

ORDER FORM
Framework Agreement

FROM

Authority	The Secretary of State for Education acting through her executive agency, the Government Equalities Office (GEO)
Service Address	Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT
Invoice Address	Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT
Contact Ref:	Name: Steve Porch Phone: 020 7783 8706 e-mail: Steve.PORCH@geo.gov.uk
Order Number	EASS/G4S/GEO: 00001
Order Date	03 August 2016

TO

Provider:	G4S GOVERNMENT AND OUTSOURCING SERVICES (UK) LTD Registered Number: 3175173
For the attention of: E-mail Telephone number	Neil Mapas Managing Director, G4S ESS Southside 105 Victoria Street London SW1E 6QT Neil.mapas@uk.g4s.com +44 7841 112 599
Address	Southside 105 Victoria Street London SW1E 6QT

1. SERVICES REQUIREMENTS

(1.1) This Call Off Contract is comprised of this Order Form, the Call Off-Contract Terms (which are attached at Annex [1] and any other document referred to in the Call Off Contract. In the event of any ambiguity or inconsistency between any of the documents, clause A5.4 of the Call Off Contract Terms will apply.

(1.1) Services and Deliverables Required:

The Provider shall deliver the Services in accordance with the Specification set out in Annex 5 of the Order Form.

(1.2) Commencement Date:

Contract Start: 03 August 2016 with Service Go Live Date: 1st October 2016. There is the option to extend this agreement by a further 2 years (maximum).

(1.3) Price Payable by Authority

£2,799,650.00 + 20% £559,930.00 VAT (Total Price Inc. VAT = £3,359,580.00)

(Total Price covers 3 months Transition + 33 months Operations)

Monthly invoice will comprise:

- a) A fixed monthly fee as stated in the Pricing Schedule.
- b) A variable fee to cover any variable costs incurred in line with the Pricing Schedule. Invoices will be provided to provide evidence that the costs were incurred.

(1.4) Completion Date:

02 August 2019

2 ADDITIONAL REQUIREMENTS

(2.1) Supplemental Requirements in addition to Call-Off Terms and Conditions:

As described in Annexes 2 to 7 of the Order Form

(2.2) Variations to Call-Off Terms and Conditions

2.2.1 The Authority shall reimburse the Provider for Excluded Transition Costs in accordance with Annex 2 to this Order Form.

2.2.2 The Authority shall give an indemnity in respect of Redundancy Costs in accordance with Annex 3 to this Order Form.

2.2.3 Clauses B10 and B11 of the Call Off Contract are replaced with new clauses B10 and B11 of Annex 4 to this Order Form. All changes to the original clauses in B10 and B11 of the Call-Off Terms and Conditions are shown in tracked changes in Annex 4 including now the definitions used in such clauses.

2.2.4 Clause C4.1 shall be replaced with the following clauses:

"C4.1A The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period), the Contract Price shall be increased by multiplying the (current) Price by the percentage increase in the Retail Prices Index published for the twelve (12) months ended on 31 January immediately preceding the most recent anniversary of the Commencement Date.

C4.1B The increase in price shall take effect on the most recent anniversary of the Commencement Date.

C4.1C For the avoidance of doubt both Parties accept and acknowledge that any Variation to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Provider in a manner not provided for in the terms of the Contract."

2.2.4 Clause G1.5(a) & (b) of the Call Off Contract shall be amended as shown below:

"... the aggregated liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed XXXXX One Million Five Hundred Thousand pounds (£1,500,000)."

... the aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses B10 and B11 (Employment), C2.6 (VAT), E2.3 (Protection of Personal Data), E8.3 E8.4 and E8.6 (Intellectual Property Rights) or G4.4) shall in no event ~~XXXXX~~ exceed pounds £4,500,000 (£XXXXXX)

2.3. The Appendices to the Call Off Contract Terms listed in the table below are replaced with the corresponding Annexes to this Order Form and any references in the Call Off Contract to any of these Appendices shall be read and construed as a references to the corresponding Annex:

Call Off Terms	Order Form
Appendix 1 (Specification)	Annex 5 (Specification)
Appendix 2 (Administration Requirements)	Annex 5 (Specification)
Appendix 3 (Monitoring Requirements)	Annex 5 (Specification)
Appendix 4 (Pricing)	Annex 6 (Pricing)
Appendix 6 (Security Requirements)	Annex 7 (Security Requirements)

3. PERFORMANCE OF THE SERVICES AND DELIVERABLES

(3.1) Key Personnel of the Provider to be involved in the Services and deliverables:

David Lewis	Contact Centre Operations Director
Debby Beattie	Contact Centre Manager
Vicky Keeton	EASS Operations Manager

(3.2) Performance Standards

Key Performance Indicators are included within the Specification of requirements in Annex 5 and come into effect after the 3 months Transition Period.

(3.3) Location(s) at which the Services are to be provided:

Wath-upon-Deerne - Yorkshire

(3.4) Quality Standards

Quality and Performance Standards are contained within the Specification of requirements.

(3.5) Contract Monitoring Arrangements

Monitoring frequency and meetings terms of reference/standard agenda items will be mutually agreed with GEO and G4S, in accord with the stated performance standards.

4. CONFIDENTIAL INFORMATION

(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:-

No	Reference	Rationale
'G4S GEO EASS Response Section 0 Management Summary' [Part 0]		
1	Page 7 – DWP Letter	This is a private letter from DWP to G4S. Whilst G4S does not have an issue with it being in the public domain, we recommend that DWP is also consulted prior to any release
2	Page 4	Contains commercially sensitive information on G4S's approach and pricing mechanism
3	Page 5 – Phase 1	Contains commercially sensitive information on staffing strategy
4	Page 8 – Building on Excellence	This contains commercially sensitive information on our solution and pricing
'G4S GEO EASS Response Section 2 Meeting the Specification' [Part 2]		
5	Page 12/13 – response to section 12	This contains commercially sensitive information on G4S's technical solution and approach
6	Page 14 etc. – response to 12.4 & 12.6	Placing security controls in public domain increases risk of security breaches
7	Page 16 etc. – response to section 15	This contains sensitive information about G4S's approach and technical innovation
8	Page 18 etc. – response to section 17	This contains commercially sensitive information on G4S's approach
9	Page 20 etc. – response to section 18	This contains commercially sensitive information on our staffing solution and likely pricing This information contains personal details
10	Page 23 etc. – response to section 18.8 and 18.10	This contains commercially sensitive information on our staffing solution and likely pricing
11	Page 28 etc. – response to section 21.5	This contains commercially sensitive information on our technical approach
12	Page 29 etc. - sections 22.2-22.6	This contains commercially sensitive information on our technical approach
13	Page 31 – response to 22.8-22.14	This contains commercially sensitive past performance details
G4S GEO EASS Response Sections 3, 4, 5 and 6 Costs, Declarations, References, CVs [Parts 3,4,5,6]		
14	Page 5 – Pricing Schedule	This contains commercially sensitive pricing information

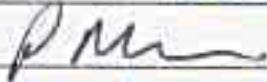
15	Page 7 - Detailed Cost Estimates	This contains commercially sensitive pricing information
16	Page 8 etc. – Excluded Transition Costs and Value for Money	This contains commercially sensitive pricing information and G4S approach
17	Page 10 etc. – Pricing Assumptions	This contains commercially sensitive pricing information
18	Page 14	This contains commercially sensitive information of G4S's supply chain
19	Page 17 etc. – Section 6 CVs	This contains personal information and disclosure would potentially lead to loss of personal privacy

(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information

36 months plus any extension that maybe agreed within the terms of this order.

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Authority to provide the Service specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Provider and the Authority on 03 August 2016.

For and on behalf of the Provider:-

Name and Title	DEREK NEDEN, REGIONAL PRESIDENT, URFI
Signature	
Date	4TH AUGUST 2016

For and on behalf of the Authority:-

Name and Title	HILARY SPENCER, DIRECTOR GED
Signature	
Date	8th August 2016

Protect – Contract

SCHEDULE 4

CALL-OFF TERMS AND CONDITIONS

DWP Department for Work and Pensions

Call-Off Terms and Conditions

For

The Provision of Contact Centre Services

Protect – Contract

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

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

"Annex" means an annex attached to an Appendix, which is attached to, and forming part of, the Contract.

"Appendix" means an appendix attached to, and forming part of, the Contract.

"Approval" means the prior written consent of the Authority.

"Authority" means the Contracting Body that makes the call-off under the Framework Agreement.

"Authority Data" means

- a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - i) supplied to the Provider by or on behalf of the Authority; or
 - ii) which the Provider is required to generate, process, store or transmit pursuant to this Contract; or
- b) any Personal Data for which the Authority is the Data Controller.

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

"Authority's Premises": means the Contracting Authority premises where the Services are to be supplied as set out in the Order Form and/or the Call-off Terms and Conditions.

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

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"Breach of Security" means the occurrence of unauthorised access to or use of the Premises, the Services, the Provider ICT system or data (including the Authority's Data) used by the Authority or the Provider in connection with this Contract.

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

"Business Continuity Plan" means any plan prepared pursuant to clause H5.6, as may be amended from time to time.

"Cabinet Office Statement" means the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector issued in January 2000 and revised in November 2007 (including the annex to that Statement entitled "A Fair Deal for Staff Pensions" together with HM Treasury's note issued in June 2004 entitled "A Fair Deal for Staff Pensions: procurement of bulk transfer agreements and related issues") as any of the same may be amended from time to time.

"Call-Off Terms and Conditions" means the terms and conditions in Schedule 4 of the Framework Agreement and any changes detailed in the Order Form set out in Schedule 3 of the Framework Agreement.

"Commencement Date" means the date specified on the Order Form.

"Commercially Sensitive Information" means the Information (i) listed in the Commercially Sensitive Information Appendix; or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

- a) which is provided by the Provider to the Authority in confidence for the period set out in that Appendix or notification; and/or
- b) which constitutes a trade secret.

"Commercially Sensitive Information Appendix" means the Appendix containing a list of the Commercially Sensitive Information.

"Confidential Information" means:

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

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- b) the Commercially Sensitive Information and does not include any information;
- i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
 - ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - iv) is independently developed without access to the Confidential Information.

“Contract” means the legally binding agreement for the provision of Services made between the Authority and the Provider comprising an Order Form and the Call-Off Terms and Conditions.

“Contracting Body” means the Department for Work and Pensions and any contracting body described in the OJEU Notice 2012/S 164-272892

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

- a) the date of expiry set out on the Order Form.,
- b) following an extension pursuant to clause FB (Extension of Initial Contract Period), the date of expiry of the extended period,

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

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

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies.

“Data Controller” shall have the same meaning as set out in the DPA.

“Data Subject” shall have the same meaning as set out in the DPA.

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

"Default" means any breach of the obligations or any other default or negligence of a Party, its employees, agents or sub-contractors in connection with or in relation to the subject-matter of the Contract.

"Directive" means EC Council Directive 2001/23/EC.

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"DWP Offshoring Policy" means the Authority's policy and procedures as advised to the Provider by the Authority from time to time.

"Emergency" means an event causing or, in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency services or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

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

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

"Financial Model" means any or all of the financial models prepared by the Provider applicable to this Contract and any Variation. The financial model shall comply with the principles of Open Book accounts.

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

"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 that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

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- a) any industrial action occurring within the Provider's or any Sub-contractor's organisation; or
- b) the failure by any Sub-contractor to perform its obligations under any sub-contract.

"Framework Agreement" means the agreement which governs the relationship between the DWP and the Provider in respect of the provision, through the application of the Call-Off Terms and Conditions and the Ordering Procedures, of the Services by the Provider to the Authority and to other Contracting Bodies

"Fraud" means any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

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

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

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

"Guarantor" [TextReq COMPANY NAME] incorporated and registered in [TextReq COUNTRY OF INCORPORATION] with company number [TextReq COMPANY NUMBER] whose registered office is at [TextReq REGISTERED OFFICE ADDRESS].

"Implementation Date" means the date specified by the Authority for the commencement of the Services

"Incumbent Provider" means any Provider providing any service that constitutes or that will constitute part of the Services immediately before the Transfer Date.

"ICT" means information and communications technology.

"ICT Environment" means the Authority ICT system and the Provider ICT system.

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

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

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

"Key Personnel" means those persons named in Appendix 1, Annex D as being Key Personnel.

"Landed Resources" means when the Provider or any Sub-contractor causes foreign nationals to be brought to the United Kingdom, to provide the Services.

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Provider is bound to comply.

"Liquidated Damages" means any amounts payable by the Contractor to the Authority pursuant to clause B1.4

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

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

"Monitoring Requirements Appendix" means the Appendix containing details of the monitoring requirements.

"Month" means calendar month.

"OJEU Notice" means the contract notice published in the Official Journal of the European Union in respect of the Framework Agreement.

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“Open Book Accounts” means the Contractor's complete and accurate financial and nonfinancial information relating to the Services, categorised as appropriate and including:

- (a) actual and forecast staffing and non staffing costs;
- (b) actual and forecast operating income and expenditure relating to the provision of the Services with an analysis showing the detailed costs;
- (c) Sub-contractor and bought in service actual and forecast operating income and expenditure relating to the provision of the Services with an analysis showing the detailed costs;
- (d) The actual and forecast profit, revenue and expenses which the Provider has achieved/incurred in the provision of the Services on an annual basis and over the contract term;

“Order” means an order for Services served by any Contracting Body on the Provider in accordance with the Ordering Procedures.

“Order Form” means a document setting out details of an Order in the form set out in Schedule 4 of the Framework Agreement.

“Ordering Procedures” means the ordering and award procedures specified in clause 7 of the Framework Agreement.

“Original Public Sector Employee” means a former employee of the Crown or other public sector body who as a result of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or of the TUPE Regulations, in relation to what was done for the purposes of carrying out a contract for the provision of services which were the equivalent of or similar to the Services, becomes or became an employee of someone other than the Crown or other public sector body

“Party” or “Parties” means a party to the contract.

“Persistent Breach” means a Default which has occurred on three or more separate occasions within a continuous period of six (6) months.

“Personal Data” shall have the same meaning as set out in the DPA.

“Pre-Existing Intellectual Property Rights” means any Intellectual Property Rights vested in or licensed to (a) the Provider prior to or independently of the performance by the Provider of its obligations under the Contract; and (b) the Authority prior to or independently of the performance by the Authority of its obligations under the Contract.

“Premises” means the location where the Services are to be supplied, as set out in the Order Form and/or the Call-off Terms and Conditions.

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"Prices & Rates Appendix" means the Appendix containing details of the Contract Price.

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

"Provider" means the person, firm or company with whom the Authority enters into the Contract.

"Provider ICT System" means the information and communications technology system used by the Provider in performing the Services

"Provider Software" means software which is proprietary to the Provider, including software which is or will be used by the Provider for the purposes of providing the Services.

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

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

"Relevant Convictions" means a conviction that is relevant to the nature of the Services (or as listed by the Authority and/or relevant to the work of the Authority).

"Relevant Employees" means the employees of the Provider (including the Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are/will be the subject of a Relevant Transfer by virtue of the application of the TUPE Regulations.

"Relevant Transfer" means a relevant transfer for the purposes of the TUPE Regulations.

"Replacement Provider" means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

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

"Security Plan" means the Provider's security plan prepared pursuant to paragraph 3 of the Appendix (Security Requirements & Plan)

"Security Policy" means the Authority's Security Policy annexed to the Appendix (Security Requirements and Plan) as updated from time to time.

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

"Services" means the services to be supplied as specified in the Specification.

"Specification" means the description of the Services to be supplied under the Contract as referred to in the Appendix (The Services), including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

"Staff" mean all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents, providers and Sub-contractors used in the performance of its obligations under the Contract.

"Staff Vetting Procedure" means the Authority's procedures for the vetting of personnel and as advised to the Provider by the Authority.

"Sub-contractor" means any third party appointed by the Provider under clause F1.1 which through its employees or agents directly delivers the Services.

"Tender" means the document(s) submitted by the Provider to the Authority in response to the Authority's invitation to providers for formal offers to supply it with the Services.

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

"Transfer Date" means the date the Transferring Employee is transferred to the employment of the Provider from the Incumbent Provider.

"Transferring Employees" means employees of the Incumbent Provider whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out the Contract, a contract of employment with someone other than the Incumbent Provider.

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

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"**Variation**" has the meaning given to it in clause F3.1 (Variation).

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

"**Working Day**" means any day (other than a Saturday or Sunday) on which banks in the United Kingdom are open for business.

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

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

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

A2 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A3 Provider's Status

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

A4 Authority's Obligations

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 Provider.

A5 Entire Agreement

A5.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

A5.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

A5.3 Nothing in clauses 5.1 or 5.2 shall operate to exclude Fraud or fraudulent misrepresentation.

A5.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-

- a) the Order Form;
- b) the clauses of the Contract; and
- c) any other document referred to in the clauses of the Contract.

A5.5 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.

A6 Notices

A6.1 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.

A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or 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 A6.3. Provided the relevant

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communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.3 For the purposes of clause A6.2, the address of each Party shall be:

a) as set out in the Order Form.

A6.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A7 Mistakes in Information

The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Provider in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A8 Conflicts of Interest

A8.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of the Contract. The Provider will disclose to the Authority full particulars of any such conflict of interest which may arise.

A8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A8.3 This clause shall apply during the continuance of the Contract and for a period of 2 years after its termination.

A9 Prevention of Fraud

A9.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Providers and Sub-contractors are required to:

a) Have an established system that enables Provider and Sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;

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- b) Ensure that Provider or Sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
- c) Ensure a segregation of duties within the Provider's or Sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Authority;
- d) Ensure that an audit system is implemented to provide periodic checks, as a minimum at six [6] Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

A9.2 The Provider shall use its best endeavours to safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Provider's directors, employees or Sub-contractors. The Provider shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

A9.3 If the Provider, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Authority, the Authority may:

- a) terminate the Contract and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of this clause.

A9.4 Any act of fraud committed by the Provider or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Authority) shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Provider, by serving written notice on the Provider.

A9.5 If the Authority finds that the Provider has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Provider, with immediate effect.

A10 Non-Exclusivity

A10.1 The Provider acknowledges that, in entering this Contract, no form of exclusivity or volume guarantee has been granted by the Authority and/or Other Contracting Bodies for Services from the Provider and that the Authority and/or Other Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services

B. SUPPLY OF SERVICES

B1 The Services

- B1.1 The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Provider in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Provider 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.
- B1.3 Subject to the Authority providing written consent in accordance with clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- B1.4 In any case where the Contractor fails to achieve the Implementation Date, the Authority may claim Liquidated Damages amounting to five thousand pounds (£5,000) per week for each week of delay from and including the Implementation Date until the date on which the Authority is satisfied that the Services have been provided. The amount of Liquidated Damages payable by the Contractor under this clause shall be subject to a maximum of fifteen thousand pounds (£15,000). The parties acknowledge that where Liquidated Damages are applicable, such Liquidated Damages are a genuine pre-estimate of the loss that the Authority shall suffer in relation to that failure.

B2 Provision and Removal of Equipment

- B2.1 Unless otherwise stated in the Order Form, the Provider shall provide all the Equipment necessary for the supply of the Services.

B3 Manner of Carrying Out the Services

- B3.1 The Provider shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 While not in anyway limiting any other provision of this Contract, in delivering the Services, the Provider, or any of its Sub-contractors, shall comply with the

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DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

- B3.3 The Provider shall ensure that all Staff supplying the Services shall do so in accordance with Good Industry Practice and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.4 The Authority will conduct a review of the performance of this contract at least annually during the Contract Period. During this review, a performance report will be agreed.
- B3.5 If the Provider fails to provide the Services in accordance with:
- a) any individual Service Level measured on a weekly or monthly basis;
 - b) any Target Performance Level; or
 - c) any relevant standard of the Services agreed in writing with the Authority.

the Provider shall pay the Authority the Service Credit set out in Appendix 3, Annex B.

B4 Key Personnel

- B4.1 The Provider acknowledges that the Key Personnel, as detailed in Appendix 1, Annex D, are essential to the proper provision of the Services to the Authority.
- B4.2 The Key Personnel shall not be released from supplying the Services without the prior written agreement of the Authority.
- B4.3 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Provider's Staff

- B5.1 The Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
- a) any member of the Staff; or
 - b) any person employed or engaged by any member of the Staff,

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

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- B5.2 At the Authority's written request, the Provider shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Provider has failed to comply with clause B5.2 shall be final and conclusive.
- B5.4 The Provider's Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.
- B5.5 The Provider shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B5.6 The Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B5.7 The Provider shall provide training on a continuing basis for all Provider Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B5.8 The Provider shall be responsible for ensuring that its Staff are not claiming any Social Security Benefit, where payment of that Social Security Benefit is precluded due to earnings.
- B5.9 The Provider shall further use all reasonable endeavours to ensure that its staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Provider shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.10 Without prejudice to clause B5.2, if the Provider fails to comply with clause B5 in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

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B7 Licence to Occupy Premises

- B7.1** Any land or Premises made available from time to time to the Provider by the Authority in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B7.2** The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B7.3** The Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.4** The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B8 Property

- B8.1** Where the Authority provides Property free of charge to the Provider such Property shall be and remain the property of the Authority and the Provider irrevocably licences the Authority and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and the Provider shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B8.2** The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within five (5) Working Days of receipt.
- B8.3** The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

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- B8.4 The Provider shall ensure all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's reasonable security requirements as published from time to time.
- B8.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Provider shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

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

B10 Application of TUPE Regulations

- B10.1 The Authority and the Provider agree that where the identity of a provider (including the Incumbent Provider) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.
- B10.2 Following the Commencement Date, on the occasion of any Relevant Transfer during the Contract Period (but excluding for the avoidance of doubt a Relevant Transfer upon termination of this Contract), the Provider shall and shall procure that any new Provider (including any new Sub-contractor) of the relevant Services shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- B10.3 The Authority and the Provider acknowledge and accept that under the TUPE Regulations the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

Sub-contractors

- B10.4 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause B10 and B11 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

Emoluments and Outgoings

B10.5 The Parties acknowledge that the Incumbent Provider is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

B10.6 The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and all Relevant Employees employed by the Provider or any Sub-contractor appointed by the Provider, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date. The Provider will indemnify/keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may incur in respect of the same.

Provision of Information

B10.7 The Authority has provided to the Provider the information relating to the Transferring Employees at the Transfer Date but does not warrant that the information is accurate and complete as at the date of this Contract.

B10.8 The Provider agrees to comply with the provisions set out in clause B11 below in respect of the information required.

Indemnities

B10.9 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim or demand by any Transferring Employee or Relevant Employee arising out of the employment of or termination of the employment of any Transferring Employee or Relevant Employee provided that this arises directly or indirectly from any act, negligence, fault or omission of the Provider or any Sub-contractor in relation to any Relevant Employee or Transferring Employee, on or after the date of the Relevant Transfer.

B10.10 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim by any Transferring Employee or Relevant Employee that the identity of the Provider or Sub-contractor is to that Transferring Employee or Relevant Employee's detriment or that the terms and conditions to be provided by the Provider or any Sub-contractor or any proposed measures of the Provider or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

B10.11 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any failure by the Provider to comply with its

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obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority to comply with any of its obligations under Regulation 13 of TUPE.

B10.12 The Provider shall indemnify the Authority from and against all Loss in connection with or as a result of any claim (including any individual employees entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Provider to comply with any legal obligations to such trade union, body or person.

Pension Protection

B10.13 The Provider shall, from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date), comply and procure that each Sub-contractor shall comply with the Cabinet Office Statement and any related governmental guidance or codes of practice.

B10.14 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) that –

- (a) Original Public Sector Employees who are eligible for public sector pension scheme to which the Cabinet Office Statement applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme;
- (b) when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, and the pension provisions of the Cabinet Office Statement;

B10.15 Without prejudice to the generality of Clause B10.13, the Provider shall, and shall procure that each Sub-contractor shall, ensure that from the from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) and on expiry or termination of the Contract, that it will comply with the Cabinet Office Statement in respect of compliance with bulk transfer agreements received from any Replacement Provider and cooperate in the provision of information in respect of relevant bulk transfer agreements with any Replacement Provider.

B10.16 Clauses B10.13 to B10.16 are intended to confer rights on the Transferring Employees pursuant to the Contracts (Rights of Third Parties) Act 1999. Provided that if the Contracting Body and the Provider rescind this Contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Contract or

terminate this Contract, such rescission, variation or termination will not require the consent of any Transferring Employee.

B11 Employee Provisions On Expiry Or Termination

Handover on Termination

B11.1 During the six [6] Months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority and shall procure that any relevant Sub-contractor shall accurately disclose any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Provider or any Sub-contractor) including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:

- a) a list of employees employed by the Provider, or any Sub-contractor;
- b) a list of agency workers, agents and independent providers engaged by the Provider;
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
- f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union

B11.2 Where information has been provided in accordance with clause B11.1 above and the Provider or Sub-contractor makes or becomes aware of any changes or discovers new information the Provider shall notify the Authority within seven (7) days of any such change or discovery.

B11.3 The Provider shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to clause B11.1 and B11.2 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B11.4 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall allow the Authority or such other persons as may be authorised by the

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Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.

B11.5 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- b) increase or decrease the number of employees employed in connection with the Services; or
- c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

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

Indemnity

B11.7 The Provider shall indemnify the Authority and any Replacement Provider appointed by the Authority and keep the Authority and any Replacement Provider appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority or any new Provider appointed by the Authority as a result of or in connection with:

- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract.
- (b) any claim brought against the Authority or any Replacement Provider as a result of the Providers failure to comply with any of its obligations under the TUPE Regulations.

B11.8 Notwithstanding any other provisions of this Contract for the purposes of clauses B10 and B11, and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Provider shall be entitled to enforce the benefits conferred by it here under. Provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Provider shall not be required for such rescission, variation or termination.

B11.9 Clause B10 and this Clause B11 shall apply during the Contract Period and indefinitely thereafter.

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Provider's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2 Payment and VAT

- C2.1 The Authority shall pay all sums due to the Provider within thirty (30) days of receipt of a valid invoice, submitted Monthly in arrears.
- C2.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- C2.3 The Provider shall ensure that each invoice contains a valid purchase order number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with the Appendix (Administration Requirements).
- C2.4 Where the Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C2.5 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Provider following its receipt of a valid VAT invoice.
- C2.6 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause C2.6 shall be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.7 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause H2.5 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

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C2.8 Where payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Provider is disputed, this dispute shall be resolved in accordance with the procedures set out in the Appendix (Administration Requirements).

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider 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 Provider under the Contract or under any other agreement or contract with the Authority.

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

C3.3 The Provider shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

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

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period), the Authority may, where applicable, in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Provider (for a period of not more than thirty (30) Working Days) to agree a variation in the Contract Price. For the avoidance of doubt both Parties accept and acknowledge that any Variation to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Provider in a manner not provided for in the terms of the Contract.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

C4.3 If a variation in the Contract Price is agreed between the Authority and the Provider, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Prices & Rates Appendix) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

C5 Euro

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

C6 Third Party Revenue

- C6.1 The Provider may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

- D1.1 The Provider shall not, and shall procure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 in relation to the prevention of bribery. For the purposes of this clause D1, a prohibited act is committed when the Provider or any Staff:

a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

c) commits any offence:

- (i) under the Bribery Act 2010;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority

- D1.2 The Provider warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Contract.

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D1.3 The Provider shall:

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

D1.4 The Provider shall have an anti-bribery policy which prevents any Staff from committing any prohibited acts as set out in clause D1.1 and a copy of this shall be provided to the Authority upon request.

D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Provider must notify the Authority immediately.

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

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

- a) terminate the Contract and recover from the Provider the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Provider any other Loss sustained by the Authority in consequence of any breach of those clauses.

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

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

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

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

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall:

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- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;
- b) give all due consideration, where appropriate, to action other than termination of the contract.

D2 Discrimination

- D2.1 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D2.2 The Provider shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.
- D2.3 The Provider shall comply with the provisions of the Human Rights Act 1998.
- D2.4 In delivering the Services, the Provider shall operate at all times in accordance with the diversity and equality requirements set out in Appendix 8 (Diversity and Equality Requirements) or such other diversity and equality requirements as notified by the Authority to the Provider from time to time.
- D2.5 Where delivering the Services in Wales, the Provider shall comply at all times with the requirements set out in Appendix 9 (Welsh Language Scheme) or such other requirements as notified by the Authority to the Provider from time to time.
- D2.6 In delivering the Services, the Provider shall operate at all times in accordance with the apprenticeships and skills requirements set out in Appendix 10 (Apprenticeships and Skills Requirements) or such other apprenticeships and skills requirements as notified by the Authority to the Provider from time to time.

D3 The Contracts (Rights of Third Parties) Act 1999

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

D4 Environmental Requirements

- D4.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

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D4.2 In delivering the Services, the Provider shall comply at all times with the requirements set out in Appendix 7 (Sustainable Development Requirements) or such other requirements as may be reasonably notified by the Authority to the Provider from time to time.

D5 Health and Safety

D5.1 The Provider shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Provider of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Provider in the performance of its obligations under the Contract.

D5.2 While on the Authority's Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

D5.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.4 The Provider shall comply with the requirements of the Health and Safety at Work 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 its obligations under the Contract.

D5.5 The Provider 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.

E. PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

E1.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority.

E1.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

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- E1.5 The Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Provider's Business Continuity Plan. The Provider shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than 6 Monthly intervals.
- E1.6 The Provider shall ensure that any system or media on which the Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in the Annex to the Appendix (Security Requirements and Plan).
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, the Authority may;
- a) require the Provider (at the Provider's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Provider shall do so as soon as practicable but not later than 2 days and/or;
 - b) itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so.
- E1.8 If at any time the Provider suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Provider, or any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Provider shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Where the Authority has given its prior written consent to the Provider to process, host or access Authority Data from premises outside the United Kingdom (in accordance with E1.9 of the Contract):
- a) the Provider must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
 - b) the Provider shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption."

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E1.11 Any breach by the Provider of this clause E1 shall be a material breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E2 Protection of Personal Data

E2.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Authority is the Data Controller and that the Provider is the Data Processor.

E2.2 The Provider shall:

- a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract as otherwise notified by the Authority to the Provider during the Contract Period);
- b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- d) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services;
- f) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- h) notify the Authority (within five (5) Working Days) if it receives:
 - i) a request from a Data Subject to have access to that Person's Personal Data; or

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- ii) a complaint or request relating to the Authority's obligations under the DPA;
- i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - i) providing the Authority with full details of the complaint or request;
 - ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv) providing the Authority with any information requested by the Authority;
- j) permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's Data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under this Contract;
- k) provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Authority); and
- l) not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - ii) any reasonable instructions notified to it by the Authority.

56f The Provider shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill arising out of direct or indirect or consequential loss in respect of or in connection with, any breach by the Provider (or any Sub-contractor) of this clause E2.

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E2.4 The Provider shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

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

E3.1 The Provider shall comply with, and shall ensure that its Staff comply with, the provisions of;

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

E3.2 In the event that the Provider or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Provider.

E4 Confidential Information

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

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

E4.2 Clause E4 shall not apply to the extent that;

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other Party's Confidential Information.

E4.3 The Provider may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

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- E4.4 The Provider shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- E4.5 At the written request of the Authority, the Provider shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.
- E4.6 Nothing in this Contract shall prevent the Authority from disclosing the Provider's Confidential Information:
- a) to any government department or any other Contracting Body. All government departments or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body;
 - b) to any consultant, provider or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
 - c) for the purpose of the examination and certification of the Authority's accounts; or
 - d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E4.9 In the event that the Provider fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of

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this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

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

E5 Freedom of Information

E5.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Provider shall and shall procure that its Sub-contractors shall;

- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E5.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Provider acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services;

- a) in certain circumstances without consulting the Provider; or

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- b) following consultation with the Provider and having taken their views into account;

provided always that where E5.5 (a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- E5.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- E5.7 The Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Appendix is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

- E6.1 The Provider shall not:

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

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

- E6.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-contractors, providers, professional advisors and consultants comply with clause E6.1.
- E6.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Provider's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Provider or its Sub-contractors.
- E6.4 If so requested by the Authority the notepaper and other written material of the Provider and its Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) ("Trade Mark") from time to time. All publicity and marketing material produced by the Provider (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

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E7 Security

- E7.1** The Provider shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Provider in the performance of the Services.
- E7.2** Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Staff and other persons attending those Premises.
- E7.3** The Provider shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan. The Provider shall ensure that the Security Plan fully complies with the Security Policy.
- E7.4** The Authority shall notify the Provider of any changes or proposed changes to the Security Policy.
- E7.5** If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may request a Variation to the Contract by written notice to the Authority. In doing so, the Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Contract Price shall then be agreed in accordance with clause F3 (Variation).
- E7.6** Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to clause E7.5 the Provider shall continue to perform the Services in accordance with its existing obligations.

E8 Intellectual Property Rights

- E8.1** Save as granted under the Contract, neither the Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Provider acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority Data.
- a) The Authority shall grant the Provider a non-exclusive, revocable, no-cost licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Provider to supply the Services. The Provider shall have the right to sub license the Sub-Contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Provider shall cease use, and shall procure that any Sub-Contractor ceases use, of the Authority's Intellectual Property Rights.
- b) The Provider shall grant the Authority a non-exclusive, revocable, no-cost licence for the Contract Period to use the Provider's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Provider's Intellectual Property Rights.

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E8.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs know-how or other material:

- a) furnished to or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; or
- b) prepared by or for the Provider on behalf of the Authority for use, or intended use, in relation to the performance by the Provider of its obligations under the Contract shall belong to the Authority;

and the Provider shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights.

E8.3 The Provider shall obtain approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Provider shall ensure 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, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Bodies, the Replacement Provider or to any other third party supplying services to the Authority.

E8.4 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from;

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

E8.5 The Authority shall notify the Provider 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 Provider. The Provider 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 Provider, provided always that the Provider:

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

E8.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Provider for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Provider's obligations under the Contract and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.4 (a) or (b).

E8.7 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Provider in connection with the performance of its obligations under the Contract.

E8.8 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 Provider is likely to be made, the Provider shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

- a) modify any or all of the Services without reducing the performance or functionality 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 provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Provider is unable to comply with clauses E8.7 (a) or (b) within twenty (20) Working Days of receipt of the Provider's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E9 Audit and the National Audit Office

E9.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties,

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full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Provider shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

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

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- E9.4 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- E9.5 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority, the Comptroller and Auditor General and any relevant Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:
- (a) all information requested within the permitted scope of the audit;
 - (b) reasonable access to any Premises or sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Staff;
 - (d) access to the Provider Software and ICT Environment; and
 - (e) accommodation (including desks) at the Premises as reasonably required to conduct the audit.
- E9.6 The Authority shall endeavour to (but is not obliged to) provide at least [15] calendar days' notice of its intention to conduct an audit.
- E9.7 If an audit identifies that:
- (a) the Provider has committed a material Default, the Provider shall correct such Default as soon as reasonably practicable and implement a remedial plan;
 - (b) the Authority has overpaid any charges that become due and payable by the Authority to the Provider in respect of the Services, the Provider shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the charges if the Provider fails to make this payment; and
 - (c) the Authority has underpaid any charges that become due and payable by the Authority to the Provider in respect of the Services, the Authority shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a Default by the Provider within 20 Working Days.

Exceptional Audits

- E9.8 The Provider shall permit the Authority and/or its appointed representative's access to conduct an audit (an "Exceptional Audit") of the Provider in any of the following circumstances:
- (a) actual or suspected impropriety or Fraud;

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

E9.9 If the Authority notifies the **Provider** of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Provider shall provide access in accordance with Clause E9.5 as soon as reasonably practicable after such request and in any event within forty eight (48) hours.

Audit Costs

E9.10 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E9.3 to E9.14, unless an audit identifies a material Default by the Provider in which case the Provider shall reimburse:

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

E10 Malicious Software

E10.1 The Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E10.2 Notwithstanding clause E10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

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E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E10.2 shall be borne by the Parties as follows:

- a) by the Provider where the Malicious Software originates from the Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Provider); and
- b) by the Authority if the Malicious Software originates from the Authority Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and F1.5 applies, the Provider 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 Provider of any of its obligations or duties under the Contract.

F1.2 The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Provider to the Authority as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Provider may assign to a third party (**“the Assignee”**) the right to receive payment of the Contract Price or any part thereof due to the Provider under this Contract (including any interest which the Authority incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

- a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- c) the Authority receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Provider assigns the right to receive the Contract Price under clause F1.4, the Provider or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Provider shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.

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- F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to;
- a) any Contracting Bodies;
 - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority.

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

- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Provider.

- F1.11 The Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

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

F2 Waiver

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

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).

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

F3 Variation

F3.1 The Authority may from time to time during the Contract Period, by written notice to the Provider, request a variation of the Contract provided that such variation does not amount to a material change to it. Such a change is hereinafter called a "Variation".

F3.2 Following such notice, the Authority and the Provider shall enter into good faith negotiations (for a period of not more than thirty (30) Working Days from the date thereof or where, in the reasonable opinion of the Authority, the Variation is necessary as a matter of urgency due to circumstances outside the Parties' control, such shorter period as the Authority shall direct) to agree the Variation and any variation in the Contract Price that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree such matters within such period, the Authority shall by written notice to the Provider:

- a) agree that the Parties shall continue to perform their obligations under the Contract without the Variation; or
- b) terminate the Contract with immediate effect.

F3.3 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in clause F3.1, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

F3.4 If the Parties, acting reasonably, are unable to agree the variation in the Contract Price referred to in clause F3.3, the matter shall be referred to dispute resolution under clause I.2. Pending resolution of the matter the Provider shall nonetheless implement and comply with the Variation.

F3.5 Any such Variation shall be communicated in writing by the Authority to the Provider in accordance with clause A6 (Notices). All Variations shall form an addendum to the Contract.

F4 Severability

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

F5 Remedies in the Event of Inadequate Performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Authority shall take all reasonable steps to investigate the complaint. Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause F5.2 or clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of the Contract by the Provider, then the Authority may, without prejudice to its rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:

- a) require the Provider to submit a performance improvement plan detailing why the breach has occurred and how it will be remedied within ten (10) Working Days or such other period of time as the Authority may direct;
- b) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or 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 Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- d) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

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

F5.4 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

F5.5 In the event that:

- a) the Provider fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- b) the Provider persistently fails to comply with clause F5.4 above,

the Authority may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

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.

F7 Monitoring of Contract Performance

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

F8 Extension of Initial Contract Period

The Authority may, by giving written notice to the Provider not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to XXXXXX. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period) throughout any such extended period.

F9 Authority Step-In

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F9.1 Right to Step-In

If the Authority reasonably believes that it needs to take action in connection with the Services:

- F9.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;
- F9.1.2 to discharge a statutory duty;
- F9.1.3 because an Emergency has arisen and/or
- F9.1.4 (without prejudice to clause F5 or clause H2) because the Provider has committed a Default which is a material breach of the Contract;

then the Authority shall be entitled to take action in accordance with clauses F9.2 (Notice to the Provider) to F9.5 (Step-In on Provider Breach).

F9.2 Notice to the Provider

If clause F9.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Provider in writing of the following:

- F9.2.1 the action it wishes to take;
- F9.2.2 the reason for such action;
- F9.2.3 the date it wishes to commence such action;
- F9.2.4 the time period which it believes will be necessary for such action; and
- F9.2.5 to the extent practicable, the effect on the Provider and its obligation to provide the Services during the period such action is being taken.

F9.3 Action by Authority

- F9.3.1 Following service of such notice, the Authority shall take such action as notified under clause F10.2 (Notice to the Provider) and any consequential additional action as it reasonably believes is necessary (together, the Required Action) and the Provider shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Provider with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- F9.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Provider, the Authority shall

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undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Provider against all direct Losses where it fails to do so.

F9.4 Step-In without Provider Breach

If the Provider is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Provider from providing any part of the Services:

- F9.4.1 the Provider shall be relieved from its obligations to provide such part of the Services; and
- F9.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Provider shall equal the amount the Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

F9.5 Step-In on Provider Breach

Without prejudice to the Authority's rights and remedies under clause F5, clause H2 or otherwise, if the Required Action is taken as a result of a Default of the Provider which is a material breach of the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Provider from providing any part of the Services:

- F9.5.1 the Provider shall be relieved of its obligations to provide such part of the Services; and
- F9.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Provider shall equal the amount the Provider would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence; or

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- b) fraud; or
- c) fraudulent misrepresentation; or
- d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

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

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Provider, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Participant; and
- c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

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

G1.4 Not Used

G1.5 Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limits:

- a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed XXXXX pounds (£XXXX); and
- b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses E8.3 (Intellectual Property Rights) or G1.4) shall in no event XXXXX pounds (£XXXXXX)

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G1.6 Subject always to clause [E2.3], G1.1 and G1.2, in no event shall either Party be liable to the other for any:

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

G1.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Contract Period [and for a minimum of six (6) years following the expiration or earlier termination of the Contract].

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

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

G1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

G2.1 The Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and Sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, Sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than (**Detailed figures to be included in the Order Form at each Call-off**) for each individual claim (or such higher limit as the Authority may reasonably require, and as required by law, from time to time). Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.

G3 Warranties and Representations

The Provider warrants and represents that:

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Provider;
- b) in entering the Contract it has not committed any Fraud;
- c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or

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position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

G4 Parent Company Guarantee (PCG)

[FOR USE ONLY WHERE THE DEPARTMENT REQUIRES A PARENT COMPANY GUARANTEE TO BE IN PLACE]

G4.1 This Contract is conditional upon the Provider procuring that the Guarantor shall:

- a) execute and deliver to the Authority the Guarantee; and
- b) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.

G4.2 On satisfaction of the conditions precedent referred to in clause G4.1, the Authority shall promptly notify the Provider that those conditions have been satisfied.

G4.3 The conditions specified in this clause G4 are inserted solely for the Authority's benefit. The Authority may waive them, in whole or in part and with or without conditions, without prejudicing the Authority's right to require subsequent fulfilment of such conditions.

G4.4 For the avoidance of doubt, if the conditions precedent referred to in clause G4.1 have not been satisfied, on or before [TextReq insert date] this Contract shall not take effect.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

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

H1.2 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- b) a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy; or
- c) a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- d) the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days; or
- f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

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H1.3 The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

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

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

H2 Termination on Default

H2.1 The Authority may terminate the Contract by written notice to the Provider with immediate effect if the Provider commits a Default which is a material breach of the Contract and if:

- a) the Default is capable of remedy and the Provider has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- b) the Default is not, in the reasonable opinion of the Authority, capable of remedy;

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

- (a) specifying that it is a Formal Warning Notice;
- (b) giving reasonable details of the Persistent Breach; and
- (c) stating that if the Persistent Breach recurs two or more times within a six (6) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- (a) twenty (20) Working Days after service of a Formal Warning Notice, the Provider has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not continued and that the Provider has put in place measures to ensure that such Persistent Breach does not recur; or
- (b) within a six (6) Month period after the date of service of the Formal Warning Notice, the Provider has failed to

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demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred (two) or more times within such six (6) Month period and that the Provider has put in place measures to ensure that such Persistent Breach does not recur;

then the Authority may deem such failure shall be a Default which is a material breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

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

H2.5 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

H3 Break

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

H4 Consequences of Expiry or Termination

H4.1 Where the Authority terminates the Contract under clause F5.5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause F5.5 or clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Provider until the Authority has established the final cost of making those other arrangements.

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable

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costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause H3 (Break). Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider in relation to any termination by the Authority pursuant to clause H3 (Break), and the Provider shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

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

- a) was claimable under insurance held by the Provider, and the Provider 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 Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

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

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

H4.5 Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and

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Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other provider employed by the Authority.
- H5.2 The Provider 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.
- H5.3 In the event of industrial action by the Staff, the Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Provider's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.
- H5.6 The Provider shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Provider's operations, and those of Sub-contractors to the Provider, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract.

H6 Recovery upon Termination

- H6.1 At the expiry or early termination of the Contract Period (howsoever arising) the Provider shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted providers or Sub-contractors and in the event the Provider fails to do so, the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted providers or Sub-contractors where any such items may be held.

H6.2 At the expiry or early termination of the Contract Period (howsoever arising) and/or after the Contract Period the Provider shall provide assistance to the Authority and the Replacement Provider in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide such assistance at nil charge. Where the contract ends for other reasons the Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other Party by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I. DISPUTES AND LAW

I 1 Governing Law and Jurisdiction

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

I 2 Dispute Resolution

I.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.

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- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and its Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
 - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
 - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or

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difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- a) the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- b) if the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- c) the Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- b) the Authority shall give a written notice of arbitration to the Provider (the "**Arbitration Notice**") stating:
 - i) that the dispute is referred to arbitration; and
 - ii) providing details of the issues to be resolved;
- c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7 b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 12.7 b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- f) the arbitration proceedings shall take place in London and in the English language; and

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- g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

APPENDIX 1 – THE SERVICES

Not Applicable. Annex 5 of the Order Form applies

APPENDIX 2 – ADMINISTRATION REQUIREMENTS

Not applicable. Annex 5 (Specification) of the Order Form applies.

APPENDIX 3 – MONITORING REQUIREMENTS

Not applicable. Annex 5 of the Order Form applies.

APPENDIX 4 – PRICES AND RATES

Annex 6 of the Order Form applies.

APPENDIX 5 – COMMERCIALLY SENSITIVE INFORMATION

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

Document	Page Number	Section	Condition paragraph number	Explanation of harm which may result from disclosure and time period applicable to any sensitivity

- 2 The Authority will consult with the Provider on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
- 4 The Authority will automatically publish all information provided by the Provider **not** identified in this Appendix as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Authority reserves the right to determine whether any information provided in this Appendix does constitute Commercially Sensitive Information prior to publication.

APPENDIX 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

- 1.1 This appendix covers;
- a) Principles of security for the Provider ICT System, derived from the Security Policy, including without limitation principles of physical and information security;
 - b) The creation of the Security Plan;
 - c) Audit and testing of the Security Plan;
 - d) Conformance to ISO/IEC: 27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
 - e) Breaches of Security.

2 Principles of Security

- 2.1 The Provider acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Provider System. The Provider also acknowledges the confidentiality of the Authority's Data.
- 2.2 The Provider shall be responsible for the security of the Provider System and shall at all times provide a level of security which;
- a) is in accordance with Good Industry Practice and Law;
 - b) complies with the Security Policy;
 - c) meets any specific security threats to the Provider System; and
 - d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Appendix.
- 2.3 Without limiting paragraph 2.2, the Provider shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks;
- a) loss of integrity of Authority Data;
 - b) loss of confidentiality of Authority Data;
 - c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
 - d) unauthorised access to network elements and buildings;

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- e) use of the Provider System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- f) loss of availability of Authority Data due to any failure or compromise of the Services.

3 Security Plan

Introduction

- 3.1 The Provider shall develop, implement and maintain a Security Plan to apply during the Contract Period and after the end of the Contract Period in accordance with the Exit Management Strategy, which will be approved by the Authority, tested, periodically updated and audited in accordance with this Appendix.
- 3.2 A draft Security Plan will be provided by the Provider as part of its bid for any call-off contract and will be set out in the Order Form.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date of the Call-Off Contract and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Provider will prepare and deliver to the Authority for approval the full and final Security Plan.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Provider shall amend it within [ten (10) Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with clause 1.2 Dispute Resolution. No approval to be given by the Authority pursuant to this paragraph 3.4 of this appendix may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
 - a) the provisions of this contract; this appendix (including the principles set out in paragraph 2);
 - b) the provisions of the Appendix (The Services) relating to security;

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- c) ISO/IEC27002 and ISO/IEC27001;
 - d) the data protection compliance guidance produced by the Authority.
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Authority, a copy of the document will be made available to the Authority upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Provider and the Authority engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this appendix.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Provider annually, or from time to time to reflect:
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Provider ICT System, the Services and/or associated processes; and
 - c) any new perceived or changed threats to the Provider ICT System;
 - d) a reasonable request by the Authority.
- 3.11 The Provider will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Provider proposes to make to the Security Plan as a result of an Authority request or change to the Appendix (The Services) or otherwise shall be subject to the change control procedure and shall not be implemented until approved in writing by the Authority.

4 Audit and Testing

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

5 Compliance With ISO/IEC 27001

- 5.1 The Provider shall obtain independent certification of the Security Plan to ISO27001 as soon as reasonably practicable and will maintain such certification for the duration of the Contract
- 5.2 If certain parts of the Security Policy do not conform to good industry practice as described in ISO27002 and, as a result, the Provider reasonably believes that its certification to ISO 27001 would fail in regard to these parts, the Provider shall promptly notify the Authority of this and the Authority in its absolute discretion may waive the requirement to certification in respect of the relevant parts.
- 5.3 The Provider shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services

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in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.

- 5.4 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Provider, then the Authority shall notify the Provider of the same and give the Provider a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Provider does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 5.5 If, as a result of any such independent audit as described in paragraph 5.4 the Provider is found to be non-compliant with the principles and practices of ISO 27001 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

6 Breach of Security

- 6.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.
- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Provider shall;
- a) immediately take all reasonable steps necessary to;
 - i) remedy such breach or protect the Provider ICT System against any such potential or attempted breach or threat; and
 - ii) prevent an equivalent breach in the future.

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

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

Annex A – Security Policy for Providers

1. The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
2. In order to protect Departmental information appropriately, our Providers must provide the security measures and safeguards appropriate to the nature and use of the information. All Providers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
3. The Chief Executive or other suitable senior official of each Provider must agree in writing to comply with these policies and standards. Each Provider must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the Provider and where relevant Sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
4. All Providers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
5. The following are key requirements and all Providers must comply with relevant DWP policies concerning:
 6. **Personnel Security**
 - 6.1 Staff recruitment in accordance with government requirements for pre-employment checks;
 - 6.2 Staff training and awareness of Departmental security and any specific contract requirements.
 7. **Secure Information Handling and Transfers**
 - 7.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
 8. **Portable Media**
 - 8.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
9. **Offshoring**

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- 9.1 The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.
- 10. **Premises Security**
 - 10.1 Security of premises and control of access.
- 11. **Security Incidents**
 - 11.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.
- 12. All Providers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.
- 13. It is the Provider's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP.
- 14. Failure to comply with any of these Policies or Standards could result in termination of current contract.

APPENDIX 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This appendix sets out the Sustainable Development requirements which are applicable to the provision of the Services.

1. General

1.1 The Provider acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.

1.2 In delivering the Services, the Provider shall and shall procure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Appendix.

2. Compliance

2.1 The Provider shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Appendix, within six (6) Months of the Commencement Date and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Provider must obtain the required information from Sub-contractors and then collate and submit as stated above.

2.2 In delivering the Services, the Provider shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the contract:

- a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
- b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.

2.3 In delivering the Services, the Provider shall prepare a Sustainable Development Plan which as a minimum, detail how each organisation involved in delivery of the contract will:

- a) minimise waste produced and promote recycling;
- b) minimise energy consumption;
- c) minimise use of transport and promote use of public transport where transport is unavoidable.

Also required for each organisation are:

- d) baseline assessment of current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available to organisations);
- e) annual estimates of the progress of Sustainable Development actions;
- f) details of how Staff awareness of sustainability will be increased in line with the Sustainable Development Plan.

APPENDIX 8 – DIVERSITY AND EQUALITY REQUIREMENTS

1. General

- 1.1 The Provider acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Provider must ensure that each of its Sub-contractors involved in delivery of the contract are aware of, and acknowledge, that the Authority has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Provider shall, and shall procure that its Sub-contractors, assist and cooperate with the Authority in satisfying equality duties by fully complying with the requirements of this Appendix.

2. Compliance

- 2.1 The Provider acknowledges the provisions of the equality legislation set out in clause D2 (Discrimination).
- 2.2 The Provider shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Appendix, within six (6) Months of the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract.
- 2.3 The Provider will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Appendix, within six (6) Months of the Commencement Date and annually thereafter.
- 2.4 The Authority will consider and agree the submissions made by the Provider when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Appendix. Any issues will be raised with the Provider by the Contract Manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Provider must raise and resolve the issue with the Sub-contractor. Once submissions are agreed by the Authority the Provider will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and equality aspects will also be discussed jointly by the Authority and the Provider as an ongoing item at the Contract review meetings.
- 2.5 In delivering the Services, the Provider shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:
- a) an overview of Provider and any Sub-contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - i) Race
 - ii) Gender
 - iii) Gender reassignment

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- iv) Disability
 - v) Age
 - vi) Sexual orientation
 - vii) Religion/Belief
 - viii) Pregnancy and Maternity
 - ix) Marriage and Civil Partnerships;
- b) An overview of Provider and any Sub-contractor's policy/policies and procedures covering:
- i) Harassment
 - ii) Bullying
 - iii) Victimisation
 - iv) Recruitment procedures
 - v) Staff training and development
- Full policy documents must be made available to the Authority on request;
- c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Provider and any Sub-contractor's organisation; and
- f) Details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Provider and any Sub-contractors.

2.6 In delivering the Services, the Provider shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Appendix:

- a) Where a Provider is delivering Services to customers on behalf of the Authority or Services to the Authority's staff, the Provider must provide written evidence that:
- i) Equality Impact Assessments have been carried out in conjunction with the Authority prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with equality legislation;
 - ii) reasonable adjustments are made, as required by equality legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards;
 - iii) all Staff have had appropriate training so that they understand the duties required by equality legislation, and where Services are being delivered on behalf of the Authority, the Provider shall provide evidence that Staff understand the duties not to discriminate and to promote equality, in accordance with equality legislation.

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2.7 The Authority may request further information and assurance relating to diversity and equality at any point during the duration of the Contract.

3. Monitoring and Reporting

3.1 The Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of this Appendix. A template for data collected in paragraphs 3.2, 3.3 and 3.4 will be provided by the Authority. Completed templates for the Provider and each Sub-contractor will be submitted by the Provider with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date and annually thereafter. Providers are required to provide workforce monitoring data for the workforce involved in delivery of the Contract. Data relating to the wider Provider workforce and wider Sub-contractors workforce would however be well received by the Authority. Providers and any Sub-contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

3.2 The Provider and Sub-contractors will each provide separate information detailing:

- a) the proportion of employees who are:
 - i) female; and/or
 - ii) disabled
 - iii) those who prefer not to state gender and/or disability

- b) the proportion of Staff who in terms of ethnicity are:

White

- i) white British;
- ii) white Irish;
- iii) of any other white background

Mixed

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group

Prefer not to state

- xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each template in respect of the Provider's employees and each Sub-contractors employees) should total one hundred percent (100%).

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- c) The Provider will provide details of the proportion of its Sub-contractors that are:
- i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
 - ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Appendix; and
 - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Appendix.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Appendix, depending on its composition.

- 3.3 The Provider and any Sub-contractors will compare their figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Provider and any Sub-contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Appendix.
- 3.5 The Provider shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

APPENDIX 9 – WELSH LANGUAGE SCHEME

This Appendix sets out the Provider's obligations which are applicable to the provision of the Services in Wales.

1 General

- 1.1 The Provider acknowledges that in relation to the operation of its Services which are delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Contract, the Provider shall ensure that it cooperates with the Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Appendix.

2 The Department for Work and Pensions Welsh Language Scheme

- 2.1 The DWP Welsh Language Scheme can be found at:
<http://www.dwp.gov.uk/publications/corporate-publications/welsh-language-scheme/>
- 2.2 The Provider shall, in the delivery of the Services, ensure that it complies with the Department for Work and Pensions Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of Services Through the Medium of Welsh

- 3.1 The Provider undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Provider will ensure that:
 - a) Those who want, or are required, to correspond with the Provider will be able to do so in English or Welsh;
 - b) Those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - c) Any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - d) Staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - e) Any answer phones in the Provider's offices in Wales will have a pre-recorded bilingual message;
 - f) All people who participate in the Services are able to contribute through the medium of English or Welsh;

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- g) All material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
- h) All forms and explanatory material be available in both English and Welsh; and
- i) Any complaints or grievance procedure should be provided in both English and Welsh.

APPENDIX 10 – APPRENTICESHIPS AND SKILLS REQUIREMENTS

NOT USED.

APPENDIX 11 – PARENT COMPANY GUARANTEE

NOT USED.

ORDER FORM ANNEX 2

Excluded Transition Costs

1. Subject to and in accordance with clauses 2 to 4 (and in respect of Redundancy Costs, Order Form Annex 3), the Authority shall reimburse the Service Provider for Excluded Transition Costs reasonably and properly incurred in connection with the re-procurement of the Service up to the financial limits set out in clause 3.
2. The Authority shall make payment of the Excluded Transition Costs within 30 days of the Service Provider providing an invoice together with such evidence as the Authority may reasonably require that the costs have been reasonably and properly incurred in connection with the re-procurement of the Service.
3. The Service Provider must submit claims for all Excluded Transition Costs within 3 months of the Commencement Date. The Authority shall have no liability in respect of claims for payment submitted after this date.
4. The Excluded Transition Costs are:

Description	Financial Limit (£)
Redundancy Costs	171,500
Technical Solution Implementation, which covers costs associated with: <ul style="list-style-type: none">• the provision of the Customer Relationship Management (CRM) system;• Data Transfer;• Knowledge Bank• Initial Accreditation of the IT system• Telephony Set-up	65,000
Staff Recruitment and Training: the initial recruitment and training of new staff required to deliver the service	60,000

ORDER FORM ANNEX 3

1. REDUNDANCY COSTS

1.1 In this section 1, the following terms shall have the meanings assigned to them below:

1.1.1 **"Eligible Redundant Employee"** means a Transferring Employee who is compulsorily dismissed by the Provider by reason of redundancy (as such term is defined in section 139 of the Employment Rights Act 1996) as a result of an economic technical organisational reason entailing changes to the workforce and the Provider has followed a fair dismissal procedure and complied with all contractual and legislative requirements;

1.1.2 **"Redundancy Costs"** means, in respect of each Eligible Redundant Employee, statutory redundancy pay entitlement (calculated in accordance with Part XI of the Employment Rights Act 1996) and contractual redundancy pay entitlement (which transferred to the Provider under the TUPE Regulations) to the extent it exceeds the statutory redundancy pay entitlement, and contractual payment in lieu of notice entitlement (which transferred to the Provider under the TUPE Regulations) where it is not reasonably practicable for that employee to continue in employment during their period of notice

1.2 Subject to the provisions of this section 1, the Authority shall pay to the Provider any Redundancy Costs incurred by the Provider in relation to each Eligible Redundant Employee.

1.3 The obligation to pay any Redundancy Costs set out in section 1.2 above shall not apply in relation to the Eligible Redundant Employee(s) made redundant:

1.3.1 where the relevant Eligible Redundant Employee is identified more than 30 calendar days after the date of the Relevant Transfer; or

1.3.2 to the extent that any Redundancy Costs are attributable to any increases made by the Provider to any Eligible Redundant Employee's contractual entitlements to redundancy or notice periods; or

1.3.3 in respect of any Eligible Redundant Employee who was in-scope to transfer to the Replacement Provider pursuant to the TUPE Regulations but who objected to such transfer pursuant to Regulation 4(7) of the TUPE Regulations.

1.4 The Provider shall use reasonable endeavours to:

1.4.1 redeploy any prospective Eligible Redundant Employees within the Provider; and

1.4.3 mitigate the Redundancy Costs.

1.5 The Provider shall provide:

(a) such documents or information as the Authority may reasonably require to verify the Redundancy Costs claimed by the Provider; and

(b) information and relevant supporting documents to explain the process followed by Provider in compliance with its obligations under section 1.4 above, in each case prior to any payment under section 1.2 above.

- 1.6 If any Eligible Redundant Employee is made compulsorily redundant by the Provider but is subsequently re-employed by the Provider or any Affiliate of the Provider within 1 year of the date such Eligible Redundant Employee's employment by the Provider terminates, the Provider shall repay the Authority any payment made by the Authority to the Provider pursuant to this Annex within 30 days of such re-employment commencing.
- 1.7 The Authority's aggregate liability for any Redundancy Costs payable in accordance with section 1.2 above shall be limited to £171,500 and the Authority shall have no liability for any Redundancy Costs incurred by the Provider in relation to any Eligible Redundant Employee in excess of such amount.

ORDER FORM ANNEX 4

"Employee Liabilities"	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none">(a) unlawful deduction of wages;(b) unfair, wrongful or constructive dismissal compensation;(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;(d) compensation for less favourable treatment of agency, part-time workers or fixed term employees;(e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Provider to a Relevant Employee which would have been payable by the Provider or the Sub-Contractor if such payment should have been made prior to the date of the Relevant Transfer;(f) claims whether in tort, contract or statute or otherwise;(g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation).
"Admission Agreement"	<p>means an admission agreement in the form available on the Civil Service Pensions website on the relevant date, to be entered into by the Provider and/or Sub-contractor under which the Provider and / or the Sub-contractor agrees to participate in the Schemes in respect of the Services as amended from time to time;</p>
"Eligible Employee"	<p>means any Fair Deal Employee who at the relevant time remains eligible to participate in the Admission Agreement;</p>
"Fair Deal Employees"	<p>means those Original Public Sector Employees who on the date of a Relevant Transfer are, or become entitled to, the protection of New Fair Deal;</p>
"New Fair Deal"	<p>means the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 including any amendments to</p>

that document at the date of any Relevant Transfer;

"Schemes"

means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under s25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and 'alpha' introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

B10 Application of TUPE Regulations

- B10.1 The Authority and the Provider agree that where the identity of a provider (including the incumbent Provider) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change may constitute a Relevant Transfer.
- B10.2 Following the Commencement Date, on the occasion of any Relevant Transfer during the Contract Period (but excluding for the avoidance of doubt a Relevant Transfer upon termination of this Contract), the Provider shall and shall procure that any new Provider (including any new Sub-contractor) of the relevant Services shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- B10.3 The Authority and the Provider acknowledge and accept that under the TUPE Regulations the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Provider.

Sub-contractors

- B10.4 In the event that the Provider enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause B10 and B11 and shall procure that the Sub-contractor complies with such terms. The Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

Emoluments and Outgoings

- B10.5 Subject to clause B10.7 below, the Parties acknowledge that the Incumbent Provider is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay,

bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the Transfer Date.

- B10.6 Subject to clause B10.7 below, the Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and all Relevant Employees employed by the Provider or any Sub-contractor appointed by the Provider, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.
- B10.7 The Provider will assume (or will procure that any Sub-contractor will assume) the outstanding obligations of the Incumbent Provider in relation to the Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration to the Transfer Date. In consideration, the Incumbent Provider will pay to the Provider within 14 days of the Transfer Date the full amount necessary to enable the Provider to meet the cost of providing any such untaken holiday entitlements and remuneration as at the Transfer Date. The Provider will reimburse the Incumbent Provider any amount paid by the Incumbent Provider before the Transfer Date in respect of holidays taken in excess of any Transferring Employee's entitlement to paid holiday in respect of the period ending on the Transfer Date.

Provision of Information

- B10.8 The Authority has provided to the Provider the information relating to the Transferring Employees at the Transfer Date but does not warrant that the information is accurate and complete as at the date of this Contract. The Provider undertakes to comply with its obligations under the UK Data Protection regime (or similar regime in place from time to time, as applicable) in respect of such information.
- B10.9 The Provider agrees to comply with the provisions set out in clause B11 below in respect of the information required.

Indemnities

- B10.10 The Provider shall indemnify the Incumbent Provider and/or the Authority and/or the Replacement Provider from and against all Employment Liabilities in respect of any Transferring Employee or Relevant Employee provided that any such liability arises directly or indirectly from any act or omission of the Provider or any Sub-contractor in relation to any Relevant Employee or Transferring Employee, whether such claim arises before, on or after the date of the Relevant Transfer.
- B10.11 The Provider shall indemnify the Incumbent Provider and/or the Authority from and against all Employee Liabilities in connection with or as a result of any claim by any Transferring Employee or Relevant Employee that the identity of the Provider or Sub-contractor is to that Transferring Employee or Relevant Employee's detriment or that the terms and conditions, benefits or working conditions to be provided by the Provider or any Sub-contractor or any proposed measures of the Provider or any Sub-contractor are to that employee's detriment whether such claim arises before, on or after the Transfer Date.

- B10.12 The Provider shall indemnify the Incumbent Provider and/or the Authority from and against all Employee Liabilities in connection with or as a result of any failure by the Provider or any Sub-contractor to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Incumbent Provider and/or the Authority to comply with any of its obligations under Regulation 13 of TUPE.
- B10.13 The Provider shall indemnify the Incumbent Provider and/or the Authority from and against all Employee Liabilities in connection with or as a result of any claim (including any individual employees entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Provider to comply with any legal obligations to such trade union, body or person.
- B10.14 The Provider shall indemnify the Incumbent Provider and/or the Authority against all Employee Liabilities arising from or a result of a failure by the Provider or any Sub-contractor to discharge or procure the discharge of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, national insurance contributions, pension contribution and otherwise) payable on or after the Transfer Date.

Pension Protection

- B10.15 The Provider shall, from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date), comply and procure that each Sub-contractor shall comply with the Cabinet Office Statement and any related governmental guidance or codes of practice.
- B10.16 Without prejudice to the generality of Clause B10.15, the Provider shall, and shall procure that each Sub-contractor shall, ensure from the date of any Relevant Transfer during the Contract Period (including, for the avoidance of doubt, from the Commencement Date, in the event of there being a Relevant Transfer on that date) that –
- (a) any Fair Deal Employees, shall be offered membership of the Schemes, or where that is not possible a pension scheme broadly comparable to their pre-transfer pension scheme;
 - (b) when employing staff who are not Fair Deal Employees, comply with the requirements of Part 1 of the Pensions Act 2008, section 256 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff;
 - (c) it does all such things and executes any documents (including the Admission Agreement) required to enable the Fair Deal Employees to participate in the Schemes;
 - (d) it is either admitted into, or is offered continued membership of, the relevant section of the Schemes that it currently contributes to, or was eligible to join

immediately prior to the date of a Relevant Transfer and the Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the date of any Relevant Transfer;

(e) should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department ("GAD") (or any actuary nominated by the Authority in accordance with relevant guidance produced by GAD) as providing benefits which are broadly comparable to those provided by the Schemes as at the date the Eligible Employee ceased to participate in such Schemes; and

(f) it pays to the Schemes all such amounts as are due under the Admission Agreement and shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Authority in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Provider to or in respect of the Schemes. B10.17 The Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses arising out of or in connection with any liability towards the Transferring Employee (including all Fair Deal Employees) arising in respect of service on or after a Relevant Transfer which relate to the participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

B10.18 On a Relevant Transfer upon termination or expiry of this Contract the Provider shall, and shall procure that each Sub-contractor shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Relevant Transfer;
- (b) provide all such co-operation and assistance as the Schemes and any Replacement Provider and/or the Authority may reasonably require to enable any Replacement Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Contract or any part of the Services; or
 - (ii) after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to any Replacement Provider or the Authority, no category of earnings which were not previously pensionable are made

pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this clause shall not apply to any change made as a consequence of participation in an Admission Agreement.

B10.19 Clauses B10.15 to B10.18 are intended to confer rights on the Transferring Employees pursuant to the Contracts (Rights of Third Parties) Act 1999. Provided that if the Contracting Body and the Provider rescind this Contract or vary any of its terms (including any release or compromise in whole or in part of liability) in accordance with the relevant provisions of this Contract or terminate this Contract, such rescission, variation or termination will not require the consent of any Transferring Employee.

B11 Employee Provisions On Expiry Or Termination

Handover on Termination

B11.1 During the six (6) Months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of being so requested by the Authority, the Provider shall fully and accurately disclose to the Authority and shall procure that any relevant Sub-contractor shall accurately disclose any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Provider or any Sub-contractor) including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:

- a) a list of employees employed by the Provider, or any Sub-contractor;
- b) a list of agency workers, agents and independent providers engaged by the Provider;
- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
- f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union

B11.2 Where information has been provided in accordance with clause B11.1 above and the Provider or Sub-contractor makes or becomes aware of any changes or

discovers new information the Provider shall notify the Authority within seven (7) days of any such change or discovery.

- B11.3 The Provider shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to clause B11.1 and B11.2 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- B11.4 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- B11.5 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:
- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
 - b) increase or decrease the number of employees employed in connection with the Services; or
 - c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.
- B11.6 The Provider confirms that it shall, and shall procure that each Sub-contractor shall, comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Provider and hereby warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

Indemnity

- B11.8 The Provider shall indemnify the Authority and any Replacement Provider appointed by the Authority and keep the Authority and any Replacement Provider appointed by the Authority indemnified in full from and against all Employee Liabilities awarded against or incurred or paid by the Authority or any Replacement Provider arising as a result of or in connection with:
- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract;
 - (b) any claim brought against the Authority or any Replacement Provider as a result of the Provider's failure to comply with any of its obligations under the TUPE Regulations; and

(c) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-contractor other than a Relevant Employee included in the list of employees prepared by the Provider in accordance with clause B11.1 above, for whom it is alleged the Authority and/or any Replacement Supplier may be liable by virtue of the TUPE Regulations.

B11.9 Notwithstanding any other provisions of this Contract for the purposes of clauses B10 and B11, and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Provider shall be entitled to enforce the benefits conferred by it here under. Provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Provider shall not be required for such rescission, variation or termination.

B11.10 Clause B10 and this Clause B11 shall apply during the Contract Period and indefinitely thereafter.