

CONTRACTING BODY NOTE

These WHP Terms and Conditions (including Schedules, Appendices and Annexes) are in draft form only and are subject to further review and amendment by the Contracting Body.

The Contracting Body has marked sections which are under particular consideration with drafting notes but it reserves its right to amend any term of this draft. The Contracting Body will publish an updated version of these WHP Terms and Conditions (including Schedules, Appendices and Annexes) in due course.

**Umbrella Agreement for Employment and Health Related Services
Work and Health Programme**

AGREEMENT FOR THE PROVISION OF WHP SERVICES

Between

**THE SECRETARY OF STATE FOR WORK AND PENSIONS
(the "Contracting Body") acting as part of the Crown**

and

**The Shaw Trust Limited
(the "Contractor")**

Contract Number: DWP_19023 - 5

Order Form

SECTION A

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

FROM

Contracting Body:	Secretary of State for Work and Pensions (" Contracting Body ") acting as part of the Crown
Service Address:	Caxton House, Tothill Street, London SW1H 9DA
Invoice Address:	SSCL Accounts Payable Team Room 6124 Tomlinson House Norcross Blackpool FY5 3TA
Contact Reference:	Name: Shared Services Helpline Ref: DWP_19023 - 5 Phone: 0845 602 8244
Order Number:	DWP_19023 - 5 To be quoted on all correspondence relating to this Order:
WHP Commencement Date:	

TO

Contractor:	The Shaw Trust Limited ("Contractor")
Registered Number:	1744121
Service Address:	Third Floor, 10 Victoria Street, Bristol, BS1 6BN
Contact	Name: [REDACTED]

Reference:	Ref: Integrated Services Director Phone: [REDACTED] e-mail: [REDACTED]
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herein after called the "Parties", each being a "Party".

SECTION B

1. FORMATION OF WHP CONTRACT

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

For and on behalf of the Contractor:

Name and Title	
Signature	
Date	

For and on behalf of the Contracting Body (acting as part of the Crown):

Name and Title	[REDACTED] Deputy Director, Head of Employment Services Category
Signature	
Date	

**Work and Health Programme
WHP Terms and Conditions**

Contents

Clause		Page
A	GENERAL PROVISIONS	10
A1	Definitions and Interpretation	10
A2	WHP Contract Period	36
A3	Contractor's Status	37
A4	Contracting Body's Obligations	37
A5	Notices	37
A6	Mistakes in Information	38
A7	Conflicts of Interest	38
A8	Prevention of Fraud	38
A9	ESF Funding	39
A10	Representatives of the Parties	39
B	SUPPLY OF SERVICES	41
B1	The WHP Services	41
B2	Not used	42
B3	No Guarantee of Levels, Values or Exclusivity	42
B4	Provision and Removal of Equipment	42
B5	Manner of Carrying Out the WHP Services	43
B6	Participant Complaints	43
B7	The Merlin Standard	44
B8	Key Personnel	45
B9	Contractor's Staff	46
B10	Inspection of Premises	47
B11	Licence to Occupy Premises	47

B12	Property	47
B13	Offers of Employment.....	48
B14	Employee Provisions and TUPE.....	48
B15	RNOs, tMPLs, Customer Service Standards	49
B16	Performance Improvement Process	49
B17	Universal Credit.....	51
B18	WHP Services Improvement	52
B19	Step-In Rights.....	52
B20	Cancellation or Suspension after a Contractor Termination Event.....	54
B21	Formal Warning Notice.....	55
B22	Monitoring of WHP Contract Performance.....	55
C	PAYMENT AND FEES	57
C1	Fees	57
C2	Delivery Fee	57
C3	Outcome Payments.....	57
C4	Validation & Extrapolation of Outcomes	59
C5	Recovery of Sums Due	61
C6	Deferral of Delivery Fee	62
C7	Currency other than Sterling	63
C8	Third Party Revenue	63
C9	VAT	63
C10	Methods of Payment.....	64
D	STATUTORY OBLIGATIONS AND REGULATIONS	66
D1	Prevention of Bribery and Corruption	66
D2	Discrimination	68
D3	The Contracts (Rights of Third Parties) Act 1999	68
D4	Environmental Requirements	68
D5	Health and Safety	69

D6	Tax Compliance.....	69
D7	Termination Rights due to any Occasion of Tax Non-Compliance	70
E	PROTECTION OF INFORMATION	71
E1	Contracting Body Data	71
E2	Protection of Personal Data	72
E3	Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989	76
E4	Confidential Information.....	77
E5	Transparency and Freedom of Information.....	79
E6	Publicity, Media and Official Enquiries.....	80
E7	Security	82
E8	Intellectual Property Rights	82
E9	Audit and the National Audit Office and Open Book Data.....	84
E10	Exceptional Audits.....	85
E11	Audit Costs	86
E12	Malicious Software.....	86
E13	Provision of Management Information	87
E14	Records Relating to the Provision of the WHP Services	87
F	CONTROL OF THE CONTRACT	88
F1	Transfer and Sub-Contracting	88
F2	Waiver.....	89
F3	Changes to the WHP Contract.....	90
F4	Severability	93
F5	Remedies Cumulative.....	93
F6	Entire Agreement	93
F7	Counterparts.....	94
F8	Further Assurance	94
G	LIABILITIES.....	95
G1	Liability and Indemnity	95

G2	Insurance	99
G3	Warranties and Representations	99
G4	Deed of Guarantee	100
H	TERMINATION RIGHTS AND DISRUPTION	102
H1	Termination by the Contracting Body	102
H2	Termination by the Contractor	102
H3	Partial Termination	103
H4	General Provisions on Expiry or Termination	103
H5	Exit Management	103
H6	Payments by the Contracting Body	103
H7	Payments by the Contractor	104
H8	Disruption	105
I	Disputes and Law	106
I1	Governing Law and Jurisdiction	106
I2	Dispute Resolution	106
	Schedule 1	
	The WHP Services	
	Schedule 2	
	Tender Minimum Performance Levels (tMPLs, Required Number of Outcomes (RNOs) and Customer Service Standards (CSS)	
	Schedule 3	
	Contract Performance Reviews & Contractor Systems Assurance & Performance Indicators	
	Schedule 4	
	Fees and Payment	
	Schedule 5	
	WHP Commercially Sensitive Information	
	Schedule 6	
	Security Requirements and Plan	

Schedule 7	Sustainable Development Requirements.....
Schedule 8	Welsh Language Scheme
Schedule 9	Parent Company Guarantee
Schedule 10	Arrangements Leading up to and Following Expiry or Termination.....
Schedule 11	Allocation of Costs on Termination
Schedule 12	ESF Requirements.....
Schedule 13	Change Control Procedure
Schedule 14	Key Personnel.....
Schedule 15	Sub-contractors.....
Schedule 16	Dispute Resolution Procedure
Schedule 17	Life Chances
Schedule 18	Business Continuity and Disaster Recovery
Schedule 19	Employee Provisions and TUPE.....
Schedule 20.....	Management Information
Schedule 21	

Insurance Requirements.....

Schedule 22

Financial Distress Events.....

A GENERAL PROVISIONS

A1 Definitions and Interpretation

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

"Action Plan" means the action plan agreed between the Contractor and an individual Participant in relation to the WHP Services. Such action plan must detail activities linked to the requirements of the WHP Contract, set out clear goals and must be agreed and signed by the Participant and Contractor, or otherwise as required by the WHP Specification.

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

"Admin Fees" means the costs incurred by the Contracting Body in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the Crown Commercial Service at the following link:

<http://CCS.cabinetoffice.gov.uk/i-am-Contractor/management-information/admin-fees>

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

"Anticipated Contract Value" means the sum set out at paragraph 1.48 of the WHP Specification which relates to this WHP Contract as adjusted in accordance with paragraph 4.2(c) of Schedule 4 of this WHP Contract;

"Apportioned Unable to Validate Outcomes" in respect of each Payment Validation Period, shall be calculated as follows:

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

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

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

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

"Apprentice" means an individual on an apprenticeship as more particularly described at <https://www.gov.uk/topic/further-education-skills/apprenticeships>.

"Approval" means the prior written consent of the Contracting Body.

"Assets" means all assets and rights used by the Contractor to provide the WHP Services in accordance with the WHP Contract but excluding any and all assets and rights owned by the Contracting Body.

"Audit Agents" means:

- (a) the Contracting Body's internal and external auditors;
- (b) the Contracting Body's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) the European Commission;
- (f) the European Court of Auditors;
- (g) any party formally appointed by the Contracting Body and/or by the European Commission and/or by the European Court of Auditors to carry out audit or similar review functions; and
- (h) successors or assigns of any of the above.

"Audit Rights" means the audit and access rights referred to in clause E.

"Average Annual Contract Value" means £7,688,491.46

"Backlog" has the meaning set out in CSS3 in Schedule 2 (Tender Minimum Performance Levels, Required Number of Outcomes (RNOs) and Customer Service Standards).

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

"Breach of Security" means the occurrence of unauthorised access to or use of the Premises, the WHP Services, the Contractor System or any ICT or data (including the Contracting Body's Data) used by the Contracting Body or the Contractor in connection with this WHP 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 and Disaster Recovery Plan" or **"BCDR Plan"** means any plan prepared as directed in clause H8.6, as may be amended from time to time.

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

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

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

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

"Change Control Procedure" means the procedure for changing this WHP Contract, as set out in Schedule 13.

"Change in Law" means any change in Law which comes into force after the WHP Commencement Date.

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

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

"Cohort Period" means a calendar month.

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

"Commercially Sensitive Information" shall have the meaning given to it in the Umbrella Agreement.

"Compensation Payment" shall have the meaning given to it in Schedule 11.

"Completer" means a Participant who has reached their end date on WHP as set out in the Specification under the heading "Maximum Duration on Provision".

"Confidential Information" means:

- (a) means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; and
- (b) all personal data and sensitive data within the meaning of the DPA,

but excluding this WHP Contract in accordance with clause E4.11.

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

"Contract Performance Reviews" or "CPRs" shall have the meaning as set out in Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance).

"Contract Year" means a period which falls within the WHP Contract Period, either in whole or in part, ending on 31 October annually.

"Contracts Finder" means the GOV.UK website for opportunities with public sector bodies in England.

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

"Contracting Body 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 Contractor by or on behalf of the Contracting Body; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this WHP Contract; and
- (b) any Personal Data for which the Contracting Body is the Data Controller and which is Processed by the Contractor or any Sub-contractor on behalf of the Contracting Body or the Crown pursuant to or in connection with this Agreement.

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

"Contracting Body Premises" means Premises which are owned and/ or controlled by the Contracting Body.

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

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

"Contracting Body's Representative" means the individual named at clause A10.1 or such other individual as the Contracting Body may notify in writing to the Contractor from time to time and the Contracting Body's Representative is authorised to act on behalf of the Contracting Body on all matters relating to the WHP Contract. For the avoidance of doubt "in writing" for this purpose may include email.

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

"Contractor System" means any such electronic or hard copy system/process utilised in the delivery of the WHP Services and that is used to transfer, disclose, receive or store Contracting Body Data including, but not limited to, any web enabled system, database, electronic media, e-mail or hard copy system.

"Contractor Termination Event" means:

- (a) the occurrence of 3 Defaults in any 6 Month period;
- (b) the Contractor committing a material Default which is irremediable;
- (c) as a result of the Contractor's Default, the Contracting Body incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in clause G1.7(b);
- (d) the representation and warranties given by the Contractor pursuant to clause D6.1 being materially untrue or misleading;
- (e) the Contractor committing a material Default, whether or not such material Default is capable of remedy, under any of the following clauses:
 - (i) clause E2 (Protection of Personal Data);
 - (ii) clause E4 (Confidential Information);
 - (iii) clause E5 (Freedom of Information); or
 - (iv) clause E7 (Security);
- (f) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Contracting Body with the Guarantor or with another guarantor which is acceptable to the Contracting Body);
- (g) a failure by the Contractor to comply in the performance of the WHP Services with legal obligations in the fields of environmental, social or labour law; or
- (h) where a right of termination is expressly reserved in this WHP Contract, including (without limitation) pursuant to:
 - (i) Clause A7 (Conflicts of Interest);
 - (ii) Clause A8 (Prevention of Fraud);
 - (iii) Clause B9 (Contractor's Staff);
 - (iv) Clause B16 (Performance Improvement Process);
 - (v) Clause B19 (Step-In Rights);
 - (vi) Clause B21 (Formal Warning Notice);
 - (vii) Clause B22 (Monitoring of WHP Contract Performance);
 - (viii) Clause D1 (Prevention of Bribery and Corruption);

- (ix) Clause D7 (Termination Rights Due to and Occasion of Tax Non-Compliance);
 - (x) Clause E1 (Contracting Body Data);
 - (xi) Clause E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act) 1989;
 - (xii) Clause E4 (Confidential information);
 - (xiii) Clause E8 (Intellectual Property Rights); or
 - (xiv) Schedule 3 (CPRs and Contractor Systems Assurance).
- (i) an Insolvency Event occurring in respect of the Contractor or the Guarantor;
 - (j) a Change of Control of the Contractor or a Guarantor unless:
 - (i) the Contracting Body has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Contracting Body has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Contracting Body was given notice of the Change of Control;
 - (k) a change of Control of a Sub-contractor unless, within 6 months of being notified by the Contracting Body that it objects to such change of Control, the Contractor terminates the relevant Sub-contract and replaces it with a comparable Sub-contract which is approved by the Contracting Body pursuant to paragraph 2 of Schedule 15 (Sub-contractors); or
 - (l) the Contracting Body has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this WHP Contract.

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

“Contractor’s Representative” means the individual named at clause A10.3 or such other individual as the Contractor may notify in writing to the Contracting Body from time to time and the Contractor’s Representative is authorised to act on behalf of the Contractor on all matters relating to the WHP Contract. For the avoidance of doubt “in writing” for this purpose may include email.

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

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

“CPA Disability RNO” means the total number of Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of

Disability Participant Starts in the CPA. The CPA Disability RNO shall be calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2.

"CPA Early Access RNO" means the total number of Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Early Access Participant Starts in the CPA. The CPA Early Access RNO shall be calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2.

"CPA LTU RNO" means the total number of Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of LTU Participant Starts in the CPA. The CPA LTU RNO shall be calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2.

"CPA RNO" means the total number of Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts in the CPA. The CPA RNO shall be calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2.

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

"CSS Measurement Period" means the period in respect of which the Contractor's achievement of the WHP Specification Customer Service Standards shall be measured by the Contracting Body. Such period could be any Month, 3 Month, 12 Month or other period at the absolute discretion of the Contracting Body.

"CSS Measurement Point" means the point in time at which the Contracting Body measures/reviews:

- (a) the Contractor's achievement of the WHP Specification Customer Service Standards; and/or
- (b) the Contractor's compliance with its obligations under clause E13 (Provision of Management Information) and Schedule 20 (Management Information)

which will be the last day of a Month or such other point in time as the Contracting Body selects in its absolute discretion.

"CSS Measurement Review" means the Contracting Body's review of the Contractor's achievement of the WHP Specification Customer Service Standards.

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

"Data Controller" shall have the meaning given to it under the DPA.

"Data Processor" shall have the meaning given to it under the DPA.

"Data Protection Change" shall have the meaning given to it in clause E2.9.

"Data Protection Principle" means the eight data protection principles, as set out in Schedule 1 of the DPA.

"Data Subject" shall have the meaning given to it under the DPA.

"DDA" means the geographic area of the Devolution Deal Area which falls within the CPA and which is more particularly described in Schedule 1B.

"DDA Participant" means a Participant referred to the Contractor under the WHP Contract by the Contracting Body acting through a Jobcentre Plus located in the DDA.

"DDA Participant Start" means a Participant Start of a DDA Participant.

"DDA Disability PI" means the total number of Outcomes which the Contracting Body anticipates the Contractor would need to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Disability Participant Starts in the DDA as calculated by the Contracting Body in accordance with Schedule 3.

"DDA Early Access PI" means the total number of Outcomes which the Contracting Body anticipates the Contractor would need to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Early Access Participant Starts in the DDA as calculated by the Contracting Body in accordance with Schedule 3.

"DDA LTU PI" means the total number of Outcomes which the Contracting Body anticipates the Contractor would need to have achieved during the Performance Measurement Period in respect of all Start Cohorts of LTU Participant Starts in the DDA as calculated by the Contracting Body in accordance with Schedule 3.

"DDA RNO" means the total number of Outcomes which the Contractor is required to have achieved during the Performance Measurement Period in respect of all Start Cohorts of Participant Starts in the DDA. The DDA RNO shall be calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2.

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

"Deferral Notice" means the notice to be issued by the Contracting Body in relation to Deferral of payment of Delivery Fee Periodic Payments.

"Deferred Month" means a Month in which the Contractor commits two or more Service Failures arising from one or more Delivery Fee Deferral Failures.

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

"Delivery Fee" means the amount set out in Schedule 4 (Fees and Payment).

"Delivery Fee Deferral Failure" means failure by the Contractor:

- (a) to meet more than one WHP Specification Customer Service Standard in any CSS Measurement Period; or
- (b) to meet any of its obligations to deliver timely and accurate Management Information to the Contracting Body in accordance with the provisions of clause E13 (Provision of Management Information) and Schedule 20 (Management Information).

"Delivery Fee Periodic Payment" means the periodic payment of the Delivery Fee set out in Schedule 4 (Fees and Payment).

"Delivery Model" means the structures and processes used by the Contractor to deliver the WHP Services as described in Schedule 1.

"Disability Participant Start" means a Participant Start of a person with a disability.

"Disallowed Financial Contribution" means a direct or indirect contribution which: (a) is valued by the Contracting Body in its absolute discretion at more than £1,000; and (b) is deemed by the Contracting Body in its absolute discretion to be a contribution towards working capital or equipment or to be otherwise an inappropriate method of providing support to a self-employed Participant.

"Disputes" means any dispute, difference or question of interpretation arising out of or in connection with this WHP Contract, including any dispute, difference or question of interpretation relating to the WHP Services, failure to agree in accordance with the Change Control Procedure or any matter where this WHP Contract directs the Parties to resolve an issue by reference to clause I2.

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

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

"DPA" means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.

"Due Diligence Information" means any information supplied to the Contractor by the Contracting Body.

"DWP" means the Department of Work and Pensions.

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

"Early Access Participant Start" means a Participant Start of a Participant from an early access disadvantage group as more particularly described in the specification and as amended from time to time.

"Earnings PI" means the amount of earnings which the Contracting Body anticipates that each relevant Participant would need to have earned during the Performance Measurement Period for the Contractor to achieve the relevant RNO.

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

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

"Employed Outcome" means when a Participant receives gross earnings (excluding any Non-Qualifying Earnings) in at least the amount described at paragraph 5.5 (An Outcome Payment) of the WHP Specification and the Contracting Body identifies such earnings using the HMRC PAYE Data.

"Employed Outcome Payment" means an Outcome Payment payable in respect of an Employed Outcome.

"Employment Business" means any part of the Contractor, the Contractor's Group, any Sub-contractor or any Sub-contractor's Group which:

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

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

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

"ESF Co-Financing Organisation" means designated bodies including the Contracting Body which channel both ESF and match funding to meet ESF priorities.

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

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

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

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

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

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

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

"Financial Distress Event" means the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 22.

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

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

"Force Majeure Event" means any event outside the reasonable control of either Party affecting its performance of its obligations under this WHP Contract arising from acts, events,

omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor's or a Sub-contractor's supply chain.

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

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

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

"General Anti-Abuse Rule" means:

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

"General Change in Law" a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort);

"Good Industry Practice" means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the WHP Services to a customer like the Contracting Body, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws.

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

"Guarantee" means the deed of guarantee in favour of the Contracting Body entered into by the Guarantor on or about the date of the WHP Contract (which is substantially in the form set out in Schedule 9 (Parent Company Guarantee) or such similar form acceptable to the Contracting Body from time to time).

"Guarantor" means the body who has agreed to guarantee the due performance of the WHP Contract by the Contractor and has entered into the Guarantee in the form set out in Schedule 9 (Parent Company Guarantee).

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

"Higher Rate Outcome Payment" means the amount specified as the Higher Rate Outcome Payment in paragraph 4.1 of Schedule 4 (Fees and Payment).

"HMRC" means Her Majesty's Revenue and Customs.

"HMRC PAYE Data" means the real time information held by HMRC in respect of Participants and used by the Contracting Body to determine and to verify Outcomes.

"ICT" means information and communications technology.

"ICT Environment" means the Contracting Body ICT System and the Contractor System.

"Impact Assessment" means an assessment of a Change Request in accordance with paragraph 6 of Schedule 13.

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

"ICE" means the independent case examiner who reviews complaints from Participants about certain government organisations, including Jobcentre Plus, that deal with benefits and financial support, details of which are set out at: <https://www.gov.uk/government/organisations/independent-case-examiner>.

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

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

"Insolvency Event" means:

- (a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
- (b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- (c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the

whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days;

- (e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where the other Party is a company, a LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party;
 - (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
 - (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or
- (g) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.

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

"Irregularity" means:

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

"Key Personnel" means those persons named Schedule 14 (Key Personnel).

"Key Role" means the roles described in Schedule 1 Appendix B Part 1 Appendix 4 as specified in the WHP Final Offer.

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

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

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

"Long Term Unemployed Participant Start" means a Participant Start of a Participant who is long-term unemployed.

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

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

"Management Information" means the management information specified in clause E13 and Schedule 20 (Management Information).

"Managing Authority" means Contracting Body's managing authority (within the Contracting Body's European Social Fund Division operating on behalf of the Secretary of State which is the managing authority responsible for administering European Social Fund funds by means of which this WHP Contract is funded (where applicable).

"Merlin Standard" means:

- (a) the Contracting Body's standard and accreditation process in respect of supply chain management as further described at:
 - (i) <http://www.merlinstandard.co.uk/>;
 - (ii) <http://www.dwp.gov.uk/docs/merlin-standard.pdf>; and
 - (iii) <http://www.dwp.gov.uk/docs/sub-contracting-merlin-guidance.pdf>,as may be updated and amended from time to time; and/or
- (b) any equivalent policy of the Contracting Body, as notified to the Contractor from time to time as such equivalent policy may be updated and/or replaced by the Contracting Body from time to time.

"Merlin Accreditation" means accreditation in relation to the Merlin Standard in accordance with the requirements specified by any organisation(s) from time to time appointed by the Contracting Body to administer the Merlin Standard assessment and accreditation service. For

the avoidance of doubt, such requirements include any terms and conditions agreed between such appointed organisation(s) and the Contractor.

"MI Failure" means when an MI Report:

- (a) contains any material errors or material omissions or a missing mandatory field; or
- (b) is submitted using an incorrect MI Reporting Template; or
- (c) is not submitted by the Reporting Date (including where a Nil Return should have been filed).

"MI Report" means a report containing Management Information submitted to the Contracting Body in accordance with clause E13 and Schedule 20 (Management Information).

"Month" means a calendar month.

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

"Non-Qualifying Earnings" means any and all earnings paid to a Participant during a Non-Qualifying Period which for the avoidance of doubt shall include any earnings paid to the Participant during the Non-Qualifying Period by the Employment Business or by any other entity.

"Non-Qualifying Participant" means:

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

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

"Non Service Failure Default" means a Default other than a Service Failure.

"Occasion of Tax Non-Compliance" means where:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the WHP Commencement Date or to a civil penalty for fraud or evasion.

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

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

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

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

- (a) will not affect the Fees and will not result in any other costs to the Contracting Body;
- (b) may change the way in which the WHP Services are delivered but will not adversely affect the output of the WHP Services or increase the risks in performing or receiving the WHP Services; and
- (c) will not adversely affect the interfaces or interoperability of the WHP Services with any of the Contracting Body ICT System.

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

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

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

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

"Outcome" means an Employed Outcome or a Self Employed Outcome (as applicable).

"Outcome Aggregate Error Amount" shall have the meaning set out in clause C4.5.

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

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

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

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

expressed as a percentage.

"Outcome Fail" means an Outcome in respect of which the Contracting Body in its absolute discretion determines that not all of the relevant qualifying criteria and requirements (in respect of that Outcome) have been satisfied.

"Outcome Payment" means the fee as set out in Schedule 4 (Fees and Payment) payable by the Contracting Body to the Contractor on achievement of either an Employed Outcome or a

Self-Employed Outcome and which shall be payable in accordance with the requirements of the WHP Contract.

"Outcomes Sample" shall have the meaning given to it in clause C4.3.

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

"Partial Termination" shall have the meaning given to it in clause H1.2.

"Participant" means an individual in respect of whom the Contractor provides WHP Services who has been Referred to the Contractor by the Contracting Body pursuant to the WHP Contract.

"Participant Personal Data" means the Personal Data of each Participant, where such Personal Data is Processed by either Party under, or in connection with, this WHP Contract.

"Participant Start" means, in respect of each Participant, the date on which the initial face to face meeting between the Contractor and a Participant takes place.

"Party" means the Contracting Body or the Contractor, and **"Parties"** shall be construed accordingly.

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

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

"Performance Improvement End Date" means the date set out in the Performance Improvement Notice.

"Performance Improvement Notice" means a written notice given by the Contracting Body to the Contractor pursuant to clause B16.

"Performance Improvement Period" means the period from the date of issue of the Performance Improvement Notice until the Performance Improvement End Date.

"Performance Improvement Plan" means the plan agreed in accordance with clause B16.

"Performance Improvement Plan Failure" has the meaning set out in clause B16.10

"Performance Improvement Process" means the process set out in clause B16.

"Performance Indicator(s)" means the indicators set out in paragraph 3 of Schedule 3 (Contract Performance Reviews & Contractor Systems Assurance & Performance Indicators) which shall include but not be limited to the DDA Disability PI, the DDA Early Access PI, the DDA LTU PI and the Earnings PI.

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

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

"Performance Indicator Course of Action Notice" means a notice issued by the Contracting Body in accordance with paragraph 3 of Schedule 3 (Contract Performance Reviews and Contractor Systems Assurance).

"Performance Manager" means the Contracting Body's and the Contractor's respective representative who will monitor and review the matters specified in clause B22.2.

"Performance Measurement Period" means the period in respect of which the Contractor's achievement of the RNOs shall be measured by the Contracting Body. Such period could be any Month, 3 Month, 12 Month or other period at the absolute discretion of the Contracting Body.

"Performance Measurement Point" means the last day of the Performance Measurement Period or such other day as the Contracting Body in its absolute discretion selects.

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

"Personal Data" shall have the meaning given to it under the DPA.

"PRaP" means DWP's prescribed provider referral and payments system, which DWP uses to refer Participants and pay providers, and/or any equivalent Contractor Body provider referral and payments system, from time to time. For the avoidance of doubt, where PRaP is not available, a clerical system may be adopted by the Contracting Body in its place.

"Premises" means any location from which the WHP Services are delivered; Premises as at the Date of Contract are set out within the Tender a Copy of which is at Schedule 1.

"Processing" shall have the meaning given to it under the DPA and **"Process"** and **"Processed"** shall be interpreted accordingly.

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

"Programme WHP Contract" means any WHP Contract entered into pursuant to the Umbrella Agreement between the Contracting Body and the Contractor in relation to the Work and Health Programme, covering any CPA.

"Property" means the property, other than real property, issued or made available to the Contractor by the Contracting Body in connection with the WHP Contract.

"Provider Guidance" means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to sustainable development and promotion of race equality and non-discrimination, copies of which have been provided by the Contracting

Body to the Contractor prior to the WHP Commencement Date, and any other instructions and recommended practices as updated by the Contracting Body to the Contractor from time to time.

"Purchase Order" means any purchase order issued by the Contracting Body to the Contractor in relation to the WHP Services, as referred to in Schedule 4.

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

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

"Receiving Party" means the Party which receives a proposed Contract Change.

"Records Retention End Date" has the meaning set out in clause E14.

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

"Referral Group" mean all the Referrals in respect of this WHP Contract in any Month.

"Referral Period" means the period from and including the Referral Period Start Date until the Referral Period End Date when the Contracting Body may make Referrals.

"Referral Period Start Date" means 15 January 2018

"Referral Period End Date" means:

- (a) 31 October 2022; or
- (b) such later date no more than 2 years later than (a) following any extension of the Referral Period End Date pursuant to clause F3.3(a).

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

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

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

"Replacement Services" means any services which are substantially similar to any of the WHP Services and which the Contracting Body receives in substitution for any of the WHP Services following the expiry of end of provision of the WHP Services or the termination of the

WHP Contract, whether those services are provided by the Contracting Body internally and/or any third party.

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

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

"Required Action" has the meaning set out in B19.1.

"RNOs or Required Number of Outcomes" means the number of Outcomes which the Contractor is required to achieve in a Performance Measurement Period as calculated by the Contracting Body on the basis of the Performance Offers and Cohort Profiles in the tMPLs set out in Schedule 2 and shall include but not be limited to the CPA RNO, the CPA Disability RNO, the CPA Early Access RNO, the CPA LTU RNO and the DDA RNO.

"Schedule" means a Schedule attached to, and forming part of, the WHP Contract.

"Security Plan" means the Contractor's security plan prepared pursuant to Schedule 6 (Security Requirements and Plan).

"Security Policy" means the Contractor's security plan prepared pursuant to Schedule 6 (Security Requirements and Plan).

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

"Self Employed Outcome" means, in accordance with paragraph 5.6 (An Outcome Payment) of the WHP Specification, when a Participant, who is not a Non-Qualifying Participant, achieves a cumulative period of not less than 182 days self-employment in a business based in the United Kingdom. For the avoidance of doubt, any period of self-employment can only be counted once regardless of whether the Participant has one or multiple self-employed occupations during that period.

"Self Employed Outcome Payment" means an Outcome Payment payable in respect of a Self Employed Outcome.

"Sell2Wales" means the GOV.UK website for opportunities with public sector bodies in Wales.

"Service Failure" means a failure by the Contractor to:

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

"Specific Change in Law" a Change in Law that relates specifically to the business of the Contracting Body and which has a material effect on the WHP Services.

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

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

“Standard Rate Outcome Payment” means the amount specified as the Standard Rate Outcome Payment in paragraph 4.1 of Schedule 4 (Fees and Payment).

“Start Cohort” means the Participant Starts recorded on the PRaP System in each Cohort Period.

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

“Step-In Trigger Event” means:

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

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

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

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

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

guidance on the England ESF Operational Programme 2014-2020 via the GOV.UK website (ESF pages).

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

"Sub-contractor" any third party with whom:

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

"Subject Access Request" means a request made by a Data Subject to access his Personal Data pursuant to section 7 of the DPA.

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

"Tender" means the Contractor's response to the WHP ITT including but not limited to the WHP Mini-Competition Initial Stage Response, the WHP Mini-Competition Commercial Dialogue Stage Response and the WHP Final Offer and which, for the avoidance of doubt, includes any post-tender clarifications made by the Contractor to the Contracting Body prior to the WHP Commencement Date ("**Tender Clarification**").

"Tender Cohort Profiles" means the tables in the tMPLs set out in Schedule 2 which profile the number of Outcomes that the Contractor predicts it will achieve and the point in time when the Contractor predicts it will achieve such Outcomes, based on (a) an assumed number of Participant Starts and (b) an assumed point in time when each Participant Start will occur.

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

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

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

"Termination Payment" shall have the meaning given to it in Schedule 10.

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

"tMPL" or "**Tender Minimum Performance Levels**" means the performance levels offered by the Contractor in the WHP Final Offer which are set out in Schedule 2 (Tender Minimum

Performance Levels (tMPLs), Required Number of Outcomes (RNOs) and Customer Service Standards (CSS)).

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

A + B where:

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

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

"Transferee" means any person to whom the Contracting Body assigns, novates or otherwise disposes of its rights and obligations under the WHP Contract pursuant to Clause F1.7.

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

"Umbrella Agreement" means the umbrella agreement dated 12 January 2017 for the provision of employment related support services with contract reference number 2016/S 193-34740 Lot 1 between the Contracting Body and the Contractor, pursuant to which this WHP Contract has been entered into.

"Universal Credit" means the Government initiative of that name which is more particularly described in the WHP Specification.

"Unsupported WHP Services" shall have the meaning set out in Clause C10.2.

"Variation" means any change to this WHP Contract other than an Operational Change.

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

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

"WHP Commercially Sensitive Information" means the information:

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

"WHP Commercially Sensitive Information Schedule" means Schedule 5.

"WHP Contract" means this contract between the Contracting Body and the Contractor (entered into pursuant to the Umbrella Agreement) consisting of the Order Form and the WHP Terms and Conditions, the Schedules and any Appendices or Annexes to the WHP Terms and Conditions, the Tender, the Provider Guidance, the Q&A, the Tender Clarification and any other document referred to in the WHP Contract.

"WHP Contract Period" has the meaning set out in Clause A2.

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

"WHP ITT" means the suite of documents issued by the Contracting Body through the Bravo portal which formed the invitation to participate in the mini-competition for the award of this and other WHP Contracts for the provision of Work and Health Programme services to the Contracting Body.

"WHP Mini-Competition Commercial Dialogue Stage" means the second stage of the WHP Mini-Competition where DWP engaged in structured dialogue with 3 selected WHP Bidders in each CPA in relation to their WHP Mini-Competition Commercial Dialogue Stage Response.

"WHP Mini-Competition Commercial Dialogue Stage Response" means the Contractor's answers to the WHP Mini-Competition Commercial Dialogue Stage Questions.

"WHP Mini-Competition Initial Stage Response" means the Contractor's answers to the WHP Mini-Competition Initial Stage Questions and the WHP Mini-Competition Initial Stage Presentation by the Contractor.

"WHP Mini-Competition Initial Stage Presentation" means the presentation that the Contractor was required to do for the Contracting Body at the WHP Mini-Competition Initial Stage.

"WHP Mini-Competition Initial Stage Questions" means those Evaluation Questions identified by the Contracting Body to which the Contractor was required to respond at the WHP Mini-Competition Commercial Dialogue Stage.

"WHP Plans" means any Action Plan, BCDR Plan, Diversity & Equality Delivery Plan, Exit Plan, Financial Distress Service Continuity Plan, Implementation Plan, PAT Action Plan, Performance Improvement Plan, Security Plan, Step-Out Plan, Sustainable Development Plan which the Contractor is required to submit in connection with this WHP Contract.

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

"WHP Services Cessation Date" means the date 21 Months after the last Participant Start under the WHP Contract.

"WHP Services Delivery Period" means the period from and including the WHP Commencement Date until the WHP Services Cessation Date during which the Contractor shall supply the WHP Services.

"WHP Specification" means the Contracting Body's specification for the WHP Services as set out in Appendix 1 to Schedule 1 (The WHP Services) (including all amendments to, variations of, or supplements to such specification).

"WHP Specification Customer Service Standards" means any customer service standards set out by the Contracting Body in the WHP Specification for the WHP Contract.

"WHP" means Work and Health Programme.

"WHP Terms and Conditions" means these terms and conditions of contract and the accompanying schedules which together form part of the WHP Contract.

"Work and Health Programme" means the Contracting Body's Work and Health Programme in England and Wales as more particularly described in the Specification.

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

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

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

A2 WHP Contract Period

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

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

A3 Contractor's Status

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

A4 Contracting Body's Obligations

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

A5 Notices

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

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

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

(a) For the Contracting Body:

Address: Department for Work and Pensions
1 Hartshead Square
Sheffield
S1 2FD

For the attention of: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

(b) For the Contractor:

Address: Shaw Trust, Garrick Court,
31 SCARBOROUGH Street, London, E1 8DR.

For the attention of: [REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

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

A6 Mistakes in Information

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

A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where, in the reasonable opinion of the Contracting Body, there is or may be, directly or indirectly, a financial, economic or other personal interest of the Contractor or any Staff which might be perceived to compromise their impartiality and independence in the context of the duties owed to the Contracting Body under the provisions of this WHP Contract. The Contractor will disclose to the Contracting Body full particulars of any such conflict of interest which may arise.

A7.2 The Contracting Body reserves the right to terminate this WHP Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be, directly or indirectly, a financial, economic or other personal interest of the Contractor or any Staff which might be perceived to compromise their impartiality and independence in the context of the duties owed to the Contracting Body under the provisions of this WHP Contract (and for the avoidance of doubt the provisions of clause H1 shall not apply). The actions of the Contracting Body 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 Contracting Body.

A7.3 Without prejudice to clause A7.1 and A7.2, the Contractor may seek Approval for matters which would otherwise constitute Default of Clause A7 and the Contracting Body will consider whether to grant Approval in its absolute discretion.

A7.4 This clause A7 shall apply during the continuance of this WHP Contract and for a period of two (2) years after its Expiry or termination.

A8 Prevention of Fraud

A8.1 The Contractor shall establish, maintain and enforce and require that its Staff and Sub-contractors establish, maintain and enforce policies and procedures which are adequate to prevent the occurrence of Fraud and/or Irregularity in connection with any Programme WHP Contract.

A8.2 The Contractor shall establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce:

- (a) a system that enables its Staff, Sub-contractors and any person involved in the supply of the WHP Services to report to the Contractor, the commission or suspected commission of Fraud or Irregularity by any person in connection with this WHP Contract;
- (b) a personnel performance assessment system for any persons involved in the supply of the WHP Services in which personnel performance targets are appropriately set to ensure the commission of Fraud or Irregularity is not encouraged; and
- (c) a segregation of duties between those persons directly involved in supplying the WHP Services to Participants and those persons providing the Contracting Body with Management Information under a Programme WHP Contract in respect of compliance with the Tender Minimum Performance Levels (tMPLs) and Customer Service Standards (CSS) and achievement of the RNOs.

A8.3 To the extent permitted by Law, the Contractor shall notify the Contracting Body immediately in writing if it becomes aware of any Fraud or Irregularity, or has reason to believe that any Fraud or Irregularity has occurred, is occurring, or may occur in connection with any Programme WHP Contract.

A8.4 If the Contractor notifies the Contracting Body under clause A8.3, the Contractor shall respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body access to the Open Book Data and/or any other relevant records/information in accordance with clause E9.

A8.5 If the Contractor fails to comply with its obligations under this clause A8, the Contracting Body may terminate this WHP Contract by issuing a Termination Notice to the Contractor.

A8.6 If the Contractor, its Staff or its Sub-contractors commits Fraud or does something which constitutes an Irregularity, the Contracting Body may:

- (a) terminate this WHP Contract, and any other Programme WHP Contract, by issuing a Termination Notice to the Contractor; and
- (b) recover from the Contractor the amount of any Loss suffered by the Contracting Body resulting from the termination, including but without limitation, the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the WHP Services and any additional expenditure incurred by the Contracting Body resulting from any such termination.

A9 ESF Funding

A9.1 The Contractor acknowledges that the Contracting Body may at its absolute discretion, whether from the WHP Commencement Date or from any later date prior to the Expiry or termination of this WHP Contract, either fund the delivery of this WHP Contract using ESF monies or use this WHP Contract as match for contracts funded using ESF monies.

A9.2 The Contractor and any Sub-contractors appointed by it shall be bound by the ESF Requirements including but not limited to those set out in Schedule 12 (ESF Requirements).

A10 Representatives of the Parties

A10.1 The following person is the Contracting Body's Representative:

Name [REDACTED]

Title: **Senior Category Manager**

A10.2 The Contracting Body's Representative may approve deputy Contracting Body's Representatives to exercise the Contracting Body's Representative's powers on his/her behalf. The Contracting Body's Representative may notify the Contractor of any such deputy in accordance with clause A5.

A10.3 The following person is the Contractor's Representative:

Name **[REDACTED]**

Title: **Integrated Services Director**

A10.4 The Contractor's Representative may approve deputy Contractor's Representatives to exercise the Contractor's Representative's powers on his/her behalf. The Contractor's Representative may notify the Contracting Body of any such deputy in accordance with clause A5.

B SUPPLY OF SERVICES

B1 The WHP Services

- B1.1 The Contractor shall supply the WHP Services during the WHP Services Delivery Period in accordance with the Contracting Body's requirements as set out in the WHP Contract (including for the avoidance of doubt, in accordance with Schedule 1, the WHP Specification and the ESF Requirements) in consideration of the payment of the Fees.
- B1.2 The Contractor acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information.
- B1.3 The Contractor shall not be excused from the performance of any of its obligations under this WHP Contract as a result of any misinterpretation of the Contracting Body's requirements and/or any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
- B1.4 The Contractor shall implement the Implementation Plan to the satisfaction of the Contracting Body and satisfy the requirement of clause C9.6 with effect from the WHP Commencement Date in accordance with the terms of the Implementation Plan and in accordance with the timescales set out in the Implementation Plan but in any event prior to the Referral Period Start Date and if the Contractor fails to do so the Contracting Body shall be entitled to terminate this WHP Contract by issuing a Termination Notice to the Contractor.
- B1.5 Timely supply of the WHP Services shall be of the essence of the WHP Contract, including in relation to commencing the supply of the WHP Services within the time agreed or on a specified date including the dates specified in the WHP Specification and the Implementation Plan.
- B1.6 An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that all Sub-contractors and Staff also do, or refrain from doing, such act or thing.
- B1.7 The Contractor shall continue to perform all of its obligations under this WHP Contract and shall not suspend the supply of the WHP Services, notwithstanding:
- (a) any cancellation or suspension of the outstanding Delivery Fee or Referrals pursuant to clause C6;
 - (b) any deferral of the Delivery Fee by the Contracting Body pursuant to clause B16.2 or clause C6; or
 - (c) any withholding of Fees by the Contracting Body pursuant to clause H7.3;
 - (d) the existence of an unresolved Dispute; and/or
 - (e) any failure by the Contracting Body to pay any Fees,
- unless the Contractor is entitled to terminate this WHP Contract under clause H2 for failure to pay undisputed Fees.
- B1.8 The Contractor shall not add or remove locations as Premises without having obtained Approval.
- B1.9 The Contractor shall at all times comply with the Provider Guidance when supplying the WHP Services.

B1.10 In the event of any conflict between this WHP Contract and the Provider Guidance, the Contractor shall notify the Contracting Body of the existence and nature of such conflict without delay.

B1.11 The Contractor shall at all times prepare and submit all WHP Plans in a timely manner in good faith and with due skill, care and diligence in a form reasonably capable of acceptance by the Contracting Body including in accordance with the Contracting Body's requirements. Any purported WHP Plan which does not comply with the requirements of this clause B1.11 is not a relevant WHP Plan for the purposes of the relevant clause of this WHP Contract.

B2 Not used

B3 No Guarantee of Levels, Values or Exclusivity

B3.1 Subject to clause B3.2 and clause B3.3, the Contracting Body will refer prospective Participants to the Contractor during the Referral Period in accordance with the provisions of the WHP Contract (in particular, the WHP Specification).

B3.2 The Contractor acknowledges and has submitted its WHP Final Offer on the understanding that no guarantee is given by the Contracting Body in respect of levels or values of WHP Services referred to in the Schedules which are indicative only and shall not be binding on the Contracting Body

B3.3 The Contractor acknowledges that, in entering the WHP Contract, no form of exclusivity has been granted by the Contracting Body for WHP Services from the Contractor and that the Contracting Body is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the WHP Services.

B4 Provision and Removal of Equipment

B4.1 The Contractor shall provide all the Equipment necessary for the supply of the WHP Services.

B4.2 The Contractor shall not deliver any Equipment nor provide any work on the Contracting Body's Premises without obtaining Approval.

B4.3 All Equipment brought onto the Contracting Body's Premises shall be at the Contractor's own risk and the Contracting Body shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was wholly caused by action or inaction the Contracting Body. The Contractor shall provide for the haulage or carriage to the Contracting Body's Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Contracting Body's Premises will remain the property of the Contractor.

B4.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

B4.5 The Contractor shall, at the Contracting Body's written request, at its own expense and as soon as reasonably practicable:

(a) remove from the Premises any Equipment which in the reasonable opinion of the Contracting Body is hazardous, noxious or not in accordance with the WHP Contract; and

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

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

B5 Manner of Carrying Out the WHP Services

- B5.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of WHP Services has not been specified in the WHP Contract, the Contractor shall agree the relevant standard of the WHP Services with the Contracting Body prior to the supply of the WHP Services and in any event, the Contractor shall perform its obligations under the WHP Contract in accordance with all applicable Law and Good Industry Practice and deliver the WHP Services using efficient business processes and ways of working having regard to the Contracting Body's obligation to ensure value for money.
- B5.2 While not in any way limiting any other provision of this WHP Contract, in delivering the WHP Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.
- B5.3 The Contractor shall ensure that all Staff supplying the WHP Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the WHP Services.
- B5.4 To the extent required by the Contracting Body, the Contractor shall comply and shall ensure that its Staff comply with the provisions of Schedule 8 (Welsh Language Scheme) in providing the WHP Services in the Welsh language.
- B5.5 The Contractor shall at all times comply and shall ensure that its Staff at all times comply with the provisions of Schedule 17 (Life Chances).

B6 Participant Complaints

- B6.1 The Contractor shall have an internal dispute resolution procedure for dealing with complaints from Participants about the Contractor (and/or any of its Sub-contractors) or any aspect of the supply of the WHP Services.

- B6.2 If the dispute between any Participant and the Contractor (and/or any Sub-contractor) cannot be resolved the dispute shall be referred to the ICE for mediation.
- B6.3 If the dispute cannot be resolved by mediation, ICE will conduct a full investigation. In accordance with ICE's usual procedures, the Contractor shall have the opportunity to present its case and any evidence during the investigation and ICE shall share its draft report with the Contractor for comment before issuing a final version. The decision of ICE shall be final and binding upon the parties to the dispute. The ICE investigation shall carry a £5,000 fee paid by the Contractor or the Sub-contractor, who will also be liable for any financial redress recommended by ICE. In the event that the complaint against the Contractor or Sub-contractor is dismissed, no fee shall be payable. Any fees in respect of complaints that have been upheld against the Contractor (and/or any Sub-contractor) and any financial redress due to the Participant shall be paid within four (4) weeks of the date of the ICE final investigation report.
- B6.4 Without prejudice to clauses B6.1 to B6.3, the Contracting Body shall take all reasonable steps to investigate any complaint it receives regarding:
- (a) the standard of WHP Services;
 - (b) the manner in which any WHP Services have been supplied,
 - (c) the manner in which work has been performed;
 - (d) the materials or procedures the Contractor uses; or
 - (e) any other matter connected with the performance of the Contractor's obligations under the WHP Contract.
- B6.5 Without prejudice to its other rights and remedies under the WHP Contract, the Contracting Body may, in its sole discretion, uphold any complaint and take further action in accordance with clause B or clause H of the WHP Contract.
- B6.6 The Contractor shall provide Management Information relating to complaints from Participants in accordance with the requirements of Schedule 20 (Management Information).

B7 The Merlin Standard

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

- B7.4 The Contractor acknowledges that all decisions relating to Merlin Accreditation are made by the relevant Merlin Standard authorisation body.
- B7.5 The Contractor consents to the publication by and on behalf of the Contracting Body of all its scores relating to the Merlin Standard.
- B7.6 Any breach by the Contractor of this clause B7 shall entitle the Contracting Body to terminate the WHP Contract by issuing a Termination Notice to the Contractor.

B8 Key Personnel

- B8.1 The Contractor acknowledges that the Key Personnel are essential to the proper supply of the WHP Services.
- B8.2 The Contractor shall give notice to the Contracting Body of any proposed changes to the Key Personnel in accordance with the provisions of clause A5.
- B8.3 The Contractor shall not remove or replace any Key Personnel unless:
- (a) requested to do so by the Contracting Body;
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Contractor or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Contractor obtains Approval.
- B8.4 The Contractor shall:
- (a) notify the Contracting Body promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice; and
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the WHP Services.
- B8.5 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the WHP Services.
- B8.6 The Contracting Body will not unreasonably withhold its Approval under clauses B8.3 or B8.5. Such Approval shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the WHP Contract which could be caused by a change in Key Personnel.

B8.7 The Contractor shall have a continuing obligation to provide to the Contracting Body an up to date organogram of Key Personnel which shall include contact details of all Key Personnel and show the first point of contact in relation to any issues arising with the WHP Contract and further points of escalation.

B9 Contractor's Staff

B9.1 The Contracting Body may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Contracting Body'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 Contracting Body, be undesirable.

B9.2 At the Contracting Body's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the WHP Contract to the Contracting Body's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the WHP Contract and giving such other particulars as the Contracting Body may reasonably request.

B9.3 The decision of the Contracting Body as to whether any person is to be refused access to the Contracting Body's Premises and as to whether the Contractor has failed to comply with clause B9.2 shall be final and conclusive.

B9.4 The Staff, engaged within the boundaries of the Contracting Body'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 Contracting Body's Premises.

B9.5 The Contractor shall comply with all applicable Law relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B9.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the WHP Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the WHP Services and accessing the Premises.

B9.7 The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the WHP Services in compliance with the Security Policy and Security Plan.

B9.8 The Contractor shall further use all reasonable endeavours to ensure that all Staff are legally entitled to work in the United Kingdom. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.

B9.9 If the Contractor, in the reasonable opinion of the Contracting Body, fails to comply with clauses B9.4, B9.5, B9.6, B9.7 and B9.8 the Contracting Body shall be entitled to terminate the WHP Contract by issuing a Termination Notice to the Contractor.

B9.10 The Parties agree that the Contractor shall, both during and after the WHP Contract Period, , within three (3) Working Days of demand, indemnify fully, keep the Contracting Body

indemnified and hold harmless the Contracting Body at all times from and against all Employee Liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of any claims against the Contracting Body by any person where such claim is connected to this WHP Contract whether directly or indirectly.

B10 Inspection of Premises

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

B11 Licence to Occupy Premises

B11.1 To the extent that any land or Premises is made available from time to time to the Contractor by the Contracting Body in connection with this WHP Contract this shall, subject to the provisions of any additional agreement entered into by the Parties as may be required by the Contracting Body, be made available to the Contractor on a non-exclusive licence basis, and shall be used by the Contractor solely for the purpose of performing its obligations under this WHP Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the WHP Contract.

B11.2 Subject to clause B11.1, the Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this WHP Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Contracting Body may reasonably request.

B11.3 Subject to clause B11.1, the Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Contracting Body, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B11.4 Subject to clause B11.1, the Parties agree that there is no intention on the part of the Contracting Body to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this WHP Contract, the Contracting Body retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B11.5 Subject to clause B11.1, should the Contractor request modifications to the Contracting Body's Premises, such modifications shall be subject to Approval and if Approved shall be carried out by the Contracting Body at the Contractor's expense. Ownership of such modifications shall rest with the Contracting Body.

B12 Property

B12.1 Where the Contracting Body provides Property free of charge to the Contractor such Property shall be and remain the property of the Contracting Body and the Contractor irrevocably licences the Contracting Body and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the

Contracting Body. The Contractor shall take all reasonable steps to ensure that the title of the Contracting Body 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 Contracting Body's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Contracting Body.

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

B13 Offers of Employment

- B13.1 For the duration of the WHP Contract and for a period of twelve (12) Months thereafter neither the Contracting Body nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the WHP Services without that other Party's prior written consent.
- B13.2 As a separate and independent obligation to the provisions of paragraph 2.1 of Schedule 20 (Management Information), the Contractor shall notify the Contracting Body a minimum of five (5) Working Days prior to the first payment of earnings or remuneration being made to any Participant or Completer who is a Non-Qualifying Participant.
- B13.3 Failure by the Contractor to notify the Contracting Body in accordance clause B13.2 will constitute a Non Service Failure Default and the provisions of clause B21 will apply.

B14 Employee Provisions and TUPE

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

Sub-contractors

- B14.2 In the event that the Contractor enters into any Sub-contract in connection with this WHP Contract, it shall:
- (a) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause B14;
 - (b) ensure that each Sub-contractor complies with such terms;
 - (c) within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against all

claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of any action or inaction of a Sub-contractor in relation to such terms; and

(d) comply with the provisions of Schedule 15 (Sub-Contractors).

B15 RNOs, tMPLs, Customer Service Standards and Performance Indicators

B15.1 The Contractor shall ensure that, at all times from the WHP Commencement Date, the WHP Services are supplied in such a manner as to meet or exceed (a) the RNOs as calculated by the Contracting Body from the tMPLs set out in paragraph 1 of Schedule 2; and (b) the Customer Service Standards set out in paragraph 2 of Schedule 2.

B15.2 In measuring the Contractor's performance against each of the RNOs, the Contracting Body shall have absolute discretion to choose any Performance Measurement Point and any Performance Measurement Period. In measuring the Contractor's performance against each of the Customer Service Standards, the Contracting Body shall have absolute discretion to choose any CSS Measurement Point and any CSS Measurement Period.

B15.3 The Contracting Body shall conduct regular formal contract performance review meetings ("CPRs") in accordance with Schedule 3 to monitor, and review, the Contractor's performance against the RNOs, the Customer Service Standards and the Performance Indicators.

B15.4 The Contractor shall comply with the provisions of Schedule 3 (Contract Performance Reviews, Contractor Systems Assurance & Performance Indicators) in relation to the review, monitoring and reporting of its performance against the RNOs, the Customer Service Standards and the Performance Indicators.

B15.5 The Contracting Body's measurement of the Contractor's performance against each of the RNOs, the Customer Service Standards and the Performance Indicators shall continue throughout the period from the WHP Commencement Date until the later of the WHP Services Cessation Date or the end of the Payment Tail Period.

B15.6 The Contracting Body may, at its sole discretion, elect to make changes to the RNOs and/or the Customer Service Standards and/or the Performance Indicators from time to time. If the Contracting Body elects to make changes to the RNOs and/or the Customer Service Standards and/or the Performance Indicators, the Contracting Body shall notify the Contractor in writing 2 Months prior to such changes becoming effective and shall confirm any Management Information requirements in respect of such changed RNOs and/or changed Customer Service Standards and/or changed Performance Indicators.

B16 Performance Improvement Process

B16.1 Where the Contracting Body believes that a Service Failure has occurred, the Contracting Body may at any time (in its absolute discretion) elect to give a Performance Improvement Notice to the Contractor in respect of such Service Failure and thereby initiate the Performance Improvement Process in accordance with this clause B16.

B16.2 A Performance Improvement Notice given in accordance with this clause B16 shall indicate:

(a) that it is a Performance Improvement Notice;

(b) the Service Failure;

- (c) the actions the Contracting Body in its absolute discretion requires the Contractor to take to satisfy the Contracting Body that the Contractor can ensure compliance with its contractual obligations in relation to the subject matter of the Service Failure, which, for the avoidance of doubt, may include the requirement to remedy the Service Failure where it is capable of remedy; and
 - (d) the Performance Improvement Period which will start on the date of issue of the Performance Improvement Notice and will end on the Performance Improvement End Date specified in the Performance Improvement Notice.
- B16.3 For the avoidance of doubt, the Contracting Body may issue a Performance Improvement Notice and initiate the Performance Improvement Process at any time after the occurrence of a Service Failure and any delay in exercising its right to issue a Performance Improvement Notice and/or initiate the Performance Improvement Process shall not constitute a waiver or cause of diminution of the Contracting Body's right to do so.
- B16.4 For the avoidance of doubt, the Contracting Body shall be under no obligation to initiate the Performance Improvement Process including, without limitation, if it serves notice to terminate the WHP Contract pursuant to any other termination rights under the WHP Contract.
- B16.5 Within such timescales as notified by the Contracting Body to the Contractor (taking into account all relevant circumstances in relation to the subject matter and nature of the Service Failure) but in any event no more than ten (10) Working Days following receipt of a Performance Improvement Notice the Contractor shall either:
- (a) submit a draft Performance Improvement Plan; or
 - (b) inform the Contracting Body that it does not intend to submit a draft Performance Improvement Plan,
- in the event that the Contractor either fails to submit a draft Performance Plan or the Contractor informs the Contracting Body that it does not intend to submit a draft Performance Improvement Plan the Contracting Body shall be entitled to terminate the WHP Contract by issuing a Termination Notice to the Contractor.
- B16.6 The Contracting Body shall either approve the draft Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of its receipt pursuant to clause B16.5(a), or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Contractor shall address all such concerns in a revised Performance Improvement Plan, which it shall submit to the Contracting Body within a period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of its receipt of the Contracting Body's comments. If no such notice is given, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.
- B16.7 The Contracting Body and the Contractor may agree temporary variations to the Contract in relation to the subject matter and nature of the Service Failure as part of the Performance Improvement Plan.
- B16.8 Once agreed the Contractor shall immediately implement the Performance Improvement Plan.
- B16.9 If, despite the measures taken under clause B16.6 a revised Performance Improvement Plan cannot be agreed within the period of ten (10) Working Days (or such other period as notified by the Contracting Body to the Contractor) of receipt by the Contractor of the Contracting Body's

comments in respect of the Contractor's draft Performance Improvement Plan then the Contracting Body may elect to end the Performance Improvement Process and (a) refer the matter for resolution by the dispute resolution procedure set out in clause I1 (Disputes and Law); or (b) to terminate the WHP Contract by issuing a Termination Notice to the Contractor.

B16.10 If a Performance Improvement Plan is agreed between the Parties, but the Contractor fails to implement the Performance Improvement Plan in accordance with its terms and by the Performance Improvement End Date as specified in the Performance Improvement Notice such that the Contractor fails to rectify the Service Failure and/or undertake all the actions specified by the Contracting Body in the Performance Improvement Notice by the Performance Improvement End Date (a "**Performance Improvement Plan Failure**"), the Contracting Body may, at its absolute discretion, but shall not be obliged to:

- (a) terminate the WHP Contract by issuing a Termination Notice to the Contractor; and/or
- (b) escalate any issues arising out of the failure to implement the Performance Improvement Plan to the Contractor's commercial director (or equivalent) under the dispute resolution procedure set out in clause I1 (Disputes and Law);

and for the avoidance of doubt, this clause is without prejudice to any other rights which the Contracting Body has under the WHP Contract.

B16.11 Any subsequent Service Failure, which the Contracting Body regards, at its sole discretion, as being substantially the same in character to a Service Failure in respect of which a Performance Improvement Notice has been issued in accordance with this clause B16, which occurs not less than six (6) Months of the Performance Improvement End Date shall entitle the Contracting Body to terminate the WHP Contract by issuing a Termination Notice to the Contractor.

B17 Universal Credit

B17.1 The Contractor acknowledges that the Contracting Body has altered the benefit system such that Universal Credit replaces a number of existing benefits.

B17.2 The Contractor is required to support the ongoing implementation of the Universal Credit insofar as it may impact on the WHP Services, including (without limitation):

- (a) assisting in notifying Participants for which it is responsible how the change to Universal Credit will impact the WHP Services as applicable to those Participants; and/or
- (b) notification to the Contracting Body of the data relevant to the impact of Universal Credit on the WHP Services.

B17.3 At any time, as a consequence of, or in connection with the implementation of Universal Credit, the Contracting Body reserves the right to:

- (a) review all systems and processes used and implemented by the Contractor in connection with delivery of the WHP Services, to ensure that such systems and processes are aligned and compatible with any legislative changes, any changes to the Contracting Body's systems and processes and any other changes arising out of or in connection with, the introduction or implementation of Universal Credit; and/or
- (b) require the Contractor to make such changes to the Contractor's systems and processes as the Contracting Body may determine.

B18 WHP Services Improvement

B18.1 The Contractor shall have an ongoing obligation throughout the WHP Contract Period to identify new or potential improvements to the WHP Services in accordance with this clause B18. As part of this obligation the Contractor shall identify and report to the Contracting Body in accordance with Schedule 3:

- (a) the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the WHP Services, and those technological advances potentially available to the Contractor and the Contracting Body which the Parties may wish to adopt;
- (b) new or potential improvements to the WHP Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the WHP Services;
- (c) new or potential improvements to the interfaces or integration of the WHP Services with other services provided by third parties or the Contracting Body which might result in efficiency or productivity gains or in reduction of operational risk;
- (d) changes in business processes and ways of working that would enable the WHP Services to be delivered at lower cost and/or with greater benefits to the Contracting Body; and/or
- (e) changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of WHP Services.

B18.2 The Contractor shall ensure that the information that it provides to the Contracting Body shall be sufficient for the Contracting Body to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Contracting Body requests.

B18.3 If the Contracting Body wishes to incorporate any improvement identified by the Contractor the Contracting Body shall send the Contractor a Change Request in accordance with the Change Control Procedure.

B18.4 The Contractor shall comply with the provisions of paragraph 3 of Schedule 3 (Contract Performance Reviews & Contractor Systems Assurance & Performance Indicators) in relation to the Performance Indicators.

B19 Step-In Rights

B19.1 On the occurrence of a Step-In Trigger Event, the Contracting Body may serve notice on the Contractor (a "**Step-In Notice**") that it will be taking action under this clause B19, either itself or with the assistance of a third party (provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to clause E4). The Step-In Notice shall set out the following:

- (a) the action the Contracting Body wishes to take and in particular the WHP Services that it wishes to control (the "Required Action");
- (b) the Step-In Trigger Event that has occurred and whether the Contracting Body believes that the Required Action is due to the Contractor's Default;
- (c) the date on which it wishes to commence the Required Action;

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

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

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

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

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

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

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

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

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

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

- (b) the date, which shall be no less than twenty (20) Working Days after the date of the Step-Out Notice, on which the Contracting Body plans to end the Required Action (the "Step-Out Date") subject to the Contracting Body being satisfied with the Contractor's ability to resume the provision of the WHP Services and the Contractor's plan developed in accordance with clause B19.6.
- B19.6 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, submit for the Contracting Body's approval a draft plan (a "Step-Out Plan") relating to the resumption by the Contractor of the WHP Services, including any action the Contractor proposes to take to ensure that the affected WHP Services satisfy the requirements of this WHP Contract.
- B19.7 Subject to Clause B19.8, if the Contracting Body does not approve the draft Step-Out Plan, the Contracting Body shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall promptly re-submit the revised plan to the Contracting Body for the Contracting Body's approval. The Contracting Body shall not unreasonably withhold or delay its approval of the draft Step-Out Plan.
- B19.8 In the event that the Parties still fail to agree a draft Step-Out Plan, having followed the steps set out in Clause B19.7, after the third draft Step-Out Plan submitted by the Contractor, the Contracting Body shall be entitled to terminate the WHP Contract by issuing a Termination Notice to the Contractor.
- B19.9 The Contractor shall bear its own costs in connection with any step-in by the Contracting Body under this clause B19, provided that the Contracting Body shall reimburse the Contractor's reasonable additional expenses incurred directly as a result of any step-in action taken by the Contracting Body under:
- (a) limb (c) of the definition of a Step-In Trigger Event; or
 - (b) limbs (d), (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Contracting Body serving the Step-In Notice is identified as not being the result of the Contractor's Default).

B20 Cancellation or Suspension after a Contractor Termination Event

- B20.1 At any time after a Contractor Termination Event has occurred, the Contracting Body may, by notice to the Contractor:
- (a) cancel or suspend the outstanding Delivery Fee whereupon it shall immediately be cancelled or suspended; and/or
 - (b) cancel or suspend Referrals whereupon Referrals shall immediately be cancelled or suspended; and/or
 - (c) require the Contractor to transfer all Participants and any and all information and support to effect a smooth transition and continuation of the WHP Service to Participants to the Contracting Body or such third party as the Contracting Body may direct with effect on and from such date as the Contracting Body may elect whereupon the Contractor shall immediately cease to have any right to receive any Outcome Payments in respect of such Participants.

B21 Formal Warning Notice

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

B22 Monitoring of WHP Contract Performance

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

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

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

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

B22.3 The Contracting Body may appoint an assessor (which may be an internal or an external assessor, subject (in the case of an external assessor) to the external assessor entering into a non-disclosure arrangement and having the relevant expertise and competence), to participate in the monitoring of the Contractor's performance in supplying the WHP Services and the Contractor will co-operate with the assessor and take all necessary steps to implement recommendations made. Any changes to any WHP Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with the Change Control Procedure.

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

C PAYMENT AND FEES

C1 Fees

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

C2 Delivery Fee

- C2.1 Subject to clause B19.3, B20.1 and clause C6 and provided that the requirements of Schedule 4 (Fees and Payment) are met the Contracting Body shall pay the Delivery Fee to the Contractor. The Contracting Body shall make such payment in accordance with the provisions of Schedule 4 (Fees and Payment) and paragraph 5.4 (A Delivery Fee) of the WHP Specification.

C3 Outcome Payments

General Provisions

- C3.1 The Contractor shall input such information as specified by the Contracting Body in the WHP Specification and/or the Provider Guidance onto the Contracting Body ICT System in the format also specified by the Contracting Body in the Provider Guidance.
- C3.2 The Contractor agrees and acknowledges that payment of an Outcome Payment by the Contracting Body does not constitute confirmation by the Contracting Body that the Outcome to which it relates is valid and is without prejudice to any of the Contracting Body's rights under this WHP Contract or otherwise to check, validate or otherwise verify the validity of such Outcome. For the avoidance of doubt such checks may include, without limitation reviewing the HMRC PAYE Data in respect of Employed Outcomes to ensure that the HMRC PAYE Data continues to show that an Employed Outcome has been achieved.
- C3.3 The Contractor agrees and acknowledges it shall be entitled to receive no more than one Outcome Payment in respect of each Participant regardless of whether the Participant meets the qualifying criteria for more than one Outcome.
- C3.4 Without prejudice to anything else in this clause C, the Contracting Body shall have no obligation to make any Outcome Payments to the Contractor:
- (a) where an Employed Outcome Payment is identified by the Contracting Body, using HMRC PAYE Data, after the end of the Payment Tail Period; or

(b) where a Self Employed Outcome Payment is claimed by the Contractor after the end of the Payment Tail Period.

- C3.5 Subject always to clause C4, the Contracting Body shall pay Outcome Payments no later than a period of thirty (30) calendar days from the date on which the Contracting Body has determined that the qualifying criteria and requirements for an Outcome have been met. Payment will be made at the rate(s) set out in Schedule 4. The Contracting Body may at its discretion require the Contractor to provide any appropriate supporting information it considers necessary before making payment.
- C3.6 The Contractor shall notify details of the Contractor's bank account and address to the Contracting Body via the Contracting Body ICT System. The Contracting Body shall send notifications of Fees paid to that address.
- C3.7 At any time and/or times (including, for the avoidance of doubt, at any time and/or times before and/or after payment has been made by the Contracting Body to the Contractor) the Contracting Body shall be entitled to validate any payment made by the Contracting Body to the Contractor. At all times the Contractor shall provide all necessary assistance as requested by the Contracting Body to enable the Contracting Body to validate any payment made by the Contracting Body to the Contractor.
- C3.8 When the Contracting Body has made an Outcome Payment to the Contractor in respect of an Outcome, the Contracting Body shall refuse any requests of the Contractor to remove the claim for any such Outcome Payments from the Contracting Body ICT System, except in exceptional cases where the Contracting Body determines, in its sole discretion, are appropriate circumstances to permit such a request.
- C3.9 The Contractor hereby agrees to use its best endeavours to procure, if required by the Contracting Body at any time, the written consent of the Participant for the Contracting Body to contact the Participant's employer and the Contractor shall retain copies of such written consent or, where it has been unable to obtain such consent, detailed records of the steps it has taken to attempt to procure such consent, as part of the Contractor's record keeping obligations under the WHP Contract including, without limitation, clauses A9 (ESF Funding) and E9 (Audit and the National Audit Office and Open Book Data). The Contracting Body reserves the right to inspect such written consent and/ or such detailed records from time to time.

Employed Outcomes

- C3.10 The Contracting Body will identify Employed Outcomes using HMRC PAYE Data and other information it holds. Subject to clause C6 and clause B22.6 and provided that the requirements of Schedule 4 (Fees and Payment) are met, the Contracting Body shall pay an Outcome Payment to the Contractor in respect of each Employed Outcome.

Self Employed Outcomes

- C3.11 The Contractor shall, within five (5) Working Days of a Participant commencing self-employment, notify the Contracting Body of the start date of the relevant Participant's self-employment by inputting such information onto the Contracting Body ICT System as the Contracting Body specifies from time to time.
- C3.12 The Contractor shall notify the Contracting Body of Self Employed Outcomes, within 700 days of the Participant Start for the Participant to whom the Self Employed Outcome applies, by inputting such information onto the Contracting Body ICT System as the Contracting Body specifies from time to time.

- C3.13 Subject to the Contractor notifying the Contracting Body of each Self Employed Outcome in accordance with the Contract including without limitation, this Clause C3, the Contracting Body shall pay to a Contractor an Outcome Payment in respect of each valid Self Employed Outcome.
- C3.14 For the avoidance of doubt, the Contractor acknowledges and agrees that no Outcome will arise and therefore no Outcome Payment will be payable in respect of a Non-Qualifying Participant, regardless of whether their employment or self-employment otherwise meets the qualifying criteria for an Outcome.
- C3.15 The Contractor shall only notify the Contracting Body of a Self Employed Outcome where:
- (a) it has carried out sufficient checks to ensure that such Self Employed Outcome meets all of the relevant qualifying criteria and requirements as detailed in the WHP Specification including, without limitation; and
 - (b) it holds sufficient and reliable evidence of such criteria and requirements being met in accordance with the Provider Guidance.
- C3.16 The Contractor shall only have validly notified the Contracting Body of a Self Employed Outcome where the Contractor has input information onto the Contracting Body ICT System or (in the event that no Contracting Body ICT System is available) as otherwise determined by the Contracting Body in the prescribed manner and has submitted the appropriate supporting information in accordance with clause C3. For the avoidance of doubt, the Contracting Body will be unable to consider and verify eligibility of any Self Employed Outcome until the Contractor has validly notified the Contracting Body thereof.

C4 Validation & Extrapolation of Outcomes

Pre-payment validation

- C4.1 Before payment of any Outcome Payment by the Contracting Body to the Contractor, in respect of each Outcome Payment, the Contracting Body may undertake a check(s) to verify the validity of such Outcome. For the avoidance of doubt, where the Contracting Body has undertaken any check(s) pursuant to this clause C4.1 it reserves the right to include such Outcome Payment in the relevant Outcomes Sample for the Payment Validation Period in which it falls.
- C4.2 The Contracting Body shall be entitled to reject any claims for payment made by the Contractor which fail any check(s) undertaken by the Contracting Body pursuant to clause C4.1 without undertaking any further check(s).

Post-payment validation

- C4.3 At any time during the WHP Contract Period, for any Payment Validation Period the Contracting Body may carry out a check(s) of all, or a sample, of the Outcomes (i) under this WHP Contract only; or (ii) under all Programme WHP Contracts, which have been made under WHP Contracts or all Programme WHP Contracts (as the case may be) during such Payment Validation Period (each such sample hereinafter being referred to as follows: an "**Outcomes Sample**").
- C4.4 For each Outcomes Sample:
- (a) the Contracting Body will determine the types of Outcomes from which the Contracting Body will draw the sample;

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

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

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

General

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

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

C4.7 For the avoidance of doubt, the Contracting Body's rights in this clause C4 shall be without prejudice to any other rights or remedies that the Contracting Body has under the WHP Contract (including for the avoidance of doubt any rights of set-off pursuant to clause C5 (Recovery of Sums Due)).

C5 Recovery of Sums Due

C5.1 (a) The Contracting Body may apply each Ineligible Outcome to reduce the number of Outcomes achieved in respect of the Start Cohort from which such Ineligible Outcome was achieved and the Contractor shall pay an amount to the Contracting Body in respect of each Ineligible Outcome on demand which is equal to:

- (i) if the Contracting Body has paid any Higher Rate Outcome Payments in respect of that Start Cohort which have not been applied to an Ineligible Outcome, a Higher Rate Outcome Payment; or
- (ii) if either the Contracting Body has not paid any Higher Rate Outcome Payments in respect of that Start Cohort or the Contracting Body has previously applied all paid Higher Rate Outcome Payments in respect of that Start Cohort to Ineligible Outcomes achieved in respect of that Start Cohort, a Standard Rate Outcome Payment.

(b) The Contracting Body may recover any amount due and payable under clause C5.1(a) in such instalments and at such times as it may decide in its sole discretion (i) during the WHP Contract Period or (ii) during the 12 Months immediately following the end of the WHP Contract Period. The Parties acknowledge and agree that the Contracting Body may recover an instalment equal to all or part of such amount through PRaP at one time (for the avoidance of doubt, including by way of set-off) and may subsequently at any time during the WHP Contract Period demand one or more balancing payments from the Contractor if the instalment recovered through PRaP is less than the amount due and payable to the Contracting Body pursuant to clause C5.1(a) until such time as the Contracting Body has received the full amount due and payable pursuant to clause C5.1(a).

C5.2 Any overpayment by either Party, whether of the Fees or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- C5.3 Wherever under the WHP Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Body in respect of any default of the WHP Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the WHP Contract or under any other agreement or contract with the Contracting Body.
- C5.4 The Contractor shall make any payments due to the Contracting Body without any deduction whether by way of any set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Contractor.
- C5.5 All payments due shall be made within a reasonable time unless otherwise specified in the WHP Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C6 Deferral of Delivery Fee

- C6.1 Without prejudice to any other right or remedy available to it under this WHP Contract (including without limitation any rights it may have under either clause G1.6 or clause H1), provided by Law, in equity, or otherwise, the Contracting Body may in accordance with this clause C6 defer payment of 50% of all Delivery Fee Periodic Payments.
- C6.2 The Contractor shall ensure that at all times the WHP Specification Customer Service Standards 1-4 are met or exceeded in respect of each Referral Group.
- C6.3 Failure by the Contractor to:
- (a) meet more than one of the WHP Specification Customer Service Standards 1-4 in any CSS Measurement Period; or
 - (b) meet any of its obligations to deliver timely and accurate Management Information to the Contracting Body in accordance with the provisions of clause E13 (Provision of Management Information) and Schedule 20 (Management Information),

shall constitute a Delivery Fee Deferral Failure.

- C6.4 The Contracting Body will:
- (a) carry out a CSS Measurement Review at each CSS Measurement Point to review whether and the extent to which, during the relevant CSS Measurement Period the Contractor has met or exceeded the WHP Specification Customer Service Standards 1-4 in respect of each Referral Group;
 - (b) review whether and the extent to which, during any Month, the Contractor has met its obligations to deliver timely and accurate Management Information in accordance with the provisions of clause E13 (Provision of Management Information) and Schedule 20 (Management Information); and
 - (c) whether there has been a Delivery Fee Deferral Failure.
- C6.5 If, at a CSS Measurement Point, the Contracting Body in its absolute discretion is satisfied that, during the relevant CSS Measurement Period there has been a Delivery Fee Deferral Failure, then the Contracting body shall have the right to defer payment of 50% ("Deferral") of any Delivery Fee Periodic Payment which is due for payment after that CSS Measurement Point.

- C6.6 If the Contracting Body wishes to exercise its right to implement a Deferral of the Delivery Fee Periodic Payment, the Contracting Body should issue a notice (a "Deferral Notice"). Such Deferral Notice shall set out the CSS Measurement Point, the relevant CSS Measurement Period/Month, the Delivery Fee Deferral Failure and the date from which Deferral shall commence.
- C6.7 Deferral of payment of 50% of Delivery Fee Periodic Payments shall continue until, at a CSS Measurement Point which follows the commencement of such deferral, the Contracting Body is satisfied that during a CSS Measurement Period/Month which follows the commencement of such deferral there has not been a Delivery Fee Deferral Failure. When deferral of the Delivery Fee Periodic Payments ceases, save as specified in clause C6.8 below, all Delivery Fee Periodic Payment amounts which have been deferred will become payable.
- C6.8 If, in the CSS Measurement Period/Month immediately prior to the Referral Period End Date, there has been a Delivery Fee Deferral Failure, then the Contracting Body shall be under no obligation to pay any outstanding Delivery Fee Periodic Payments or any Delivery Fee Periodic Payments which have been previously deferred and the Contractor acknowledges that it shall forfeit any right to claim such outstanding Delivery Fee Periodic Payments or Delivery Fee Periodic Payments which have been previously deferred.

C7 Currency other than Sterling

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

C8 Third Party Revenue

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

C9 VAT

- C9.1 The Contractor shall add VAT to the Fees at the prevailing rate as applicable and the Contracting Body shall pay the VAT to the Contractor following an eligible claim for VAT payment being notified by the Contractor.
- C9.2 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities (including any interest, penalties or costs incurred which is levied, demanded or assessed on the Contracting Body at any time) caused to the Contracting Body whether directly or indirectly in whole or in part by reason of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the WHP Contract.

- C9.3 Without prejudice to clause C9.2, for the avoidance of doubt, it shall at all times remain the sole responsibility of the Contractor to:
- (a) assess the VAT rate(s) and tax liability arising out of or in connection with the WHP Contract; and
 - (b) account for or pay any VAT (and any other tax liability) relating to payments made to the Contractor under the WHP Contract to HMRC.
- C9.4 The Contracting Body shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Contracting Body) in relation to VAT, including without limit:
- (a) where the Contractor is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the WHP Contract;
 - (b) where the Contractor has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such other relevant authority) to be incorrect or invalid;
 - (c) where the Contractor's treatment of VAT in respect of any claim for payment made under the WHP Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid; and/or
 - (d) where the Contractor does not provide accurate information to the Contracting Body for it to calculate the VAT on an invoice produced by the self-billing process, the Contracting Body will not be liable to pay any VAT for that invoice either when it falls due, or at any later date. Further, in this scenario C9.4(d), the Contractor shall be obliged to repay any overpayment by the Contracting Body on demand.
- C9.5 The Contractor acknowledges that the Contracting Body has advised the Contractor that the Contractor should seek specialist VAT advice in relation to the WHP Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the WHP Contract's VAT status with HMRC.
- C9.6 Without prejudice to clause C9.2 and C9.3, the Contractor shall comply with the Law governing self-billing contracts including, without limitation, as more particularly described in HMRC Notice 700/62 it shall:
- (a) prior to the Referral Period Start Date, confirm the rate(s) of VAT that the Contracting Body should apply to each part of the funding model used in the WHP Contract on the WHP Commencement Date and on each anniversary thereof;
 - (b) enter into an annual self-billing agreement with the Contracting Body on or around the WHP Commencement Date and on each anniversary thereof, for the duration of the WHP Contract (a template of the current version of which is set out in Appendix to Schedule 4 (Fees and Payment)); and
 - (c) complete the VAT confirmation documentation as required by the Contracting Body (a template of the current version of which is set out in Appendix 1 to Schedule 4 (Fees and Payment)).

C10 Methods of Payment

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

D STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1. For the purposes of this clause D1, a prohibited act is committed when the Contractor or any Staff:

- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Contracting Body 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 WHP 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 WHP Contract or any other contract with the Contracting Body; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Contracting Body.

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

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

D1.4 The Contractor shall establish, maintain and enforce and require that its Sub-contractors establish, maintain and enforce an anti-bribery policy and procedures which are adequate to prevent any Staff from committing any prohibited acts as set out in clause D1.1 and shall keep appropriate records of its compliance with its obligations and make such records available to the Contracting Body upon request.

D1.5 To the extent permitted by Law, the Contractor shall immediately notify the Contracting Body in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any Staff has:

- (a) been subject to an investigation or prosecution which relates to an alleged prohibited act in clauses D1.1 or D1.2;

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a prohibited act as set out in clause D1.1 or D1.2; or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this WHP Contract or otherwise suspects that any person or party directly or indirectly connected with this WHP Contract has committed or attempted to commit a prohibited act in clauses D1.1 or D1.2.
- D1.6 If the Contractor notifies the Contracting Body that it suspects or knows that there may be a Default of clauses D1.1 or D1.2, the Contractor must respond promptly to the Contracting Body's enquiries, co-operate with any investigation, and allow the Contracting Body to audit books, records and any other relevant documentation.
- D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Contracting Body may;
- (a) require the Contractor to remove from performance of this WHP Contract:
 - (i) any Staff; and/ or
 - (ii) anyone acting on the Contractor's behalf
 whose acts or omissions have caused the Default; or
 - (b) immediately terminate this WHP Contract.
- D1.8 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against:
- (a) all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of the termination of this WHP Contract pursuant to clause D1.7, including the costs reasonably incurred by the Contracting Body of making other arrangements for the supply of the WHP Services and any additional expenditure incurred by the Contracting Body throughout the remainder of the WHP Contract Period; and
 - (b) recover in full from the Contractor any other Loss sustained by the Contracting Body in consequence of any Default of clauses D1.1 or D1.2.
- D1.9 Despite clause I (Disputes and Law), any dispute relating to:
- (a) the interpretation of clause D1; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Contracting Body, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.
- D1.10 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.

D2 Discrimination

- D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.
- D2.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D3 The Contracts (Rights of Third Parties) Act 1999

- D3.1 Subject to clause D3.2 and to clause E4.13, a person who is not a party to the WHP 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.
- D3.2 The provisions of each of Paragraph 6.9 of Schedule 10 (Exit Plan), Paragraphs 3.1 to 3.3 of Part B, Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 19 and the Pensions Annex of Schedule 19 (Employee Provisions and TUPE) confer benefits on persons named in such provisions other than the parties to this WHP Contract and are intended to be enforceable by those third party beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999.
- D3.3 Notwithstanding clause D3.1, the parties to this WHP Contract may, without the consent of any third party vary, terminate or rescind this WHP Contract or waive any rights under it, notwithstanding that this may extinguish or alter the benefits or rights conferred by clause D3.1.

D4 Environmental Requirements

- D4.1 In delivering the WHP Services, the Contractor shall comply at all times with the requirements set out in Schedule 7 (Sustainable Development Requirements) or such other requirements as notified by the Contracting Body to the Contractor from time to time.
- D4.2 If the Contractor purchases new products partially or wholly to provide the WHP Services, the Contractor must ensure that:
- (a) any purchase of products or goods listed in Schedule 1 to the Energy Information Regulations 2011 (products with energy labels) has the highest energy efficiency class possible;
 - (b) any purchase of products listed in Schedule 1 to the Energy Information Regulations 2011, which is not a product with energy labels within the meaning of clause D4.2(a), complies with the relevant energy efficiency benchmark for that product in paragraph 4 to Schedule 1 of the Eco-Design for Energy-Related Products Regulations 2010;
 - (c) any purchase of products listed in Annex C of 2006/1005/EC (Council Decision of 18 December 2006 concerning the conclusion of the agreement between the government of the United States of America and the European Community on the Coordination of the energy efficiency labelling programme for office equipment) complies with energy

efficiency requirements not less demanding than those listed in Annex C of that Council Decision; and

- (d) any purchase of tyres carrying a label as specified in Annex II to Regulation (EC) Number 1222/2009 of the European Parliament and of the Council of 25 November 2009 (on the labelling of tyres with respect to fuel efficiencies and other parameters) has the highest fuel energy efficiency class (as defined by that Regulation).

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

D4.4 The Contractor shall (when designing, procuring, implementing and delivering the WHP Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

D5 Health and Safety

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

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

D5.3 While on the Contracting Body's Premises, the Contractor shall comply with any health and safety measures implemented by the Contracting Body in respect of Staff and other persons working there.

D5.4 The Contractor shall notify the Contracting Body immediately in the event of any incident occurring in the performance of its obligations under the WHP Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

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

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

D6 Tax Compliance

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

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

- (a) notify the Contracting Body in writing of such fact within five (5) Working Days of its occurrence; and
- (b) promptly provide to the Contracting Body:

- (i) details of the steps taken by the Contractor and any steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Contracting Body may require.

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

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

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

E PROTECTION OF INFORMATION

E1 Contracting Body Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Contracting Body Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Contracting Body Data except as necessary for the performance by the Contractor of its obligations under this WHP Contract or as otherwise expressly authorised in writing by the Contracting Body.
- E1.3 To the extent that Contracting Body Data is held and/or processed by the Contractor, the Contractor shall supply that data to the Contracting Body as requested.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Contracting Body Data and preventing the corruption or loss of that data.
- E1.5 The Contractor shall perform secure back-ups of all Contracting Body Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Contractor's Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Contracting Body at all times upon request and are delivered to the Contracting Body at no less than three (3) Monthly intervals.
- E1.6 The Contractor shall ensure that any system or media on which the Contractor holds any Contracting Body Data, including back-up data, is a secure system that complies with the Security Policy.
- E1.7 If the Contracting Body Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Contracting Body may:
- (a) require the Contractor (at the Contractor's expense) to restore or provide for the restoration of the Contracting Body Data or Personal Data and the Contractor shall do so as soon as practicable but not later than ten (10) calendar days following the Contracting Body giving notice to the Contractor; and/or
 - (b) itself restore or provide for the restoration of the Contracting Body Data or Personal Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that the Contracting Body Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Contracting Body immediately and inform the Contracting Body of the remedial action the Contractor proposes to take.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this WHP Contract, the Contractor and any of its Sub-contractors, shall not offshore Contracting Body Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Contracting Body, and where the Contracting Body gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Contracting Body in relation to the Contracting Body Data in question.
- E1.10 Where the Contracting Body has given its prior written consent to the Contractor to process, host or access Contracting Body Data from premises outside the United Kingdom (in accordance with E1.9 of the WHP Contract):

- (a) the Contractor must notify the Contracting Body (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Contracting Body Data;
 - (b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Contracting Body Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.
- E1.11 Any breach by the Contractor of this clause E1 shall entitle the Contracting Body to terminate this WHP Contract.
- E1.12 In the event of an Insolvency Event, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost and at no cost to the Contracting Body;
- (a) conduct a full and thorough search for any electronic and paper records held by the Contractor which contain Contracting Body Data/Information and Participant Personal Data/Information; in accordance with the Contracting Body instructions;
 - (b) return all such records to the Contracting Body in accordance with their instructions;
 - (c) permanently destroy all copies of any relevant electronic records; and
 - (d) provide written confirmation to the Contracting Body that the actions outlined above in this paragraph have been completed.
- E1.13 In the event of a Sub-contractor of the Contractor being in Liquidation then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Contracting Body that they have been recovered.
- E1.14 In the event the Contractor is put into Administration in any of the ways as outlined in which falls within the definition of Insolvency Event or otherwise the Contracting Body will work closely with the Administrator to ensure the Contractor is able to maintain Contracting Body, Participant and other records they have created and held in accordance with clause E1 of this WHP Contract and maintain these standards in the safekeeping of Contracting Body information, i.e. these records must be stored in accordance with Contracting Body information assurance and HMG Cabinet Office information security standards.
- E1.15 Whilst in Administration the duty of the Administrator is to help the Contractor trade. This may involve the Administrator seeking an organisation to buy up the Contractor. The assignment or novation of this WHP Contract to new ownership is not automatic and the Contracting Body must be consulted (in accordance with clause F1.1) and Approval obtained. Where the WHP Contract is assigned or novated with the Contracting Body's Approval, the contractor must provide the Contracting Body with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.
- E1.16 In the event that through any Default of the Contractor, data transmitted or processed in connection with the WHP Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data. The Contractor shall reimburse the Contracting Body in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

E2 Protection of Personal Data

- E2.1 The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of DPA. Notwithstanding

the foregoing, the Parties anticipate that each Party shall act as a Data Controller in respect of the Processing of the Personal Data, as follows:

- (a) the Contracting Body shall be a Data Controller of the Personal Data relating to the Participants where such data is being Processed for purposes not directly connected with the WHP Services and/or this WHP Contract;
- (b) the Contractor shall be a Data Controller of the Personal Data relating to the Contractor's Staff whether or not such Personal Data is Processed pursuant to this WHP Contract;
- (c) the Contracting Body and the Contractor shall each be a joint Data Controller where they Process (or procure the Processing of) the Personal Data in relation to the WHP Services and/or otherwise perform their respective obligations and/or receive the benefit of their respective rights under this WHP Contract. Such Personal Data provided by the Contracting Body, and collected and held by the Contractor in performing the WHP Services, shall form part of the Contracting Body Data.
- (d) the Contractor shall have no right or authority to Process the Personal Data other than under, or in connection with, this WHP Contract, save in respect of Personal Data relating to the Contractor's Staff; and
- (e) the Parties do not anticipate that the Contractor will Process Personal Data as Data Processor on behalf of the Contracting Body. Notwithstanding the foregoing, if and to the extent that the Contractor is Processing Personal Data on behalf of the Contracting Body, clause E2.6 shall apply to such Processing.

E2.2 Where the Parties are Processing (or procuring the Processing of) the Personal Data as joint Data Controllers, the Parties agree that they shall each be responsible for the compliance obligations imposed on a Data Controller by DPA, as follows:

- (a) in respect of any Personal Data Processed prior to the WHP Commencement Date, the Contracting Body shall be responsible for compliance with Data Protection Principles 1, 2 and 3;
- (b) in respect of any Personal Data Processed by either Party on and from the WHP Commencement Date, the Contractor shall be responsible for compliance with Data Protection Principles 1, 2, 3, 4, 5, 6 and 8 (where applicable), including, in particular, responding to Subject Access Requests pursuant to clauses E2.5(b) and (c); and
- (c) each Party shall be responsible for compliance with Data Protection Principle 7 where the Participant Personal Data has been transmitted by it, or while Participant Personal Data is in its possession or control.

E2.3 The Parties shall at all times comply with their respective obligations under DPA.

E2.4 Each Party shall:

- (a) ensure it is not subject to any prohibition or restriction which would:
 - (i) prevent or restrict it from disclosing or transferring the Participant Personal Data to the other Party, as required under this WHP Contract;
 - (ii) prevent or restrict it from granting the other Party access to the Participant Personal Data, as required under this WHP Contract; or

- (iii) prevent or restrict either party from Processing the Participant Personal Data, as envisaged under this WHP Contract;
- (b) ensure that all fair processing notices have been given (and/or, as applicable, explicit consents obtained) and are sufficient in scope to enable each party to Process the Participant Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this WHP Contract in accordance with the DPA, which shall include notification to the Participants that Participant Personal Data may be shared with the Contracting Body and with any other third party organisations envisaged within the WHP Contract; and
- (c) ensure that all Participant Personal Data disclosed or transferred to, or accessed by, the other Party is accurate and up-to-date, as well as adequate, relevant and not excessive to enable either Party to Process the Participant Personal Data, as envisaged under this WHP Contract.

E2.5 The Contractor shall:

- (a) maintain technical and organisational measures sufficient to comply at least with the obligations imposed on a Data Controller by Data Protection Principle 7, and shall take reasonable steps to ensure the reliability of its personnel who shall have access to the Participant Personal Data;
- (b) notify the Contracting Body (within two (2) Working Days) if it receives:
 - (i) a request from a Participant making a Subject Access Request; and/ or
 - (ii) a complaint or request relating to the Contracting Body's obligations under the DPA;
- (c) provide the Contracting Body with full cooperation and assistance in relation to any complaint or Subject Access Request or other Data Subject request made, including by:
 - (i) providing the Contracting Body with full details of the complaint or request;
 - (ii) complying with a Subject Access Request within the relevant timescales set out in the DPA and in accordance with the Contracting Body's instructions;
 - (iii) providing the Contracting Body with any Participant Personal Data it holds in relation to the requesting Participant within the timescales required by the Contracting Body; and
 - (iv) providing the Contracting Body with any information requested by the Contracting Body;
- (d) immediately, and in any event within twenty-four (24) hours, notify the Contracting Body where it believes that any instruction given under this WHP Contract is contrary to the DPA;
- (e) permit the Contracting Body or the Contracting Body's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the

Contracting Body to enable the Contracting Body to verify and/or procure that the Contractor is in full compliance with its obligations under this clause E2;

- (f) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data within the timescales required by the Contracting Body;
- (g) without prejudice to the generality of clause E1, without undue delay, and in any event within twenty-four (24) hours, notify the Contracting Body about any actual or suspected breach of clause E2.5(a) and shall, within such timescale to be agreed by the parties (acting reasonably and good faith):
 - (i) implement any measures necessary to restore the security of compromised Participant Personal Data; and
 - (ii) support the Contracting Body to make any required notifications to the UK Information Commissioner and affected Participants.

E2.6 Notwithstanding clause E2.1(e), if and to the extent that the Contractor is acting as Data Processor for and on behalf of the Contracting Body, then, in addition to meeting its obligations set out in clause E2.5, it shall:

- (a) Process the Personal Data only in accordance with instructions from the Contracting Body (which may be specific instructions or instructions of a general nature as set out in this WHP Contract as otherwise notified by the Contracting Body to the Contractor during the WHP Contract Period);
- (b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the WHP Services or as is required by Law (including the DPA) or any Regulatory Body (including the UK Information Commissioner);
- (c) take reasonable steps to ensure the competence of any Staff who have access to the Personal Data and restrict the disclosure of the Participant Personal Data to those of its Staff who may be required by it to assist it in meeting its obligations under this WHP Contract, and shall ensure that no other Staff shall have access to such Participant Personal Data. Such Staff used by the Contractor to Process the Participant Personal Data to provide the WHP Services as they relate to Participant Personal Data shall have:
 - (i) undergone reasonable levels of training in DPA and in the care and handling of Personal Data; and
 - (ii) are informed of the confidential nature of, and have entered into appropriate contractually binding confidentiality undertakings in relation to, the Processing of Personal Data;
- (d) not transfer any Participant Personal Data outside the European Economic Area without the Contracting Body's prior written consent and procuring compliance with Data Protection Principle 8;
- (e) hold the Participant Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Contractor;
- (f) obtain prior written consent from the Contracting Body in order to transfer the Participant Personal Data to any Sub-contractors or agents for the provision of the

WHP Services. Such consent shall be conditional upon the Contractor undertaking thorough due diligence on the proposed Sub-contractor, including a risk assessment of the information governance related practices and processes of the Sub-contractor, which shall be used by the Contractor to inform any decision on appointing the proposed Sub-contractor. Where requested, the Contractor shall provide to the Contracting Body the results of any such due diligence;

- (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 Contracting Body; and
- (h) without prejudice to the generality of clause H4.2(b) (Consequences of Expiry or Termination), on expiry or termination of this WHP Contract, howsoever caused, the Contractor shall immediately cease Processing the Participant Personal Data and, at the Contracting Body's option or direction, arrange for the prompt and safe return and/or secure and permanent destruction of all Participant Personal Data, together with all copies in its possession or control and, where requested by the Contracting Body, certify that such destruction has taken place. The provisions of this clause E2 shall survive termination of this WHP Contract.

E2.7 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of any Default by the Contractor (or any Sub-contractor) of this clause E2.

E2.8 The Parties acknowledge and agree that Schedule 1 (The WHP Services) is an accurate statement of:

- (a) the subject matter and duration of the Processing;
- (b) the nature and purpose of the Processing;
- (c) the type of Personal Data being Processed; and
- (d) categories of Data Subjects.

E2.9 The Contractor shall be responsible for, and bear the risk and cost of, its compliance with any change in any DPA affecting this WHP Contract (a "Data Protection Change"), and shall seek to implement all necessary changes required to this WHP Contract to address a Data Protection Change, as shall be agreed between the Parties in accordance with the Change Control Procedure (for the purposes of which, a Data Protection Change shall constitute a Contract Change).

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

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

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

E3.2 Any breach by the Contractor of this clause E3 shall entitle the Contracting Body to terminate this WHP Contract.

E4 Confidential Information

- E4.1 For the purposes of this Clause E4, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- E4.2 Except to the extent set out in this Clause E4 or where disclosure is expressly permitted elsewhere in this WHP Contract, the Recipient shall:
- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this WHP Contract or without obtaining the owner’s prior written consent;
 - (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this WHP Contract; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- E4.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause E5 (Transparency and Freedom of Information) shall apply to disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Contracting Body arising out of or in connection with this WHP Contract;
 - (ii) the examination and certification of the Contracting Body’s accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Body is making use of any WHP Services provided under this WHP Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this WHP Contract; or
 - (iv) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- E4.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

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

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

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

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

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Contracting Body or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Contracting Body (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause E4.7(a) for any purpose relating to or connected with this WHP Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights and its step-in rights pursuant to Clause B19 (Step-In Rights), its rights pursuant to Schedule 11 (Exit Management); or
- (f) on a confidential basis to a proposed Transferee in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this WHP Contract,

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

E4.8 Nothing in this clause E4 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of the WHP Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

E4.9 Any breach by the Contractor of clauses E4.1 to E4.4 (inclusive) shall be a Serious Breach for the purposes of clause H2 (Termination on Default) and shall entitle the Contracting Body to terminate the WHP Contract by issuing a Termination Notice to the Contractor.

- E4.10 Clauses E4.1 to E4.6 (inclusive) 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 this WHP Contract is not Confidential Information. The Contracting Body shall be responsible for determining in its absolute discretion whether any of the content of the WHP Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E4.12 Notwithstanding any other term of this WHP Contract, the Contractor hereby gives consent for the Contracting Body to publish the WHP 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 WHP Contract, to the general public. The Contractor shall assist and cooperate with the Contracting Body to enable the Contracting Body to publish the WHP Contract.
- E4.13 The Contractor waives any contractual right or other confidentiality agreement in connection with its performance of this WHP Contract and agrees that the Contracting Body may provide information to the Cabinet Office, other government departments or any other contracting authority for the purposes of the Public Contracts Regulations 2015 in the form of certificates of performance and answer any clarifications that such entity or anyone acting on behalf of such entity in connection with a procurement may have. The Contractor confirms that save for any deceitful or maliciously false statements of fact or purported fact included in a certificate or subsequent clarification from the Contracting Body the Contracting Body will not owe the Contractor any duty of care for or otherwise have any legal liability to the Contractor in respect of any factual inaccuracies, whether innocent or negligent, and/or in respect of any expressions of opinion by the Contracting Body.

E5 Transparency and Freedom of Information

- E5.1 The Parties acknowledge that the content of this WHP Contract and any changes to this WHP Contract agreed from time to time and all performance information, supplier information and contractual information which arises out of or in connection with this WHP Contract, except for:
- (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Contracting Body; and
 - (ii) Commercially Sensitive Information;
- (the "Transparency Information") is not Confidential Information.
- E5.2 Notwithstanding any other provision of this WHP Contract, the Contractor hereby gives its consent for the Contracting Body to publish to the general public any Transparency Information either in part or in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted).
- E5.3 The Contractor shall assist and co-operate with the Contracting Body to enable the Contracting Body to publish any Transparency Information.
- E5.4 If the Contracting Body believes that publication of any element of the Transparency Information would be contrary to the public interest, the Contracting Body shall be entitled to exclude such information from publication. The Contracting Body acknowledges that it would expect the public interest by default to be best served by publication of the Transparency

Information in its entirety. Accordingly, the Contracting Body acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.

- E5.5 The Contracting Body may publish the Transparency Information in any format that it considers appropriate, having regard to the context of the wider commercial relationship with the Contractor.
- E5.6 The Contractor agrees that any Information it holds and is reasonably relevant to or that arises from the provision of the WHP Services shall be provided to the Contracting Body on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Contracting Body may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E4.7(c)) and Open Book Data) publish such Information. The Contractor shall provide to the Contracting Body within 5 Working Days (or such other period as the Contracting Body may reasonably specify) any such Information requested by the Contracting Body.
- E5.7 The Contractor acknowledges that the Contracting Body is subject to the requirements of the FOIA and the Environmental Information Regulations. The Contractor shall and shall procure that its Sub-contractors shall;
- (a) provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to comply with its obligations under the FOIA and the Environmental Information Regulations;
 - (b) transfer to the Contracting Body all Requests for Information relating to this WHP Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Contracting Body with a copy of all Information held on behalf of the Contracting Body which is requested in a Request For Information and which is in its possession or control in the form that the Contracting Body requires within five (5) Working Days (or such other period as the Contracting Body may specify) of the Contracting Body's request; and
 - (d) not respond directly to a Request For Information addressed to the Contracting Body unless authorised in writing to do so by the Contracting Body.
- E5.8 The Contractor acknowledges that the Contracting Body may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Contracting Body shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this WHP Contract) the Contracting Body shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and Environmental Information Regulations.

E6 Publicity, Media and Official Enquiries

- E6.1 The Contractor shall not:

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

without the Approval of the Contracting Body.

- E6.2 Both Parties shall take reasonable steps to ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.
- E6.3 Each Party acknowledges to the other that nothing in this WHP Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the WHP Services, the Contractor System and the Contracting Body ICT System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- E6.4 The Contracting Body shall be entitled to publicise the WHP Contract, and any other information, data or others items which the Contracting Body has a right to publish pursuant to the WHP Contract, in accordance with any legal obligation upon the Contracting Body including any examination of the WHP Contract by Audit Agents or otherwise.
- E6.5 The Contractor shall ensure that their employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.
- E6.6 The Contractor shall pay the utmost regard to the standing and reputation of the Contracting Body and shall ensure that neither it, nor any of its Affiliates or Staff does anything (by act or omission) which causes material adverse publicity for the Contracting Body, brings the Contracting Body into disrepute, damages the reputation of the Contracting Body or harms the confidence of the public in the Contracting Body, regardless of whether or not such act or omission is related to the Contractor's obligations under the WHP Contract.
- E6.7 The Contractor shall at all times supply the WHP Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- E6.8 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its Sub-contractors.
- E6.9 If so requested by the Contracting Body the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the WHP Services(s) shall carry only logos and markings approved by the Contracting Body. This may include, but shall not be limited to, such banner or logo as the Contracting Body shall use to identify the Service(s) from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this WHP Contract shall be submitted to the Contracting Body for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.
- E6.10 Without prejudice to its obligations under clause A9, the Contractor shall observe the European Commission's and the Contracting Body's publicity requirements and regulations regarding ESF projects, as amended from time to time. The Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are

made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Contracting Body, the Contractor shall provide a copy of its formal marketing and publicity plan clearly setting out the publicity arrangements used by the Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing plan is requested by the Contracting Body, the Contractor shall retain copies of its plan (as revised from time to time) as part of the Contractor's record keeping obligations under this WHP Contract.

E7 Security

- E7.1 The Contracting Body shall be responsible for maintaining the security of the Contracting Body premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Contracting Body while on the Contracting Body premises, and shall ensure that all Staff comply with such requirements.
- E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- E7.3 The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Plan and the Security Policy.
- E7.4 The Contracting Body shall notify the Contractor of any changes or proposed changes to the Security Policy. Any changes must be agreed in accordance with the procedure in clause F3.
- E7.5 Until and/or unless a change to the Security Policy is agreed by the Contracting Body pursuant to clause E7.4 the Contractor shall continue to perform the WHP Services in accordance with its existing obligations.
- E7.6 The Contractor shall comply, and shall procure the compliance of the Staff, at all times, with the security requirements set out in Schedule 6 (Security Requirements and Plan).

E8 Intellectual Property Rights

- E8.1 Save as granted under the WHP Contract, neither the Contracting Body nor the Contractor shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Contractor acknowledges that the Contracting Body Data is the property of the Contracting Body and the Contracting Body hereby reserves all Intellectual Property Rights which may exist in the Contracting Body Data.
- E8.2 The Contracting Body shall grant the Contractor a non-exclusive, revocable, free licence for the WHP Contract Period to use the Contracting Body's Intellectual Property Rights where it is necessary for the Contractor to supply the WHP Services. The Contractor shall have the right to sub-license the Sub-contractor's use of the Contracting Body's Intellectual Property Rights. At the end of the WHP Contract Period the Contractor shall cease use, and shall ensure that any Sub-contractor ceases use of the Contracting Body's Intellectual Property Rights.
- E8.3 The Contractor shall grant the Contracting Body a non-exclusive, revocable, free licence for the WHP Contract Period to use the Contractor's Intellectual Property Rights where it is necessary for the Contracting Body in the provision of the WHP Services. At the end of the WHP Contract Period the Contracting Body shall cease use of the Contractor's Intellectual Property Rights.
- E8.4 The Parties agree that:
 - (a) all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material

furnished to or made available to the Contractor by or on behalf of the Contracting Body shall remain the property of the Contracting Body; and

- (b) any Project Specific Intellectual Property Rights arising shall belong to the Contracting Body and in such regard, the Contractor hereby assigns with full title guarantee and free from all third party rights, any project Specific Intellectual Property Rights to the Contracting Body,

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the WHP Contract) without Approval, use or disclose any such Contracting Body Intellectual Property Rights (including any Project Specific Intellectual Property Rights).

- E8.5 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the WHP Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall grant to the Contracting Body (or procure the grant to the Contracting Body) of those rights a non-exclusive licence to use, reproduce, modify, develop and maintain the material. Such licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence shall also include the right for the Contracting Body to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Contracting Body.
- E8.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the WHP Services. The Contractor shall, during and after the WHP Contract Period, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body and the Crown indemnified and hold harmless the Contracting Body and the Crown at all times from and against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses, amounts, sums, outgoing of any description and any other liabilities caused to the Contracting Body or the Crown whether directly or indirectly in whole or in part by reason of any breach of this clause, except where any such claim arises from:
 - (a) items or materials based upon designs supplied by the Contracting Body; or
 - (b) the use of data supplied by the Contracting Body which is not required to be verified by the Contractor under any provision of the WHP Contract.
- E8.7 The Contracting Body shall notify the Contractor in writing of any claim or demand brought against the Contracting Body for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
 - (a) shall consult the Contracting Body 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 Contracting Body; and
 - (c) shall not settle or compromise any claim without the Contracting Body's prior written consent (not to be unreasonably withheld or delayed).
- E8.8 The Contracting Body shall at the request of the Contractor provide to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action

brought against the Contracting Body or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the WHP Contract. The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body in doing so whether directly or indirectly in whole or in part by reason of doing so. Such claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E8.6(a) or (b).

E8.9 The Contracting Body 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 Contracting Body or the Contractor in connection with the performance of its obligations under the WHP Contract.

E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the WHP Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Contracting Body and, at its own expense and subject to the consent of the Contracting Body (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the WHP Services without reducing the performance or functionality, or substitute alternative WHP Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified WHP Services or to the substitute WHP Services; or
- (b) procure a licence to use and supply the WHP Services, which are the subject of the alleged infringement, on terms which are acceptable to the Contracting Body,

and in the event that the Contractor is unable to comply with clauses E8.10(a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Contracting Body may terminate the WHP Contract with immediate effect by notice in writing.

E9 Audit and the National Audit Office and Open Book Data

E9.1 The Contractor shall at all times keep and maintain the Open Book Data.

E9.2 Without prejudice to clauses A9 and E9.1, as the delivery of this WHP Contract may be funded by, and/or may be used as match for contracts funded by the Contracting Body using ESF monies the Contractor and any Sub-contractors appointed by it shall be bound by the additional ESF Requirements, including but not limited to the requirement to maintain the Open Book Data until at least the Records Retention End Date.

E9.3 Without prejudice to the generality of clauses E9.1 and E9.2, the Contractor shall, at all times, upon written request by the Contracting Body, provide written confirmation of a summary of any of the Open Book Data, including details of any funds held by the Contractor specifically to cover its on-going costs, in such other form and detail as the Contracting Body may reasonably require, to enable the Contracting Body to monitor the performance by the Contractor of its obligations under the WHP Contract, its solvency and the level of profit the Contractor is making from the supply of the WHP Services.

- E9.4 The Contractor shall provide (or procure provision of) access at all reasonable times to the Contracting Body, its duly authorised staff or agents and any Audit Agents to inspect the Open Book Data and such records and accounts (including those of Sub-contractors) as the Contracting Body may require from time to time. The Contracting Body shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Contracting Body to do so.
- E9.5 Duly authorised Staff or agents of the Contracting Body shall have the right to visit sites controlled by the Contractor and to be given free access to the Staff and to Participants during the hours when the Contractor is supplying the WHP Services with a view to verifying that the Contractor is supplying the WHP Services in accordance with the WHP Contract.
- E9.6 The Contractor shall provide the Open Book Data and all records and accounts referred to in this clause E9 (together with copies of the Contractor's published accounts) until the end of the Payment Tail Period, and shall provide such records and accounts on request until the Records Retention End Date, to the Contracting Body and the Audit Agents.
- E9.7 The Contracting Body shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the supply of the WHP Services, save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Audit Agents is outside of the control of the Contracting Body.
- E9.8 The Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Authority under this clause E9.
- E9.9 The Contractor shall provide the rights set out in this clause E9 to any duly authorised staff or agents of the Contracting Body, the National Audit Office, the European Court of Auditors, the European Commission, the Audit Agents and any third parties as notified by the Contracting Body to the Contractor from time to time.
- E9.10 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Contractor or any third party in relation to supply of the WHP Services, the Contracting Body reserves for itself and any Audit Agents or any government department the right of immediate access to the Open Book Data and all records and accounts referred to in this clause E9 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the WHP Contract or at any time thereafter.
- E9.11 The Contractor shall, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times from and against all claims, proceedings, actions, damages, costs and expenses (including, but not limited to, legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly in whole or in part by reason of any Default by the Contractor (or any Sub-contractor) of this clause E9.

E10 Exceptional Audits

- E10.1 The Contractor shall permit the Contracting Body and/or its appointed representatives access to conduct an audit (an "**Exceptional Audit**") of the Contractor in any of the following circumstances:
- (a) actual or suspected impropriety or Fraud;
 - (b) there are reasonable grounds to suspect that:

- (i) the Contractor is in Default under the WHP Contract;
- (ii) the Guarantor may be in default of the Guarantee;
- (iii) the Contractor and/or the Guarantor is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Contractor financial distress and result in a risk of the Contractor becoming insolvent or bankrupt has occurred; or
- (iv) a breach of the Security Policy or the Security Plan has occurred under the WHP Contract,

(each an “**Exceptional Circumstance**”).

E10.2 Subject to the provisions of clause E10.3, if the Contracting Body notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.4 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours.

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

E11 Audit Costs

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

- (a) the Contractor shall reimburse the Contracting Body for all the Contracting Body's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and
- (b) where the Contracting Body, a Regulatory Body, or the Audit Agents appoint another a Contracting Authority identified in the OJEU Notice to conduct an audit under clauses E9 and E10, the Contracting Body shall be able to recover on demand from the Contractor the identifiable, reasonable and properly incurred costs and expenses of the relevant Contracting Authority.

E12 Malicious Software

E12.1 The Contractor shall ensure all anti-virus software within the Contractor's Software and the Contractor's System is updated as frequently as is necessary in order to provide protection for the Contracting Body's ICT System and the Contracting Body's Data against the latest threats including any Malicious Software.

E12.2 Notwithstanding clause E12.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Contracting Body Data, assist each other to mitigate any losses and to restore the WHP Services to their desired operating efficiency.

E12.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.2 shall be borne by the Parties as follows:

- (a) by the Contractor where the Malicious Software originates from the Contractor Software, Third Party Software licenced to the Contractor (and/or any Sub-contractor) or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contractor); and
- (b) by the Contracting Body if the Malicious Software originates from the Contracting Body Software, Third Party Software licenced to the Contracting Body or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contracting Body).

E13 Provision of Management Information

- E13.1 The Contractor shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate Management Information to the Contracting Body in accordance with the provisions of this clause E13 and Schedule 20 (Management Information).
- E13.2 The Contractor acknowledges that the Contracting Body is working with Devolved Deal Area and local authority partners, including London and Manchester Devolved Deal Areas, and the Contractor consents to the Contracting Body sharing all performance, supplier and contractual information on a commercially confidential basis which the Contracting Body in its absolute discretion considers necessary to support the management of the WHP Contract and national provision of services.

E14 Records Relating to the Provision of the WHP Services

- E14.1 Notwithstanding the provisions of clause A2.2 or clause E9 in respect of Open Book Data, the Contractor shall, during the WHP Contract Period and the later of a period of at least six (6) years following the expiry or termination of this WHP Contract or until 31 December 2026 if later (the last date of such period being the "**Records Retention End Date**"), maintain or cause to be maintained, complete and accurate documents and records in relation to the provision of the WHP Services.
- E14.2 The Contractor shall maintain or cause to be maintained until the Records Retention End Date, complete and accurate documents and records in relation to any payments, monies, loans or other financial incentives whatsoever ("Self Employed Participant Financial Incentives") provided by the Contractor to, any self employed Participant whether directly or indirectly for the purpose of any self employed business including but not limited to any amounts provided for the purpose of working capital and/or equipment for the purpose of the self-employed business. The documents and records to be maintained under this clause E14.2 shall include but not be limited to the business plan of any self-employed Participant who has received Self Employed Participant Financial Incentives and detailed information regarding such Self Employed Financial Incentives.

F CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the WHP Contract or any part of it without Approval. Sub-contracting any part of the WHP Contract shall not relieve the Contractor of any of its obligations or duties under the WHP Contract.

F1.2 In the event that the Contractor enters into any Sub-contract in connection with this WHP Contract, it shall:

- (a) impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this clause F1;
- (b) ensure that each Sub-contractor complies with such terms;
- (c) as an independent obligation, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body by any act or omission of a Sub-contractor in relation to such terms whether directly or indirectly or in whole or in part; and
- (d) comply with the provisions of Schedule 15 (Sub-Contractors).

F1.3 Notwithstanding clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Fees or any part thereof due to the Contractor under this WHP Contract. Any assignment under this clause F1 shall be subject to:

- (a) reduction of any sums in respect of which the Contracting Body exercises its right of recovery under clause C5;
- (b) deferral of any sums in respect of which the Contracting Body exercises its right under clause C6;
- (c) all related rights of the Contracting Body under the WHP Contract in relation to the recovery of sums due but unpaid; and
- (d) the Contracting Body receiving notification under both clauses F1.4 and F1.5.

F1.4 In the event that the Contractor assigns the right to receive the Fees under clause F1.3, the Contractor or the Assignee shall notify the Contracting Body in writing of the assignment and the date upon which the assignment becomes effective.

F1.5 The Contractor shall ensure that the Assignee notifies the Contracting Body, at least five (5) Working Days prior to submission of any invoice, of the Assignee's contact information and bank account details to which the Contracting Body is requested to make payment.

F1.6 The provisions of clause C3 shall continue to apply in all other respects after any such assignment and shall not be amended without Approval.

F1.7 Subject to clause F1.8, the Contracting Body may assign, novate or otherwise dispose of its rights and obligations under the WHP Contract or any part thereof to:

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

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

F1.8 Any change in the legal status of the Contracting Body such that it ceases to be a Contracting Authority shall not, subject to clause F1.7, affect the validity of the WHP Contract. In such circumstances, the WHP Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Contracting Body.

F1.9 If the rights and obligations under the WHP Contract are assigned, novated or otherwise disposed of pursuant to clause F1.7 to a Transferee which is not a Contracting Authority or if there is a change in the legal status of the Contracting Body such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Extraordinary Transferee"):

- (a) the rights of termination of the Contracting Body in clauses H1.1(b)(Termination by the Contracting Body) shall be available to the Contractor in the event of respectively, the Insolvency Event, or Default of the Extraordinary Transferee; and
- (b) the Extraordinary Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the WHP Contract or any part thereof with the prior consent in writing of the Contractor.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the WHP Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy under this WHP Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of the same.

F2.2 The performance by either Party of any of its obligations under this WHP Contract after a failure by the other Party to perform any provision of this WHP Contract strictly in accordance with its terms shall not constitute a waiver of any right or remedy under this WHP Contract or by Law nor shall it prevent or restrict further exercise of the same.

F2.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices) and in a manner that expressly states that a waiver is intended.

F2.4 A waiver of any right or remedy arising from a breach of the WHP Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the WHP Contract.

F3 Changes to the WHP Contract

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

F3.2 Save as provided in clause F3.3 and F3.4 below, the Parties acknowledge and agree that no Contract Change or Operational Change may be made to this WHP Contract which has the effect of:

- (a) rendering this WHP Contract materially different in character from this WHP Contract as at the WHP Commencement Date;
- (b) changing the economic balance of this WHP Contract in favour of the Contractor in a manner which is not provided for in this WHP Contract as at the WHP Commencement Date; or
- (c) extending the scope of this WHP Contract considerably

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

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

- (a) increase the contract value by an amount equal to any ESF funding, or funding from domestic or other sources leading up to and/ or following the UK's exit from the European Union, which is available to the Contracting Body to purchase the Services;
- (b) any modification to the Referral Period Start Date and any consequential modifications to this WHP Contract required to ensure that the economic balance of this WHP Contract is not changed in favour of the Contractor;
- (c) adding or revising any Cohort Profile as a consequence of, or in connection with, changes in volumes of Participant Starts or the addition or removal of any groups of Participants;
- (d) any modification of the proportions of Participant Starts made up of each of the groups of Participants described in paragraphs 2.11 to 2.19 (inclusive) of the WHP Specification;
- (e) any modification of the list of early entrant groups of Participants set out at paragraph 2.17 of the WHP Specification if policy priorities for the Contracting Body change on or after the WHP Commencement Date;
- (f) any modification required as a consequence of, or in connection with, changes from time to time to the Contracting Body's administrative or operational structures or procedures;
- (g) any modification required as a consequence of, or in connection with, changes from time to time to any of the Contracting Body's:
 - (i) DWP Information Security Policy;

- (ii) DWP Physical Security Policy; or
- (iii) DWP Acceptable Use Policy
- (h) any modification required as a consequence of, or in connection with, any Transfer of Functions Order;
- (i) any modification which is a consequence of, or arising in connection with, any recommendation made by an assessor appointed pursuant to clause F1.1;
- (j) any modification which is a consequence of, or arising in connection with, any notification given by the Contracting Body to the Contractor pursuant to clause F6.4;
- (k) any modification required as a consequence of, or in connection with, the implementation of Universal Credit;
- (l) any waiver (whether permanent or temporary or conditional or unconditional) by a Party of any of its rights under this WHP Contract;
- (m) any temporary modification made pursuant to a Performance Improvement Plan;
- (n) any settlement and/or compromise agreement entered into in respect of this WHP Contract;
- (o) any modification required as a consequence of, or in connection with, changes in applicable Law; and
- (p) any consequential modifications to this WHP Contract required to give effect to any Contract Change, Operational Change or Substantial Change made pursuant to this clause F3.3.

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

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

- F3.5 If the Contracting Body serves written notice to the Contractor to extend the Referral Period pursuant to clause F3.4 above, the Contractor undertakes to do all acts and execute all documents which may be necessary to give effect to such extension.
- F3.6 If the Parties agree to make a Contract Change or Operational Change or Substantial Change, the Contractor undertakes to procure the consent of the Guarantor to such Contract Change, Operational Change or Substantial Change.
- F3.7 Subject to clause F3.8, the Contracting Body may modify both the Provider Guidance and Appendix A to Schedule 6 (Security Requirement and Plan) unilaterally at any time during the WHP Contract Period as a consequence of, or in connection with, changes to the Contracting Body's administrative or operational structures or procedures and such revised Provider Guidance shall become effective on and from the date notified as the date on which such revised Provider Guidance shall become effective by the Contracting Body to the Contractor.
- F3.8 Subject to clause F3.8, the Contracting Body may modify the format of Appendix 1 to Schedule 17 (Life Chances) unilaterally at any time during the WHP Contract and such modification shall become effective on and from the date notified to the Contractor.
- F3.9 If the Contractor reasonably believes that a modification made pursuant to clause F3.6 or F3.7 will have an economic effect on the Contractor and therefore wishes such modification to be made via the Change Control Procedure, the Contractor shall so notify the Contracting Body within ten (10) days of receiving notification under clause F3.6. Such notification shall include:
- (a) why the Contractor reasonably believes that there will be and economic impact; and
 - (b) the quantum of such economic impact accompanied by supporting calculations and assumptions.
- F3.10 The Contractor shall neither be relieved of its obligations to supply the WHP Services in accordance with the terms and conditions of this WHP Contract nor be entitled to an increase in the Fees as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the WHP Services is reasonably foreseeable at the WHP Commencement Date.
- F3.11 If a Specific Change in Law occurs or will occur during the WHP Contract Period (other than as referred to in clause F3.10(b)):
- (a) the Contractor shall notify the Contracting Body as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Contract Change, Operational Change or Substantial Change is required to the WHP Services, the Fees or this WHP Contract; and
 - (ii) whether any relief from compliance with the Contractor's obligations is required; and
 - (b) the Contractor shall provide the Contracting Body with evidence:
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;

- (ii) as to how the Specific Change in Law has affected the cost of providing the WHP Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Fees; and
- (c) any variation in the Fees or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in clause F3.10(b)) shall be implemented in accordance with the Change Control Procedure. For the avoidance of doubt, the Contracting Body shall not be obliged to accept any variation in the Fees requested pursuant to this clause F3.11 and the Contracting Body shall not be obliged to accept any Contract Change, Operational Change or Substantial Change except to the extent that such Contract Change, Operational Change or Substantial Change is necessary for the Contractor or the WHP Services to comply with any Change in Law.

F4 Severability

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

F5 Remedies Cumulative

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

F6 Entire Agreement

- F6.1 This WHP Contract, together with the Umbrella Agreement, constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This WHP Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F6.2 Each of the Parties acknowledges and agrees that in entering into this WHP Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this WHP 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 WHP Contract.
- F6.3 Subject to clause F6.4, in the event of, and only to the extent of, any conflict or inconsistency between the clauses of these WHP Terms and Conditions, any document referred to in those clauses and the Schedules, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the WHP Terms and Conditions including all Schedules and any Appendices or Annexes to the WHP Terms and Conditions;
- (b) the WHP Specification;
- (c) the Q&A;
- (d) the Tender;
- (e) the Tender Clarification;
- (f) the Provider Guidance;
- (g) the Umbrella Agreement; and
- (h) any other document referred to in the WHP Contract.

F6.4 Notwithstanding clause F6.3, in the event that the Contractor becomes aware of any inconsistency between the requirements contained in the above documents, the Contractor shall immediately notify the Contracting Body's Representative in writing of such inconsistency and the Contracting Body's Representative shall, as soon as practicable, notify the Contractor which requirement the Contractor shall comply with.

F7 Counterparts

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

F8 Further Assurance

F8.1 Each Party undertakes at the request of the other to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this WHP Contract.

F8.2 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under clause F8.1.

G LIABILITIES

G1 Liability and Indemnity

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

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

G1.2 Subject to clause G1.4, the Contractor shall as an independent obligation, within three (3) Working Days of demand, indemnify fully, keep the Contracting Body indemnified and hold harmless the Contracting Body at all times:

- (a) in respect of any personal injury, death or loss or destruction of or damage to property caused to the Contracting Body or its employees and agents to the extent that such personal injury, death or loss or destruction of or damage to property is caused whether directly or indirectly in whole or in part by:
 - (i) any Default of the Contractor, its employees, agents or Sub-contractors; or
 - (ii) by circumstances within its or their control in connection with the performance or purported performance of the WHP Contract; and
- (b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body in respect of any personal injury, death or damage arising from or incurred by reason of the use of the WHP Services by any Participant whether directly or indirectly or in whole or in part; and
- (c) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly or in whole or in part by reason of:
 - (i) the supply (or the late or purported supply) of the WHP Services;
 - (ii) the performance or non-performance by the Contractor of its obligations under the WHP Contract including, without limitation, any or all Service Failure Defaults and any or all Non Service Failure Defaults;
 - (iii) the presence of the Contractor or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Contractor to the Contracting Body; or
 - (iv) any other claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting

Body by any act or omission of the Contractor whether directly or indirectly or in whole or in part; and

- (d) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements), losses, amounts, sums, outgoings of any description and any other liabilities caused to the Contracting Body whether directly or indirectly or in whole or in part resulting from any Default by the Contractor of clause A9 which, for the avoidance of doubt, include any claims, demands, actions, costs (including legal costs and disbursements) and losses which relate to the Contracting Body's obligations as on an ESF Co-Financing Organisation or connected with the ESF Requirements.

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

- (a) is a separate and independent obligation from the other obligations in this WHP Contract;
- (b) gives rise to a separate and independent cause of action;
- (c) applies whether or not any indulgence is granted by the Contracting Body;
- (d) shall continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this WHP Contract, or any other judgment or order;
- (e) notwithstanding clause G1.9, shall not be subject to any duty for the Contracting Body to mitigate;
- (f) shall not be limited or capped under clauses G1.7 or G1.8; and
- (g) shall not count towards the liabilities of the Contractor which are limited or capped under clauses G1.7 or G1.8.
- (h) for the avoidance of doubt in respect of any amount due to the Contracting Body under such indemnity, such amount shall be reduced by an amount equal to any amount that the Contracting Body actually receives pursuant to clause G1.6 in respect of the same cause of action as gives rise to the cause of action under the relevant indemnity.

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

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

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

- (a) if a Default occurs under any of:
 - (i) clause A8 (*Prevention of Fraud*);

- (ii) clause A9 (*ESF Requirements*);
- (iii) clause B7 (*The Merlin Standard*);
- (iv) clause D1.1 (*Prevention of Bribery and Corruption*);
- (v) clause D1.3 (*Prevention of Bribery and Corruption*);
- (vi) clause D1.4 (*Prevention of Bribery and Corruption*);
- (vii) clause D1.5 (*Prevention of Bribery and Corruption*);
- (viii) clause D1.6 (*Prevention of Bribery and Corruption*);
- (ix) clause D2 (*Discrimination*);
- (x) clause D4 (*Environmental Requirements*);
- (xi) clause D5.3 (*Health and Safety*);
- (xii) clause D5.5 (*Health and Safety*);
- (xiii) clause D6.2 (*Tax compliance*);
- (xiv) clause E2 (*Protection of Personal Data*);
- (xv) clause E3 (*Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989*);
- (xvi) clause E9.10 (*Audit and the National Audit Office and Open Book Data*);
- (xvii) clause E10 (*Exceptional Audits*); or
- (xviii) Schedule 8 (*Welsh Language*),

and

(aa) (if the Contracting Body considers, acting reasonably, that such Default is capable of remedy) such Default is not remedied within 5 Working Days (or such longer period as the Contracting Body may specify in each case) of the Contracting Body notifying the Contractor of the Default and the remedy required or 25 Working Days of the Contractor notifying the Contracting Body of the Default; or

(bb) if such Default is not capable of remedy and the Contracting Body notifies the Contractor that such Default is not capable of remedy,

then in respect of each and every such Default the Contractor shall pay the Contracting Body, as liquidated damages, an amount equal to one Delivery Fee Period Payment for each Month or each part Month during which such Default has not been waived PROVIDED THAT if such Default is waived the Contracting Body shall pay to the Contractor an amount equal to the liquidated damages actually paid to it by the Contractor in respect of such Default pursuant to this clause G1.6;

(b) if a Default occurs under any of:

- (i) clause E5.6 (*Transparency and Freedom of Information*);

- (ii) clause E5.7(b) (*Transparency and Freedom of Information*);
- (iii) clause E5.7(c) (*Transparency and Freedom of Information*);
- (iv) clause E6.10 (*Publicity, Media and Official Enquiries*);
- (v) paragraph 3.3 of Schedule 6 (*Security Requirements and Plan*);
- (vi) paragraph 3.4 of Schedule 6 (*Security Requirements and Plan*);
- (vii) paragraph 3.10 of Schedule 6 (*Security Requirements and Plan*);
- (viii) paragraph 4.1 of Schedule 6 (*Security Requirements and Plan*);
- (ix) paragraph 4.4 of Schedule 6 (*Security Requirements and Plan*);
- (x) paragraph 2.1 of Schedule 7 (*Sustainable Development Requirements*);
- (xi) paragraph 2.1 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xii) paragraph 2.4.2 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xiii) paragraph 6.1 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xiv) paragraph 6.4.2 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xv) paragraph 7.5 of Schedule 18 (*Business Continuity and Disaster Recovery*);
- (xvi) paragraph 7.2 of Schedule 21 (*Insurance Requirements*),

and

(aa) (if the Contracting Body considers, acting reasonably, that such Default is capable of remedy) such Default is not remedied within 5 Working Days (or such longer period as the Contracting Body may specify in each case) of the Contracting Body notifying the Contractor of the Default and the remedy required or 25 Working Days of the Contractor notifying the Contracting Body of the Default; or

(bb) such Default is not capable of remedy and the Contracting Body notifies the Contractor that such Default is not capable of remedy,

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

(c) if a Default occurs under any of:

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

and

(aa) (if the Contracting Body considers, acting reasonably, that such Default is capable of remedy) such Default is not remedied within 5 Working Days (or such longer period as the Contracting Body may specify in each case) of the Contracting Body notifying the Contractor of the Default and the remedy required or 25 Working Days of the Contractor notifying the Contracting Body of the Default; or

(bb) such Default is not capable of remedy and the Contracting Body notifies the Contractor that such Default is not capable of remedy,

then in respect of each and every such Default the Contractor shall pay the Contracting Body, as liquidated damages, an amount equal to 10 per cent. of the Delivery Fee Periodic Payment for each Working Day's delay (exclusive of VAT);

- (d) the Contractor shall pay these liquidated damages on demand or the Contracting Body may deduct them from its payments to the Contractor; and
- (e) the Parties confirm that these liquidated damages are reasonable and proportionate to protect the Contracting Body's legitimate interest in the performance of this WHP Contract by the Contractor during that part of the WHP Contract Period occurring after the last day of the period in which Referrals of Participants can be made by the Contracting Body.

G1.7 Subject always to clauses G1.1 and G1.3 and without prejudice to section H, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for Defaults that result in direct loss of or damage to the property of the other under or in connection with the WHP Contract (including the Contracting Body Premises unless a higher limit has been agreed in a separate document) shall in no event exceed 100 per cent. of the Average Annual Contract Value; and
- (b) the annual aggregate liability under the WHP Contract of either Party for all Defaults (including any liability incurred under G1.7(a) but excluding any liability under G1.7(c) or G1.7(d)) shall in no event exceed 150 per cent. of the Average Annual Contract Value,

provided that:

- (c) the liability of the Contractor under clause E1 (Contracting Body Data), clause E2 (Protection of Personal Data) or clause E8 (Intellectual Property Rights) shall not be limited or capped; and
- (d) for the avoidance of doubt, the liability of the Contractor under any indemnity in any document which forms part of this WHP Contract shall not be limited or capped and shall not count towards the limits or caps imposed on the liability of the Contractor for Defaults by this clause G1.7.

G1.8 Subject always to clause E2.7, G1.1, G1.3 and G2 and other than (i) pursuant to any indemnity in any document which forms part of this WHP Contract or (ii) as expressly set out in this WHP Contract, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and

(b) indirect or consequential loss or damage.

G1.9 Subject to clause G1.3, each Party shall use reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this WHP Contract, including any Loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this WHP Contract.

G2 Insurance

The Contractor shall comply with the provisions of Schedule 21 (Insurance Requirements) in relation to obtaining and maintaining insurance.

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the WHP Contract and that the WHP Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the WHP Contract it has not committed any Fraud;
- (c) as at the WHP 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 Contracting Body prior to execution of the WHP 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 WHP 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 WHP Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the WHP Contract;
- (h) in the three (3) years prior to the date of the WHP Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the WHP Contract;
 - (i) save as previously notified to the Contracting Body in writing, it has not employed any Participant on either an employed or self-employed basis in the Employment Business; and
 - (j) it has not made any payment, or enter into any transaction which has the economic effect of making a payment, and no Sub-contractor has made any payment, or entered into any transaction which has the economic effect of making a payment, to any employer of any Participant (other than Permitted Payments).
- G3.2 The Contractor repeats the representations and warranties in clause G3.1 (except for those in clauses G3.1(c) and G3.1(h)) on the first day of each Month during the WHP Contract Period by reference to the facts and circumstances existing on each such date.
- G3.3 If at any time a Party becomes aware that a representation or warranty given by it under this WHP Contract been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- G3.4 For the avoidance of doubt, the fact that any provision within this WHP Contract is expressed as a warranty shall not preclude any right of termination which the Contracting Body may have in respect of breach of that provision by the Contractor.
- G4 Deed of Guarantee**
- G4.1 Unless otherwise agreed by the Contracting Body in writing, this WHP Contract is conditional upon the Contractor procuring that the Guarantor shall:
 - (a) execute and deliver to the Contracting Body the Guarantee; and
 - (b) deliver to the Contracting Body a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee in accordance with the provisions of Schedule 20 (Management Information).
- G4.2 On satisfaction of clause G4.1, the Contracting Body shall promptly notify the Contractor that those conditions have been satisfied.
- G4.3 The conditions specified in this clause G4 are inserted solely for the Contracting Body's benefit. The Contracting Body may waive them, in whole or in part and with or without conditions, without prejudicing the Contracting Body's right to require subsequent fulfilment of such conditions.
- G4.4 Subject to clause G4.5, and for the avoidance of doubt, if clause G4.1 has not been satisfied, on or before the day falling four weeks after the WHP Commencement Date this WHP Contract shall not take effect.
- G4.5 Notwithstanding clauses G4.1 to G4.4, the Contracting Body reserves the right (in its absolute discretion) to waive the requirement for a Guarantee in its entirety.

H TERMINATION RIGHTS AND DISRUPTION

H1 Termination by the Contracting Body

H1.1 The Contracting Body may terminate this WHP Contract by issuing a Termination Notice to the Contractor:

- (a) for convenience at any time, including where the WHP Contract should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;
- (b) if a Contractor Termination Event occurs;
- (c) if a Force Majeure Event endures for a continuous period of more than 90 days; or
- (d) if the WHP Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this WHP Contract shall terminate on the date specified in the Termination Notice.

H1.2 Where the Contracting Body:

- (a) is terminating this WHP Contract under Clause H1.1(b) due to the occurrence of limb (b) of the definition of Contractor Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

- (b) has the right to terminate this WHP Contract under Clause H1.1(b) or Clause H1.1(c),

it may, prior to or instead of terminating the whole of this WHP Contract, serve a Termination Notice requiring the partial termination of this WHP Contract to the extent that it relates to any part of the WHP Services which are materially affected by the relevant circumstances (a "Partial Termination").

H2 Termination by the Contractor

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

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

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

H3 Partial Termination

- H3.1 If the Contractor notifies the Contracting Body pursuant to Clause H2.1(b) (Termination by the Contractor) that it intends to terminate this WHP Contract in part and the Contracting Body, acting reasonably, believes that the effect of such Partial Termination is to render the remaining WHP Services incapable of meeting a significant part of the Contracting Body Requirements, then the Contracting Body shall be entitled to terminate the remaining part of this WHP Contract by serving a Termination Notice to the Contractor within 1 month of receiving the Contractor's Termination Notice. For the purpose of this Clause H3.1, in assessing the significance of any part of the Contracting Body Requirements, regard shall be had not only to the proportion of that part to the Contracting Body Requirements as a whole, but also to the importance of the relevant part to the Contracting Body.
- H3.2 The Parties shall agree the effect of any change to this WHP Contract necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other WHP Services and the Fees, provided that:
- (a) the Contractor shall not be entitled to an increase in the Fees in respect of the WHP Services that have not been terminated if the Partial Termination arises due to the occurrence of a Contractor Termination Event; and
 - (b) the Contractor shall not be entitled to reject the change to the WHP Contract.

CONSEQUENCES OF EXPIRY OR TERMINATION

H4 General Provisions on Expiry or Termination

- H4.1 Unless otherwise expressly provided in the WHP Contract:
- (a) the provisions of Clauses A7 (Conflicts of Interest), B13 (Offers of Employment), C3 (Payment and Fees), C4 (Validation & Extrapolation of Outcomes), C5 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Contracting Body 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), F5 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (General Provisions on Expiry or Termination), I1 (Governing Law and Jurisdiction) and Schedule 10 (Exit Management), shall survive the termination or expiry of this WHP Contract; and
 - (b) termination or expiry of the WHP Contract shall be without prejudice to any rights, remedies or obligations accrued under the WHP Contract prior to termination or expiration. Nothing in the WHP Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

H5 Exit Management

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

H6 Payments by the Contracting Body

- H6.1 If this WHP Contract is terminated by the Contracting Body pursuant to Clause H1.1(a) (Termination by the Contracting Body) or by the Contractor pursuant to Clause H2.1(a)

(Termination by the Contractor), the Contracting Body shall pay the Contractor the following payments (which shall be the Contractor's sole remedy for the termination of this WHP Contract):

(a) the Termination Payment; and

(b) the Compensation Payment, if either of the following periods is less than 365 days:

(i) the period from (but excluding) the date that the Termination Notice is given by the Contracting Body pursuant to Clause H1.1(a) (Termination by the Contracting Body) to (and including) the Termination Date; or

(ii) the period from (and including) the date of the non-payment by the Contracting Body referred to in Clause H2.1(a) (Termination by the Contractor) to (and including) the Termination Date.

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

(a) payments in respect of any Assets or apportionments in accordance with Schedule 10 (Exit Management); and

(b) payments in respect of unpaid Fees for WHP Services received up until the Termination Date.

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

(a) either Party terminates or partially terminates this WHP Contract for a continuing Force Majeure Event pursuant to Clauses H1.1(c) or H1.2(b) (Termination by the Contracting Body) or H2.1(b) (Termination by the Contractor); or

(b) the Contracting Body terminates this WHP Contract under Clause (d)H1.1(d).

H6.4 If this WHP Contract is terminated in whole by the Contracting Body pursuant to Clauses H1.1(b), H1.1(c) and/or H1.2 (Termination by the Contracting Body), or the term expires, the Contractor shall not have any right to receive any Outcome Payment in respect of any Participant.

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

H7 Payments by the Contractor

H7.1 In the event of termination or expiry of this WHP Contract, the Contractor shall repay to the Contracting Body all Fees it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination.

H7.2 Where the Contracting Body terminates the WHP Contract under clause H1.1(b) (Termination by the Contractor) and then makes other arrangements for the supply of WHP Services ("Other Arrangements"), the Contracting Body may recover from the Contractor the cost of making such Other Arrangements and any expenditure incurred (including but not limited to legal costs)

by the Contracting Body in connection with such Other Arrangements in accordance with Schedule 11 (Allocation of Costs on Termination). The Contracting Body shall take all reasonable steps to mitigate such cost and expenditure.

- H7.3 Where a WHP Contract is terminated under clause H1.1(b), the Contracting Body shall be entitled to withhold payment of any amount otherwise due to the Contractor under this WHP Contract until such time as the Contracting Body has been able to establish the cost of making such Other Arrangements. For the avoidance of doubt, no interest shall accrue on any payments that are withheld under this clause H7.3.

H8 Disruption

- H8.1 The Contractor shall take all reasonable care to ensure that in performing of its obligations under the WHP Contract it does not disrupt the operations of the Contracting Body, its employees or any other contractor employed by the Contracting Body.
- H8.2 The Contractor shall immediately notify the Contracting Body of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the WHP Contract.
- H8.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the WHP Contract.
- H8.4 If the Contractor's proposals referred to in clause H8.3 are considered insufficient or unacceptable by the Contracting Body (acting reasonably), the Contracting Body may terminate the WHP Contract with immediate effect by notice in writing.
- H8.5 If the Contractor is temporarily unable to fulfil the requirements of the WHP Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- H8.6 The Contractor shall have a Business Continuity and Disaster Recovery Plan in place, prepared by the Contractor and agreed with the Contracting Body in accordance with Schedule 18 (Business Continuity and Disaster Recovery), to ensure that the WHP Services to the Contracting Body will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor's operations, and those of Sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Contracting Body to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the WHP Contract Period.
- H8.7 The Contractor and the Contracting Body shall at all times comply with the provisions in Schedule 18 (Business Continuity and Disaster Recovery).

I Disputes and Law

I1 Governing Law and Jurisdiction

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

I2 Dispute Resolution

I2.1 Subject to clause B6 and clause D1.9, the Parties shall resolve Disputes arising out of or in connection with this WHP Contract in accordance with the Dispute Resolution Procedure.

I2.2 The Contractor shall continue to provide the WHP Services in accordance with the terms of this WHP Contract until a Dispute has been resolved.

Schedule 1

The WHP Services

Description of the WHP Services

Subject to clause F6.3 of the WHP Contract, the Contractor will comply with the detail set out within the following additional documents which shall be deemed to be incorporated into this WHP Contract;

Document	Dated
WHP Specification	V7 Issued on Bravo as part of the ITT on 3 July 2017 16:52 a copy of which is attached at the Appendix to this Schedule 1.
Tender	Received through Bravo on 4 August 2017 10:00 a copy of which is attached at the Appendix to this Schedule 1.
Q&A Log (Q&A)	Response to the Q&A Log during the period following completion of the WHP Mini-Competition Commercial Dialogue Stage and prior to the WHP Final Offer, as posted on Bravo on 25 July 2017 17:21
Tender Clarification	Financial Clarification information received through Bravo on 4 August 2017 10:00. Further Financial Clarification information received through Bravo between 08 August 2017 at 10.13 and 23 August 2017 at 14.17
Provider Guidance	Available at https://www.gov.uk/government/collections/dwp-provider-guidance

The Contractor will implement the Implementation Plan in accordance with clause B1.4 of the WHP Contract.

