Software and the Documentation available to the Authority during the Service Hours excluding
 - (a) scheduled maintenance which the Contractor shall use reasonable endeavours to undertake between 18:00 and 02.00 (UK time)
 - (b) emergency maintenance; or
 - (c) downtime cause in whole or part by Force Majeure
- 49.2. The Contractor will formally notify the Authority 2 weeks in advance of any scheduled maintenance
- 49.3. The Authority Support Service will be available to the Authority through a helpdesk during the hours specified in the Tender.
- 49.4. The Authority grants a non-transferable, exclusive license to the Contractor to use the Authority Data only for the extent necessary to enable the Authority to access the Software as described in the Specification for the duration of the Contract
- 49.5. The Contractor grants the Authority a non-transferable, exclusive right for the term of this Contract to allow User's access to the Software
- 49.6. The Contractor shall be responsible for taking all necessary measures to safeguard the security of the Authority Data in its possession, including maintaining appropriate firewalls, encryption, and anti-virus protection.
- 49.7. No consultant, employee, sub-contractor, or supplier of the Contractor shall access any part of the Authority Data without written authorisation from the Authority prior to such access
- 49.8. The Contractor shall notify the Authority immediately upon discovery of any unauthorised access of the Authority Data or any security breach of the Authority Data
- 49.9. The Contractor shall indemnify the Authority against any loss suffered by the Authority due to any security breach of or unauthorised access to the Authority Data
- 49.10. The Authority warrants and represents that it shall, and ensure that its Users shall, keep confidential and, except as provided for in this Contract, not share with any third party their password or access details provided to facilitate access to the Software
- 49.11. The Authority shall not be permitted to frame or mirror any part of the Software other than as permitted by the Documentation or with the Contractor's express written consent.

Part 5 – Payment and Price**50. Price**

- 50.1. In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Authority shall pay the Price in accordance with clause 51.
- 50.2. In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of Law, the provisions of clause 55 shall apply.
- 50.3. The Authority shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Contract.
- 50.4. Prices shall be fixed for the duration of the Contract.

51. Payment and Tax

- 51.1. The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted in arrears in line with the Pricing Schedule payment milestones, for work completed to the satisfaction of the Contract Manager. For the avoidance of doubt each milestone payment must first be confirmed by the Authority's project manager once the Authority is satisfied that the relevant milestone has been completed.
- 51.2. Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice. Any copy invoices requested by the Authority are to be provided by the Contractor free of charge.
- 51.3. Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 51.4. The Authority may reduce payment in respect of any Services, which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 51.5. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 88.3 for failure to pay undisputed charges.
- 51.6. The Contractor shall pay all the invoices of its sub-contractors within 30 days of receipt and shall ensure that the same timescale for payment is passed down its supply chain.

52. Recovery of Sums Due

- 52.1. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.
- 52.2. Any overpayment by the Authority to the Contractor, whether of the Price or Tax, shall be a sum of money recoverable by the Authority from the Contractor pursuant to clause 52.1 above.
- 52.3. The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or

otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

53. Price Adjustment on Extension

- 53.1. In the event of an Extension being considered by the Authority pursuant to clause 82, the Authority will (as part of such consideration) review the Price with the Contractor in accordance with 50.4.
- 53.2. If a Price variation is agreed with the Authority as part of its consideration relating to an Extension, the revised Price will take effect from the first day of any Extension of the Term pursuant to clause 82.

54. Currency

- 54.1. Any requirement of Law to account for the Services in any currency (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.
- 54.2. The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 54.1.

55. Change of Law

- 55.1. The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Contract nor be entitled to an increase in the Price and/or any charges payable by the Contractor 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 known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Governments Finder a Tender or Contracts finder websites or otherwise.
- 55.2. If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 55.1), or during any Extension agreed pursuant to clause 53, the Contractor shall notify the Authority of the likely effects of that change, including:
 - (a) whether any change is required to the Services, the Price, or the Contract; and
 - (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 55.3. As soon as practicable after any notification in accordance with clause 55.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
 - (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors.
 - (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred.
 - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

- 55.4. Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 55 shall be implemented in accordance with clause 77.

Part 6 – Statutory Obligations, Codes of Practice and Regulations**56. Prevention of Corruption**

- 56.1. The Authority may terminate this Contract and recover all its loss if the Contractor, its employees, or anyone acting on the Contractor's behalf do any of the following things:
- (a) offer, give, or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know what has been done); or
 - (b) commit an offence under the Bribery Act 2010; or
 - (c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority contractors or employees.
- 56.2. Any clause limiting the Contractor's liability shall not apply to this clause.

57. Discrimination

- 57.1. The Contractor must:
- (a) operate an equal opportunities policy for as long as this Contract is in force; and
 - (b) provide the Authority with a copy of any such policy at the Authority's request
- 57.2. The Contractor must use all reasonable endeavours to make sure that its equal opportunities policy complies with all statutory obligations as regards discrimination on the grounds of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion, or sexual orientation in relation to:
- (a) decisions made by it in the recruitment, training or promotion of Staff employed or to be employed in the provision of the Supplies and Services.
 - (b) the provision of the Services; and
 - (c) the carrying out of its obligations under this Contract.
- 57.3. In providing the Services, the Contractor must observe as far as possible the Code and the Human Rights Act 1998
- 57.4. The Contractor must provide the Authority with such information as it may reasonably require in order for the Authority to assess the Contractor's compliance with the Code.
- 57.5. If any Court or Tribunal, or the Equality and Human Rights Commission (or anybody which may replace the Commission) makes a finding that the Contractor has unlawfully discriminated against any person in the provision of the Services then the Contractor must:
- (a) take all necessary steps to make sure that the unlawful discrimination does not happen again; and
 - (b) notify the Authority in writing of the finding and the steps taken to prevent its re-occurrence.

58. The Contracts (Right of Third Parties) Act 1999

- 58.1. Save as expressly set out in this Contract, nothing in this Contract shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Contract and for the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

59. Environmental, Social and Labour Requirements

- 59.1. The Contractor shall, when working on the Authority's Premises, perform the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper, and other resources, reduce waste including plastics and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 59.2. In performance of the Contract, the Contractor shall minimise the use of Single Use Plastics and shall ensure that a similar obligation is included in its contracts with its sub-contractors and encourage the elimination of single use plastic within its supply chain by 2021.
- 59.3. In performance of their obligations under the Contract the Contractor shall comply with applicable obligations in the field of environmental, social, and labour law, collective agreements, and the international environmental social and labour law provisions.

60. Health and Safety

- 60.1. 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 on those Premises.
- 60.2. The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. 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 the Contract.
- 60.3. 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 on those Premises.
- 60.4. The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Contract on the Authority's Premises where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
- 60.5. The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations, and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Contract.
- 60.6. 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.
- 60.7. The Contractor shall at all times during the Term, provide and maintain all such vehicles, plant, machinery and equipment (hereinafter together referred to as "plant") as are necessary for the proper performance of this Contract. Vehicles used on this Contract shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Contract.

61. Taxation Obligations of the Contractor

- 61.1. The relationship between Authority and the Contractor shall be that of "independent contractor" which means that the Contractor is not an Authority

- employee, worker, agent or partner, and the Contractor shall not give the impression that they are.
- 61.2. As this is not an employment Contract, the Contractor shall be fully responsible for all their own tax, including any national insurance contributions arising from carrying out the Services.
- (a) The Contractor in respect of consideration received under this Contract, the Contractor shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
 - (b) Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
 - (c) The Authority may, at any time during the term, completion extension or post termination of this Contract, request the Contractor to provide information which demonstrates how the Contractor complies with its obligations under tax and National insurance Clauses 61.2 (a) and 61.2 (b) above or why those Clauses do not apply to it.
- 61.3. A request under Clause 61.2 (c) above may specify the information which the Contractor shall provide and the period within which that information must be provided.
- 61.4. In the case of a request mentioned in clause 61.2 (c) above, the provision of inadequate information or a failure to provide the information within the requested period, during any term or extension, may result in the Authority terminating the Contract.
- 61.5. Any obligation by the Contractor to comply with Clause 61.2 (a), (b), (c) above shall survive any term, extension, completion or termination and the Contractors obligations to Indemnify the Authority shall survive without limitation until such time as any of these obligations are complied with.
- 61.6. The Authority may supply any information, including which it receives under Clause 61.2 (c) above to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 61.7. If the Authority has to pay any such obligations owed by the Contractor under Clauses 61.2 (a) and 61.2 (b) above then the Contractor shall pay back to the Authority in full, any money that the Authority has to pay, and the Contractor shall also pay back the Authority for any fine or compensate the Authority for any other punishment imposed on the Authority because the tax or national insurance due was not paid by the Contractor.

62A. TUPE- N/A**Part 7 – Protection of Information****63. Data Protection**

- 63.1. The Supplier warrants that that it shall under this Contract:
- (a) Process only on documented instructions (Annex A) by the Contracting Authority, including regarding international transfers (unless, subject to

certain restrictions, legally required to transfer to a third country or international organisation);

- (b) provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment (see <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> of the UK GDPR). prior to commencing any processing. Such assistance may, at the discretion of the Contracting Authority, include;
- (i) systematic description of the envisaged processing operations and the purpose of the processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 63.2. The Contracting Authority may require further assurances during the Contract through a series of questions as to the Supplier UK GDPR compliance.
- 63.3. Notwithstanding any other remedies available to the Contracting Authority, the Supplier shall fully indemnify the Contracting Authority as a result of any such breach of the United Kingdom General Data Protection Regulations (UK GDPR), by the Supplier or any other party used by the Supplier in its performance of the Contract, that results in the Contracting Authority suffering fines, loss or damages.
- 63.4. For the avoidance of doubt this clause shall require the Supplier to ensure that this Contract from its Start Date shall be performed in such a way so as to be compliant with any existing Data Protection Act and will meet the requirements of the UK GDPR.

64. Annex A - Schedule of Processing, Personal Data and Data Subjects

- 64.1. The Supplier shall only process in accordance with the instructions as advised below and comply with any further written instructions with respect to processing by the Contracting Authority. Any such further written processing instructions required by the Contracting Authority shall be incorporated into this Schedule and shall be the subject of a formal amendment to this Contract.
- (a) The contact details of the Contracting Authority Data Protection Officer are: dataprotection@acas.org.uk
 - (b) The contact details of the Suppliers Data Protection Officer are: **[TBC]**
 - (c) The Supplier shall comply with any further written instructions with respect to processing by the Contracting Authority.
- 64.2. Any such further instructions shall be incorporated into this Schedule

Annex A - Schedule of Processing, Personal Data and Data Subjects	Annex A - Schedule of Processing, Personal Data and Data Subjects
The Supplier shall only process in accordance with	The Supplier shall only process in accordance with the instructions as advised below and comply with any

the instructions as advised below and comply with any further written instructions with respect to processing by the Contracting Authority. Any such further written processing instructions required by the Contracting Authority shall be incorporated into this Schedule and shall be the subject of a formal amendment to this Contract.	further written instructions with respect to processing by the Contracting Authority. Any such further written processing instructions required by the Contracting Authority shall be incorporated into this Schedule and shall be the subject of a formal amendment to this Contract.
The contact details of the Contracting Authority Data Protection Officer are: Mark Faulkner	The contact details of the Contracting Authority Data Protection Officer is: Elizabeth Pacey
The contact details of the Suppliers Data Protection Officer are: to be inserted	The contact details of the Suppliers Data Protection Officer are: to be inserted
The Supplier shall comply with any further written instructions with respect to processing by the Contracting Authority.	The Supplier shall comply with any further written instructions with respect to processing by the Contracting Authority.

Description	Details
Subject matter of the processing	The service will provide a suitable e resource delivering accurate and timely Employment Law information and updates for Acas staff so high-quality advice and guidance can be provided to customers.
Duration of the processing	Three years from 01 April 2022
Nature and purposes of the processing	The purpose of the processing is the collection of staff names and e-mail addresses to set up access to the portal. These details will be stored in the system. The control over the portal sits with Acas and staff can be added and removed as required. The purpose of the processing is to carry out Acas statutory functions under public task and the holding of staff personal information is carried out under contract.
Type of Personal Data	Names and e-mail addresses only

Categories of Data Subject	ACAS staff
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data will be held on the system for as long as is required. If the staff member no longer requires access to the system or leaves then they can be deleted from it. Once the three-year contract is at and end then all staff records should be deleted from the system

- 64.3. The Supplier acknowledges that for the purposes of the Data Protection Legislation, the Contracting Authority shall be the Data Controller of the information listed in Annex A and the Supplier shall be the Data Processor of this data. The Supplier acknowledges that for the purposes of the Data Protection Legislation it shall be the Controller of the information listed in Annex 2.
- 64.4. Where the Supplier is the Data Controller, it shall comply with the Data Controller obligations specified in Data Protection Legislation and shall implement appropriate technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with the GDPR.
- 64.5. The Supplier shall be the Data Controller of:

65. GDPR Questionnaire

- 65.1. The Supplier agrees that during any term or extension it shall complete and return the attached questionnaire as advised below.

Note: The Contracting Authority also reserves the right to amend or increase these frequencies, as it deems necessary to secure assurance with regards to compliance.

- 65.2. The Contracting Authority requires such interim assurances to ensure that the Supplier is still compliant with the needs of the GDPR Act due to the implications of a breach.
- 65.3. The Supplier shall complete and return the questionnaire to the contact named in the Contract on the following date(s) from the Start Date of the Contract.
(Date - TBC)
- 65.4. The Supplier agrees that any financial burden associated with the completion and submission of this questionnaire at any time, shall be at the Suppliers cost to do so and will not be reimbursable.



GDPR Assurance
Questionnaire May1

66. Confidentiality

- 66.1. Each Party: -
(a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it; accordingly, and

- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.
- 66.2. The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under the Contract. Additionally, where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
- 66.3. The provisions of clauses 66.1 to 66.2 shall not apply to any Confidential Information received by one Party from the other:
 - (a) which is or becomes public knowledge (otherwise than by breach of this clause);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party.
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
 - (d) is independently developed without access to the Confidential Information; or
 - (e) which must be disclosed pursuant to a statutory, legal, or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 69.
- 66.4. Nothing in this clause shall prevent the Authority:
 - (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination by internal and or external Audit obligations required of UKSBS or the Authority.
 - (b) disclosing any Confidential Information obtained from the Contractor:
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
 - (ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract.
 - (c) provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 66.5. Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 66.6. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and EIR, the text of this Contract, and any Annex or Special Conditions to this Contract, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of these Acts.

- 66.7. Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Authority to publish this Contract and its Schedules in its entirety, including from time-to-time agreed changes to the Contract, to the general public in whatever form the Authority decides relevant so as to discharge its statutory obligations as a Contracting Authority.

67. Security of Confidential Information

- 67.1. To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain their security systems. Approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor's expense.
- 67.2. The Contractor will immediately notify the Authority of any and all breach or perceived breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 66. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data

68. Authority Policies

- 68.1. The Authority has a whistle blowing policy to encourage its employees and the public to bring into the open issues concerning dishonesty involving the Authority. The Contractor shall ensure that its staff are made aware of this policy which is available on the Authority's website.

69. Freedom of Information

- 69.1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these obligations and Information disclosure requirements.
- 69.2. The Contractor shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information.
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 69.3. The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (d) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

- (e) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 69.4. The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
 - (a) without consulting with the Contractor, or
 - (b) following consultation with the Contractor and having taken its views into account.
- 69.5. The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 69.6. The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 69.4.

70. Publicity, Media, and Official Enquiries

- 70.1. The Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the formal Approval of the Communications Team of the Authority.
- 70.2. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 70.1 by their Staff.
- 70.3. The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

71. Security

- 71.1. The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises and shall procure that all its Staff shall likewise comply with such requirements.

72. Intellectual Property Rights

- 72.1. All Intellectual Property Rights in any specifications, Software, instructions, plans, data, drawings, databases, patents, patterns, models, designs, or other material:
 - (a) which are Foreground IPR shall (as applicable) remain or be and become the Authority's Intellectual Property Rights;
 - (b) which are Background IPR shall remain the property of the Contractor.
 - (c) The Contractor shall, at no cost to the Authority and for the duration of the Contract, grant a non-exclusive, non-transferrable (unless the Authority request otherwise) royalty free licence which allows the Authority use of all Background IPR required by this Contract. Where the Foreground IPR do not vest automatically in the Authority, the Contractor shall take such steps as may be required and execute such deeds and other instruments as may be required to ensure that the Foreground IPR are transferred with their full benefit to the Authority.
 - (d) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority.

- (e) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.
- 72.2. The Contractor shall procure from 3rd Parties that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third-party providing services to the Authority, and shall be granted at no cost to the Authority.
- 72.3. It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:
 - (a) designs furnished by the Authority.
 - (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.
- 72.4. 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).
- 72.5. 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 may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:
 - (a) modify any or all the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 72.6. At the termination of the Contract the Contractor shall.

- (a) immediately return to the Authority all materials, work or records held, including any back-up media.
- (b) ensure all Software is made available free of charge to the Authority and any third-party which the Authority names in such condition and state to facilitate the success of the Exit Plan
- (c) grant a perpetual license to the Authority and any third party the Authority names for the use of any Software or software as required

73. Database Rights

- 73.1. Any and all Database Rights shall vest automatically in the Authority.
- 73.2. All data held in the Database for [TBC] must be returned to the Authority upon termination of this Contract.

74. Copyright

- 74.1. Copyright in the documents comprising the Contract shall vest in the Authority, but the Contractor may obtain or make at their own expense any further copies required for use by them for performing the Contract.

75. Audit

- 75.1. The Contractor shall keep and maintain until 2 year years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Supplies and Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Contract.

Part 8 – Control of the Contract**76. Assignment and Sub-Contracting**

- 76.1. The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
- 76.2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

77. Waiver

- 77.1. The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 77.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 7.
- 77.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

78. Variation of the Services

- 78.1. The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever.
- 78.2. Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of clause 7. All Variations shall be in the form of an addendum to the Contract.
- 78.3. In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Contractor and agreed in writing with Authority and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement, the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 100.
- 78.4. The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

79. Severability

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

- 79.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

80. Remedies in the Event of Inadequate Performance

- 80.1. Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contract, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, they may uphold the complaint, and/or take further action in accordance with the provisions of clause 89 of the Contract.
- 80.2. In the event that the Authority is of the reasonable opinion that where there has been a material breach of the Contract by the Contractor, or the Contractor's performance of its obligations under the Contract has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 89 of the Contract, do any of the following:
- (a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately.
 - (b) without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Contract.
 - (c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
 - (d) terminate, in accordance with clause 89, the whole of the Contract.
- 80.3. The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.
- 80.4. If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.
- 80.5. If:
- (a) the Contractor fails to comply with clause 80.4. above and the failure, is materially averse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or
 - (b) the Contractor persistently fails to comply with clause 80.4 above, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

- 80.6. The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

81. Remedies Cumulative

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

82. Monitoring of Performances

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

83. Possible Extension of Term

- 83.1. Not Applicable.

84. Novation

- 84.1. The Authority shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority, private sector body or any other body established under statute ("Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract.
- 84.2. The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor, which relates to the performance of the Contract by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

Part 9 – Liabilities

85. Indemnity and Insurances

- 85.1. Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by the Supply of Goods and Services Act 1982. Section 12 of the Sale of Goods Act 1979.
- 85.2. The Contractor shall take out and maintain with a reputable insurance company and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain with a reputable insurance company, a minimum amount of £500,000 for each and every claim, act or occurrence or series of acts, claims or occurrences.
- employer's liability insurance
 - public liability insurance
 - product insurance, such insurance shall be maintained for a minimum of 1 year following the expiration or earlier termination of the Contract.
- 85.3. The Contractor shall fully and promptly indemnify the Authority against all losses injury, damages, costs, expenses, liabilities, claims, or proceedings incurred by the Authority as a result of any act, default or negligence by the Contractor or any of its Suppliers or sub-contractors in carrying out its obligations under this Contract except and to the extent that it is due to the act, default or negligence of the Authority or any of its employees in the course of their employment.
- 85.4. Subject at all times to clauses 85.1, 85.4 and 85.5, in respect of all Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Contractor shall in no event exceed the following limits:
- (a) In respect of Losses arising from the occurrence of those risks and matters for which the Contractor is obliged to maintain insurance in accordance with clauses 85.2 and 86, the Contractor's liability shall be limited in aggregate to the levels of the relevant insurance.
 - (b) In respect of Losses arising from any risk or matter that is not covered by the insurances referred to in clause 85.4(a), the Contractor's liability shall be unlimited.
- 85.5. In respect of any Losses incurred by the Authority as a result of the Contractor breaching the requirements of clause 63 and or the Contractor breach the Data Protection Legislation, the Contractor's liability to the Authority shall be unlimited for each and every breach, incident, claim/or fine.
- 85.6. The Contractor's liability to the Authority in respect of any breach of clauses 72.3 or 72.4 or any other breach of third-party intellectual property rights shall be unlimited.
- 85.7. Where the Contractor is required to come onto premises owned by the Authority, the Contractor shall not do or omit to do anything that could cause any insurance policy on or in relation to the Authority's premises to become wholly or partly void or voidable or do or omit anything by which additional insurance premiums may become payable.
- 85.8. Subject always to clause 86.1, in no event shall either Party be liable to the other under this Contract for:
- (a) loss of profits, business, revenue, or goodwill and/ or
 - (b) indirect or consequential loss or damage.
- 85.9. The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

- 85.10. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 85.11. The requirement to effect insurance by the Contractor under clause 85.2 shall not in any way be deemed to amend or restrict the liability of the Contractor arising under clause 85.1.

86. Professional Indemnity

- 86.1. The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 86.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £500,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 1 year following the expiration or earlier termination of the Contract.

87. Warranties and Representations

- 87.1. The Contractor warrants and represents that:
- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor.
 - (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to best industry practice.
 - (c) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified, and trained Staff with all due skill, care and diligence.
 - (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.
 - (e) no Virus, disabling code (including code intended by the Contractor to limit or prevent the use of the Software) or malicious software (including spyware) are contained in the Software, the media on which it is delivered, the User Manual (if supplied electronically) or in any software used by the Contractor as part of the delivery or installation process for the Software.
- 87.2. The warranties and representations in clause 87.1 are granted by the Contractor to any Authorised Third Party
- 87.3. The provisions of this clause 87 is in addition to, and not exclusive of, any other rights and remedies to which the Authority and the Authorised Third Parties may be entitled and, in particular, the warranties and conditions implied by the Supply of Goods and Services Act 1982 are not excluded.

Part 10 – Default Disruption and Termination**88. Termination on Change of Control and Insolvency**

- 88.1. The Authority may terminate the Contract by notice in writing with immediate effect where:
- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or
 - (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
 - (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
 - (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (e) any similar event occurs under the law of any other jurisdiction.
- 88.2. The Authority may only exercise its right under clause 88.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.
- 88.3. If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate the Contract by notice to the Contractor or the Contractor's Representative with immediate effect.

89. Termination on Default

- 89.1. The Authority may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default, or does not meet the Long Stop date and if:
- (a) the Contractor has not remedied the Default or does not meet the Long Stop Date to the satisfaction of the Authority within 14 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default or does not meet the Long Stop Date and requesting it to be remedied; or
 - (b) the Default or Long Stop Date is not, in the opinion of the Authority, capable of remedy; or
 - (c) the Default or Long Stop Date is a fundamental breach of the Contract.

- 89.2. If through any Default of the Contractor or the Contractor does not meet the Long Stop Date, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.
- 89.3. The Contractor may terminate the Contract if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days' notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 89.3 shall not apply to non-payment of the charges or Price where such non-payment is due to the Authority exercising its rights under clauses 52.1 and 80.2(a).

89A. Termination for Failure to Go Live by the Longstop Date

- 89A.1 As set out in clause 46A; the Authority shall be entitled to terminate this Contract if the Contractor fails to achieve Go Live by the Longstop Date.

90. Break

- 90.1. The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving 3 Months' written notice to the Contractor.

91. Termination Under Public Contracts Regulations

- 91.1. The Authority shall be entitled by notice having immediate effect if any of the following grounds apply:
- (a) Where the Contract has been subject to a substantial modification that constitutes a new contract award
 - (c) Where it is discovered after contract award that the Contractor should have been excluded on mandatory exclusion grounds
 - (d) Where the Court of Justice of the European Union or applicable Jurisdiction established post EU exit, has declared a serious infringement by the Authority meaning that the Contract should not have been awarded by the Authority to the Contractor.

92. Consequences of Termination

- 92.1. Where the Authority terminates the Contract under clause 80.2, 89 or 89A, or terminates the provision of any part of the Contract under those clauses, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term. The Authority shall take all reasonable steps to mitigate such additional expenditure.
- 92.2. Where the Contract is terminated under clause 80.2, 89 or 89A, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 92.3. In the event that the Contract is terminated under clause 80.2, 89 or 89A then, without prejudice to any other right or remedy that the Authority may have, the Contractor shall immediately repay to the Authority the Price, pro-rated to reflect the Services that had not been performed by the Contractor at the date of termination.

- 92.4. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 89, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 92.5. Where the Authority terminates the Contract under clause 90, the Authority shall indemnify the Contractor against any commitments, liabilities, or expenditure, which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 90.
- 92.6. The Authority shall not be liable under clause 92.2 to pay any sum which:
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Initial Term or under any extension.

92A. Exit Plan

- 92A.1 The Contractor shall within 3 month of the Commencement Date submit to the Authority a detailed and sufficiently clear Exit Plan for the Authority's approval, acceptance of which will be at the Authority's reasonable discretion
- 92A.2 The Contractor shall ensure that the Exit Plan contains:
- (a) How the Contractor will support an orderly, controlled transition of responsibility for the provision of Services and supply of Software from the Contractor to a third party, completely free of any charge to the Authority or any third party, with the minimum of disruption to the Authority in the event of the Contract being terminated and what activities it shall undertake to achieve this; this will include the Contractor providing all data to the Authority and Contractor functions at the end of the Term in an agreed format and time period as required by the Authority.
 - (b) How such activities will be carried out to ensure there is no detrimental impact on the incumbent Software and Services or the new software and services.
 - (c) The time period of when the activities shall be completed, as agreed with the Authority, relative to the Notice of Termination Date;
 - (d) Any additional information that the Authority requests that will, in the Authority's reasonable opinion, ensure a smooth transition of responsibilities

93. Business Continuity and Disruption

- 93.1. The Contractor shall have business continuity plan to ensure the continuation of delivery of the Services in the event of serious disruption to either the Authority's or the Contractor's supplier's premises and/or working arrangements. The plan should focus upon the continuation of delivery of the Services and communication with users of the Services and the Authority. The plan should

- detail the resources available to the branch from other sources in the company.
- 93.2. Any significant changes to the Business Continuity plan shall be notified to the Authority's Representative as per clause 8.
- 93.3. The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 93.4. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 93.5. In the event of industrial action by the Staff or the Contractor's sub-contractors or suppliers the Contractor shall seek Approval of its proposals for the continuance of the Contractor's performance of the Services in accordance with its obligations under the Contract.
- 93.6. If the Contractor's proposals referred to in clause 89.5 are considered insufficient or unacceptable by the Authority, then the Contract may be terminated by the Authority by notice in writing with immediate effect.
- 93.7. 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 reasonable additional expense incurred by the Contractor in fulfilling the provisions of the Contract because of such disruption.

94. Recovery on Termination

- 94.1. Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 94.2. At the Expiry Date (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, all data, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 94.3. At the Expiry Date (howsoever arising) the Contractor shall forthwith provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress. The Contractor shall provide such assistance free of charge.
- 94.4. The provisions of this clause shall survive the continuance of the Contract and indefinitely after its termination.

95. Force Majeure

- 95.1. Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event.

However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 2 Months, either Party may terminate the Contract by notice in writing with immediate effect.

- 95.2. For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

Part 11 – Value for Money Duty**96. Value for Money**

- 96.1. The Parties agree and acknowledge that as this Contract is publicly funded the Contractor shall, at no cost to the Authority, provide all reasonably necessary assistance to allow the Authority to demonstrate Value for Money.

97. Customer Satisfaction Survey

- 97.1. The Contractor shall, on each Customer Satisfaction Survey Date, undertake (or procure the undertaking of) a Customer Satisfaction Survey, if defined as a deliverable within the Contract specification.
- 97.2. The Customer Satisfaction Survey shall be undertaken by means of distributing to users of the Services within 10 Working Days of each Customer Satisfaction Survey Date a Questionnaire (or other survey method as agreed between the Parties) in a form Approved by the Authority (acting reasonably).
- 97.3. The Authority shall provide reasonable assistance and information to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.
- 97.4. Within one month of each Customer Satisfaction Survey Date, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned Questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.

98. Annual Service Report and Annual Service Plan

- 98.1. Without prejudice to any other provision in the Contract the Contractor shall at its own cost, provide to the Authority the Annual Service Report.
- 98.2. The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require verifying and audit the information and other material contained in the Annual Service Report.
- 98.3. If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient, and economic having regard to the Annual Service Report and demonstrated value for money, then the Authority may serve upon the Contractor a Services Improvement Notice.
- 98.4. The Contractor shall, within 10 Working Days of the date of receipt of the Services Improvement Notice, provide the Authority at its own cost with an Annual Service Plan containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.
- 98.5. As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the clause 100 the Authority shall:
- (a) confirm in writing the Annual Service Plan; or
 - (b) withdraw the Services Improvement Notice.
- 98.6. If the Authority confirms the Annual Service Plan the Authority shall propose a change in the Services in accordance with clause 78.
- 98.7. The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and an Authority Notice of Change served pursuant to clause 98.6.

Part 12 – Dispute Resolution and Law

99. Governing Law and Language

- 99.1. This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.
- 99.2. The language of the Contract is English and all design data, documents, correspondence and any other information shall be provided in English unless otherwise specified by the Authority in writing.

100. Dispute Resolution

- 100.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 5 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant Group Director of the Authority and a senior manager or director of the Contractor (or equivalent) of each Party.
- 100.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 100.3. If the dispute cannot be resolved by the Parties pursuant to clause 100.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 100.5 unless both parties agree to the dispute being referred to mediation.
- 100.4. The performance of the Contract shall not be suspended, cease, or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 100.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
 - (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree within a reasonable period of time, then either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

Part 13 – Ineffectiveness and Challenge

101. Ineffectiveness and Challenge

- 101.1. In the event of a Relevant Act, the Authority may, at its discretion, either:
 - (a) require the Contractor to mitigate the effects of the Relevant Act, including, without limitation, by varying the Contract to mitigate or avoid the consequences of the Relevant Act; or
 - (b) terminate this Contract by the service of written notice on the Contractor, such notice having immediate effect.
- 101.2. If the Contract is terminated pursuant to clause 2 above or declared ineffective by courts of a competent jurisdiction, the Authority shall pay to the Contractor such sums as may be payable under the Contract (at the point that the Contract is terminated or declared ineffective) in respect of the Services that have been correctly performed by the Contractor.
- 101.3. The provisions of clause 94 shall apply in respect of any declaration of ineffectiveness or any termination made in accordance with this Contract.
- 101.4. Save as set out above, in the event of a termination made in accordance with this clause or in the event of a declaration of ineffectiveness by the courts of competent jurisdiction, the parties shall have no further liability to each other in respect of this Contract.

Part 14 – Special Conditions**102. Modern Slavery**

- 102.1. The Contractor shall not use, or allow its sub-contractors to use, forced, bonded or involuntary prison labour.
- 102.2. shall not require any Contract or staff or sub-contractor staff to lodge deposits or identify papers with the Employer or deny Contractor staff freedom to leave their employer after reasonable notice.
- 102.3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 102.4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 102.5. shall make reasonable enquiries to ensure that its officers, employees, and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- 102.6. shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its sub-contractors' anti-slavery and human trafficking provisions.
- 102.7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract.
- 102.8. shall not use, or allow its employees or sub-contractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors.
- 102.9. shall not use, or allow its sub-contractors to use, child or slave labour.
- 102.10. shall report the discovery or suspicion of any slavery or trafficking by it or its sub-contractors to the Authority without delay during the performance of this Contract to utilise the following help and advice service, so as to ensure that is suitably discharges its statutory obligations.
- 102.11. The "Modern Slavery Helpline" refers to the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700
- 102.12. During the Term or any extension of the Contract, the Authority is committed to ensuring that its supply chain complies with the above Act.
- 102.13. The Contractor shall provide a slavery and trafficking report covering the following but not limited to areas as relevant and proportionate to the Contract evidencing the actions taken, relevant to the Contractor and their supply chain associated with the Contract.
 - (a) Impact assessments undertaken
 - (b) Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised
 - (c) Evidence of stakeholder engagement
 - (d) Evidence of ongoing awareness training
 - (e) Business-level grievance mechanisms in place to address modern slavery
 - (f) Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation
- 102.14. The Authority or UK SBS when acting as an agent on behalf of the Authority reserves the sole right to audit any and all slavery and trafficking reports submitted

by the Contractor to an extent as deemed necessary and the Contractor shall unreservedly assist the Authority or UK SBS acting as an agent on behalf of the Authority in doing so.

Note: The Authority also reserves the right to amend or increase the frequency of reporting, as it deems necessary to secure assurance in order to comply with the Modern Slavery Act.

102.15. The Authority requires such interim assurances to ensure that the Contractor is compliant and is monitoring its supply chain, so as to meet the requirements of the above Modern Slavery Act.

102.16. **## ALT 2 The Contractor shall complete and return the slavery and trafficking report to the contact named in the Contract on the following date(s) from the Commencement of the Contract. ##**
(TBC)

102.17. The Contractor agrees that any financial burden associated with the completion and submission of this report and associated assistance at any time, shall be at the Contractors cost to do so and will not be reimbursable.

103. Cyber Security (To be amended post tender response to reflect the correct Certification the bidder holds)

103.1. In line with [HM Government's Cyber Essentials Scheme](#), the Contractor will hold valid Cyber Essentials certification **OR** Cyber Essentials Plus by the time of contract award. Evidence of the certification must be provided to the Authority in order for the contract to be awarded.

103.2. Evidence of renewal of certification must then be provided to the Authority on each anniversary of the first applicable certificate obtained by the Contractor for the duration of the Contract. In the event the Contractor fails to comply, the Authority reserves the right to terminate the Contract for material breach in line with the Standard Terms and Conditions of Contract.

103.3. If the Contractor already holds ISO27001 accreditation (or equivalent), no further Cyber Essentials certification will be necessary provided that the certification body carrying out this verification is approved to issue a Cyber Essentials certificate by one of the accreditation bodies.



Copy of Statement
of Assurance Questio

104. Monitoring Schedule

TBC

Part 15 – Schedules

TBC

Part 16 – Annex - Specification

TBC