



Department
for Work &
Pensions

CONTRACT

For

**The Provision of Off-Site Transcription, Typing and Equipment Maintenance
Services**

Between

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

And

[REDACTED]

CONTRACT REFERENCE NUMBER: RM3818

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This Contract is made on the Commencement Date
between the Parties The Secretary of State for Work and Pensions
("the Authority") acting as part of the Crown.
Department for Work and Pensions
Caxton House
Of Tothill Street
London
SW1H 9DA
And [REDACTED]
with Company Registration [REDACTED]
Number [REDACTED]
having the main or registered [REDACTED]
office at ("the Contractor")
individually referred to as "Party" and collectively as
"the Parties"

A.GENERAL PROVISIONS

A1 Definitions and Interpretation

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

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

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

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

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

"**Affiliate**" means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company, and "holding

company” and “subsidiary” shall have the meaning given to them in section 1159 of the Companies Act 2006.

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

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

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

“**Authority Data**” means

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

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

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

“**Authority’s Representative**” means the representative(s) of the Authority authorised to act on behalf of the Secretary of State for Work and Pensions on all matters relating to the Contract.

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

“**Baseline Personnel Security Standard**” means the standard of pre-employment screening required of civil servants, members of the armed forces, temporary staff and government Contractors, as detailed at: <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

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

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

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

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

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

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

“Change Request” means a written request for a Contract Change which shall be substantially in the form of Appendix 1 of Schedule 11 (Change Control Procedure).

“Commencement Date” means 1 June 2018 and is date when the Contractor (or any Sub-Contractor) commences the supply of the Services (or any part of the Services) under this Contract

“Commercially Sensitive Information” means the Information:-

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

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

“Commercial Optimisation Review” means the governance process that is put in place to periodically review the costs of the Contract and in collaboration with

the Contractor, proactively assess cost reductions measures that may be implemented.

“Commercial Optimisation Review Board” means the collective representatives of the Contractor and the Authority charged with the responsibility for undertaking the Commercial Optimisation Review.

“Confidential Information” means:-

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential; and
- b) the Commercially Sensitive Information and does not include any information:-
 - (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
 - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information.

“Contract” means this written agreement between the Authority and the Contractor consisting of these terms and conditions of contract and any attached Schedules, Appendices and any document referred to in the Schedules or Appendices, including the Specification, the Invitation to Tender, clarification responses issued by the Crown Commercial Service dated 13th April 2017 [RM3818 Clarification Questions and Answers - Document 6 issued 13.04.2017], the Tender, the Implementation Plan and the Contractor Guidance.

“Contract Change” means any change, amendment, Variation, restatement or supplement to this Contract other than an Operational Change.

“Contracting Body” or **“Contracting Bodies”** means the Department for Work and Pensions and any contracting body described in the OJEU Notice

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

“Contractor Guidance” means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Contractor prior to the Commencement Date including but not limited to the Transparency Guidance document at <https://www.gov.uk/government/publications/procurement-and-contracting-transparency-requirements-guidance> and any other instructions and recommended practices notified by the Authority to the Contractor from time to time.

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

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

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

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

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

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

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

“Contract Year” means each year of the Contract from the Commencement Date.

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

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

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

“Data Protection Legislation” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of Personal Data and Sensitive Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (as amended from time to time).

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

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

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

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

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

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

“Disaster” means a disruption to the Service that requires a switch to a second site or alternative provision, including, but not limited to, force majeure.

“Disaster Recovery” means the recovery and continuity of the Services in the event of a Disaster.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs 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 the National Insurance Contributions by the National Insurance Contribution (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

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

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

“Earned Profit” means the revenue remaining once all costs associated with running the Service have been met.

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

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

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

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

“Excess Volume Rate” means the Price Per Recorded Minute that the Authority will be charged when the number of recorded minutes to be transcribed has exceeded 4,334,828 minutes.

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

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

“Financial Model” means the pricing methodology set out in Schedule 4 (including the spreadsheet cost breakdown model) that governs the prices and rates payable in respect of the Services provided by the Contractor as part of its Tender (as varied in accordance with the provisions of this Contract).

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

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

“General Anti-Abuse Rule” means:-

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

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

“Guarantee” means the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Schedule 10 (Parent Company Guarantee) or such similar form acceptable to the Authority from time to time).

“Guaranteed Interview Scheme” means a commitment from the employer to interview any Disabled Person whose application meets the minimum criteria for a given post.

“Guarantor” means the body who has agreed to guarantee the due performance of the Contract by the Contractor as defined in clause G4 and the deed at Schedule 10 (Parent Company Guarantee).

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

“Hard Copy” means a copy of textual, numerical or graphic information produced on paper for the purpose of the Transcription Services. This definition shall include soft copy documents regardless of whether they are printed for the purpose of the Transcription Services.

“ICT” means information and communications technology.

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

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

“Implementation Plan” means the document to be developed and provided by the Contractor in accordance with paragraph 2 of Schedule 1.

“Incumbent Contractor” means any contractor providing services to the Authority before the Commencement Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such contractor (or any sub-contractor of such sub-contractor).

“Indexation” means the adjustment of payment by the rate of inflation.

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

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

“Intellectual Property Rights” means patents, inventions, 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, goodwill and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means the invitation and instructions to tenderers issued by the Authority on the 17th March 2017 attached in Schedule 1 (The Services).

“Key Personnel” means those persons named in Schedule 2 (Administration Requirements).

“**KPI**” means a key performance indicator to which the Services are to be provided as set out in the Specification at Schedule 1.

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

“**Law**” means any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

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

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

“**Loss**” means direct 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**” or “**MI**” means the collected data or statistics that will be used to measure service performance, as detailed in the Specification and Schedule 3 (Monitoring Requirements).

“**Material Breach**” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:-

- a) a substantial portion of the Contract; or
- b) any of the obligations set out in clauses A, B, D, E, F, H and Schedule 6; or
- c) any Default which is specified in the Contract as a ‘Material Breach’ or which may be deemed to be a Material Breach.

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

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

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

“Month” means calendar month.

“National Audit Office” is an independent Parliamentary body in the United Kingdom which is responsible for auditing central government departments, government agencies and non-departmental public bodies. The NAO also carries out Value for Money (VFM) audit into the administration of public policy.

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

“Notice Payments” means payment and benefits made in lieu of the minimum statutory or contractual period of notice to which a Redundant Employee is entitled or part thereof provided that the Contractor is able to demonstrate to the Authority’s satisfaction that:-

- a) it has not been possible to redeploy those Redundant Employees during the relevant notice period, or part thereof; and
- b) it has not been possible to utilise those Redundant Employees during the relevant notice period, or part thereof.

“Occasion of Tax Non-Compliance” means any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found 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 that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; or
- (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 and equivalent or similar regime; or
- (iii) the Contractor’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

“OJEU Notice” means the contract notice published in the Official Journal of the European Union under reference 2017/S 054-100530.

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

“Open Book Data” means is the scrutiny of the Contractor’s costs and margins through the reporting of, or accessing, accounting data.

“Open Book Contract Management” means the structured process for the sharing and management of charges and costs and operational and performance data between the Contractor and the Authority.

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

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

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

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

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

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

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

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

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

“Price Per Recorded Minute” or **“PPRM”** means the price chargeable by the Contractor for the transcription of one minute of Authority audio recording, as specified in Appendix 1 of Schedule 4.

“Priority Request” means a request for Transcription Services with a three (3) Working Day turnaround timescale.

“Profit Share Amount” means the amount of profit to be shared between the Contractor and the Authority as calculated by the Profit Share Calculation.

“Profit Share Buffer” means a 2% buffer added to the profit level the Contractor included in their Financial Model creating the Profit Share Threshold.

“Profit Share Calculation” means the annual calculation of the profit earned by the Contractor on the Contract undertaken by comparing income and costs incurred in delivery of the Service during the Contract Period. The Profit Share Calculation will be supported by a financial statement detailing costs as depicted in the Financial Model.

“Profit Share Threshold” means the threshold above which the Contractor’s actual profit is shared with the Authority under the Profit Share Amount arrangements.

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

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

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

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

“Reconciliation” means an accounting process that uses different sets of records to ensure figures are accurate and in agreement.

“Redundancy Costs” means:-

- a) Any statutory redundancy payment and/or any enhanced contractual redundancy payment to which a Redundant Employee is legally entitled to; and/or

b) Any Notice Payment in respect of any Redundant Employee,

for the avoidance of doubt, Redundancy Costs shall exclude all other costs, liabilities or expenses, including without limitation all those which arise from the failure of the Contractor to establish a potentially fair reason for the dismissal and those arising from the manner or mode of dismissal.

“Redundancy Surcharge” means the following costs to the extent they are paid to the Eligible Redundant Employee:-

- a) Statutory redundancy pay entitlement (calculated in accordance with Part XI of the Employment Rights Act 1996); and
- b) Contractual payment in lieu of notice entitlement (which transferred to the Contractor under TUPE) where it is not reasonably practicable for that employee to continue in employment during their period of notice.
- c) Any costs, liabilities or expenses, including without limitation all those which arise from the failure of the Contractor to establish a potentially fair reason for dismissal and those arising from the manner or mode of dismissal are specifically excluded.

“Redundant Employee” means:-

- a) An employee of the Incumbent Contractor who become an employee of the Contractor pursuant to the TUPE Regulations and whose employment with the Contractor is terminated by reason of Redundancy within three (3) Months following the Relevant Transfer Date; and/or
- b) Those employees of the Incumbent Contractor who become employees of the Sub-contractor pursuant to the TUPE Regulations and whose employment with the Sub-contractor is terminated by reason of redundancy within three (3) Months following the Service Transfer Date.

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

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

“Relevant Tax Authority” means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

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

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

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

“Replacement Services” means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Authority internally and/or by any third party.

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

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

“Re-Work” means any transcribed documents that have to be returned to the Contractor that do not meet the quality requirements in the Specification in terms of accuracy and require correction.

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

“Schemes” means the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its:-

- (i) Ill health Benefits Scheme; and
- (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

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

“Security Policy” means the Authority’s Security Policy annexed to Schedule 6 (Security Requirements and Plan) as updated from time to time.

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

“Sensitive Personal Data” shall have the meaning given in the DPA.

“Service(s)” means the provision of transcription, typing and equipment maintenance services, more particularly described in the Specification.

“Service Credits” means the sums attributable to a Service Failure as specified in the Schedule 4.

“Service Failure” means a failure by the Contractor to deliver any part of the Services in accordance with any of the Minimum Service Levels.

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

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

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

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

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

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

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

“Standard Request” means a request for Transcription Services with a five (5) Working Day turnaround timescale.

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

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

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

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

“Threshold Profit Margin” means the profit level shown in the Contractor’s Financial Model submitted with its Tender.

“Transcription Service(s)” means the element of the Services which converts audio recordings and handwritten text produced by the Authority into an electronic text document.

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

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

“TUPE Surcharge” means the difference, on an annual basis, between:-

- a) the costs to employ Transferring Employees and/or Relevant Employees (as the case may be); and
- b) the equivalent costs to employ staff used by the Contractor to calculate the TUPE Surcharge.

“Variation” has the meaning given to it in clause F3.1 (Variation).

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

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

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

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

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

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

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

A2 Initial Contract Period

This Contract shall commence on the Commencement Date and shall expire automatically on 31 May 2022, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under clause F9 (Extension of Initial Contract Period).

A3 Contractor’s Status

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

A4 Authority’s Obligations

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

A5 Notices

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

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

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

- a) For the Authority:
Address:
Department for Work and Pensions,
Quarry House,
Quarry Hill,
Leeds,
L2S2 7UA,
For the attention of: DWP Commercial Directorate, Corporate Services,
Transcriptions Service Category Manager
Email: professional.services@dwp.gsi.gov.uk
- b) For the Contractor: [REDACTED]
Address: [REDACTED]
For the attention of: [REDACTED]
Email: [REDACTED]

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

A6 Mistakes in Information

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

A7 Conflicts of Interest

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the

Authority under the provisions of this Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

A7.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A7.3 This clause A7 shall apply during the continuance of this Contract and for a period of two (2) years after its termination.

A8 Prevention of Fraud

A8.1 The Authority places the utmost importance on the need to prevent Fraud and irregularity in the delivery of this Contract. Contractors and its Sub-contractors are required to:-

- a) have an established system that enables the Contractor and its Staff to report inappropriate behaviour by colleagues in respect of Contract performance claims;
- b) ensure that their performance management systems do not encourage individual Staff to make false claims regarding achievement of Service Levels;
- c) ensure a segregation of duties within the Contractor's or Sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of Contract performance to the Authority;
- d) ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) monthly intervals, to ensure effective and accurate recording and reporting of Contract performance.

A8.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Contractor's Staff, including its directors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or Fraud has occurred or is occurring.

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

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

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

A9 Exclusion of Sub-contractors

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

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

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

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

A10 Volumes

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

B.SUPPLY OF SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in this Contract, including the Specification (which forms part of the Contract) and the provisions of the Contract

in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B2 Provision and Removal of Equipment

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

B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Authority's Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default including a member of the Authority's personnel physically breaking the Equipment or losing a piece of Equipment. The Contractor shall provide for the haulage or carriage to the Authority Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.

B2.4 The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.

B2.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:-

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

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

B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Authority's Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Authority Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its Staff.

B2.7 The Authority may at its option

- a) purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.
- b) request that the Contractor transfers ownership and possession of all Equipment that is a recording device used in connection with this Contract) at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract at nil cost to the Authority save for the costs referred to in clause B2.8 below.

B2.8 The Authority shall be responsible for paying the reasonable costs involved in the transfer of ownership of the Equipment specified in clause B2.7(b) from the Contractor to the Authority subject to clause B2.9.

B2.9 The Contractor shall provide to the Authority a breakdown and supporting evidence as may be reasonably required by the Authority's Representative of the costs referred to in clause B2.8 and the Contractor shall obtain written agreement of the Authority for the Authority to pay such costs. Any dispute regarding the costs referred to in clause B2.8 or the evidence provided under this clause B2.9 shall be resolved using clause I2 (Dispute Resolution).

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and the standards specified in this Contract. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 While not in any way limiting any other provision of this Contract, in delivering the Services, the Contractor and any of its Sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

B3.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.4 The Authority will conduct a review of the performance of this Contract at the frequency specified in paragraph 10.10 of the Specification during the Contract Period. During this review, a performance report will be agreed.

B3.5 If the Contractor fails to provide the Services in accordance with:-

- a) any individual Service Level measured on a monthly basis; or
- b) any relevant standard of the Services agreed in writing with the Authority;

the Contractor shall pay the Authority the Service Credit set out in Schedule 4 (Contract Price).

B3.6 The Parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Authority or a price reduction in order to appropriately reflect the diminution in the service provided by the Contractor, or has otherwise been agreed by the Parties as reasonable and proportionate in order to protect the Authority's legitimate commercial interests. The Contractor has taken the Service Credit into account in setting the level of the Contract Price.

B4 Key Personnel

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

B4.2 The Key Personnel shall not be released from supplying the Services without prior Approval.

B4.3 Any replacements to the Key Personnel shall be subject to prior Approval. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

B5 Contractor's Staff

B5.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:-

a) any member of the Staff; or

b) any person employed or engaged by any member of the Staff,

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

B5.2 At the Authority's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from the date of request and in advance of admission to the Authority's Premises, specifying the capacities in which they are involved in the provision of the Services and provide such other information as the Authority may reasonably request in connection with this clause B5.2.

- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.
- B5.4 Not Used
- B5.5 The Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- B5.6 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B5.7 The Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- B5.8 The Contractor shall further use all reasonable endeavours to ensure that its Staff who are not EC nationals are legally entitled to reside in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.9 If the Contractor, in the reasonable opinion of the Authority, fails to comply with clauses B5.5 and B5.6 the Authority will be entitled to consider that failure a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.2A.

B6 Inspection of Premises – Not Used

B7 Licence to Occupy Premises – Not Used

B8 Property – Not Used

B9 Offers of Employment

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

**B10 Transfer of Undertakings (Protection of Employment) (TUPE)
Application of the TUPE Regulations on Commencement**

B10.1. The Authority and the Contractor agree that the commencement of the Services (or any relevant part of the Services) will be a Relevant Transfer in relation to the Transferring Employees.

B10.2 The Authority and the Contractor acknowledge and accept that under the TUPE Regulations, the contracts of employment of the Transferring Employees will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10(2) of the TUPE Regulations) on and from the Relevant Transfer Date as if originally made between the Transferring Employees and the Contractor and/or any Subcontractor.

B10.3 The Parties acknowledge that the Incumbent Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions which in any case are attributable in whole or in part to the period up to (but excluding) the Relevant Transfer Date.

Provision of Information

B10.4 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and/or at the Authority's discretion, the Incumbent Contractor, in writing such information as is necessary to enable the Authority and/or the Incumbent Contractor to carry out their respective duties under Regulation 13 of the TUPE Regulations. The Authority shall, or procure that the Incumbent Contractor shall (as applicable), promptly provide to the Contractor in writing such information as is necessary to enable the Contractor and/or any Sub-contractor to carry out their respective duties under the TUPE Regulations.

Incumbent Contractor Indemnities

B10.5 Subject to clause B10.5, the Authority shall use reasonable endeavours to procure that the Incumbent Contractor shall indemnify the Contractor and any Sub-contractor from and against all Loss in connection with, or as a result of:-

- a) any claim or demand in respect of any Transferring Employee arising out of their employment or the termination of their employment provided that this arises from or as a result of any act, negligence, fault or omission of the Incumbent Contractor occurring before the Relevant Transfer Date;
- b) any claim or demand arising from or as a result of the breach or non-observance by the Incumbent Contractor occurring before the Relevant Transfer Date of:-
 - (i) any collective agreement applicable to the Transferring Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Employees which the Incumbent Contractor is contractually bound to honour;

- (iii) any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Incumbent Contractor to comply with any legal obligations to such trade union, body or person arising before the Relevant Transfer Date;
- (iv) any failure by the Incumbent Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employee in respect of the period to (but excluding) the Relevant Transfer Date;
- (v) any claim made by or in respect of any person employed or formerly employed by the Incumbent Contractor other than a person identified as a Transferring Employee for whom it is alleged the Contractor and/or any Sub-contractor (as appropriate) may be liable by virtue of the TUPE Regulations and/or the Acquired Rights Directive 77/187 EC (as amended); and
- (vi) any claim made by or in respect of the Transferring Employees or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Employee relating to any failure by the Incumbent Contractor to comply with obligations under Regulation 13 of the TUPE Regulations, save if that failure arises from the failure of the Contractor or any Sub-contractor to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

B10.6 The indemnities in clause B10.5 shall not apply to the extent that the Losses arise or are attributable to an act or omission of the Contractor or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Losses:-

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

Contractor Indemnities

B10.7 Subject to clause B10.8, the Contractor shall indemnify the Authority and/or the Incumbent Contractor from and against all Loss in connection with, or as a result of:-

- a) any claim or demand in respect of any Transferring Employee arising out of their employment or the termination of their employment provided that this arises from or as a result of any act, negligence, fault or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
- b) any claim or demand arising from or as a result of the breach or non-observance by the Contractor or any Sub-contractor occurring on or after the Relevant Transfer Date of:-
 - (i) any collective agreement applicable to the Transferring Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Employees which the Contractor or any Sub-contractor is contractually bound to honour;
 - (iii) any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligations to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (iv) any claim by any Transferring Employee that the identity of the Contractor or Sub-contractor is to that Transferring Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-contractor or any proposed measures of the Contractor or any Sub-contractor are to that employee's detriment whether such claim arises before, on or after the Relevant Transfer Date; and
 - (v) any claim made by or in respect of the Transferring Employees or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Employee relating to any failure by the Contractor or any Sub-contractor in to comply with obligations under Regulation 13 of the TUPE Regulations, save if that failure arises from the failure of the Incumbent Contractor or the Authority (as applicable) to comply with its obligations under Regulation 13 of the TUPE Regulations.

B10.8 The indemnities in clause B10.7 shall not apply to the extent that the Losses arise or are attributable to an act or omission of the Authority **OR** the Incumbent Contractor whether occurring or having its origin before on or after the Relevant Transfer Date including, without limitation, any failure to comply with its obligations under the TUPE Regulations.

TUPE Surcharge - Introduction

B10.9.1 This clause B10.9 sets out the process for determining the TUPE Surcharge, if a Relevant Transfer takes place and in respect of the following:-

- a) annual salary;
- b) annual national insurance cost;
- c) annual pension cost;
- d) holiday entitlement;
- e) annual life insurance cost;
- f) annual sick pay entitlement;
- g) maternity/paternity costs; and
- h) any other cost arising directly from the contract of employment of the Transferring Employees and/or Relevant Employees for which there is an equivalent cost applicable to the employed staff used by the Contractor to calculate the TUPE Surcharge.

TUPE Surcharge Process

B10.9.2 Where a Relevant Transfer takes place, or will take place, the Contractor shall, no later than thirty (30) days after the Relevant Transfer Date, submit to the Authority's Representative's calculation of the TUPE Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the Authority's Representative to corroborate and assess the calculation of the TUPE Surcharge.

B10.9.3 On receipt by the Authority of the Contractor's calculation of the TUPE Surcharge in accordance with clause B10.9.2, the Authority's Representative shall either:-

- a) notify the Contractor in writing of acceptance of the TUPE Surcharge relating to the Relevant Transfer; or
- b) request further information/evidence in respect of the calculation.

B10.9.4 Where the TUPE Surcharge is agreed in accordance with clause B10.9.3(a) or following the receipt of further information/evidence in accordance with clause B10.9.3(b), the Authority's Representative shall notify the Contractor in writing within thirty (30) days of receiving such further information/evidence.

B10.9.5 On agreement of the TUPE Surcharge, the Authority will pay the Contractor the amount of the TUPE Surcharge within thirty (30) days of receipt of a valid undisputed invoice from the Contractor.

B10.9.6 In the event that the Contractor and the Authority's Representative are unable to agree the TUPE Surcharge following the request for further information/evidence in accordance with clause B10.9.3(b) and within the time frame specified in clause

B10.9.4, the Parties shall resolve the dispute using the dispute resolution procedure in clause I2.

Annual Review of TUPE Surcharge

B10.9.7 The TUPE Surcharge shall be reviewed by the Authority's Representative at the commencement of each Contract Year.

B10.9.8 The Authority shall cease to be liable to pay the TUPE Surcharge in respect of a particular Transferring Employee and/or Relevant Employee from the date upon which he ceases to be employed by the Contractor or engaged in connection with this Contract (whichever occurs the earliest).

B10.9.9 In each Contract Year, the Contractor shall, no later than thirty (30) days from the commencement of that Contract Year, submit to the Authority's Representative's calculation of the TUPE Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the Authority's Representative to corroborate and assess the calculation of the TUPE Surcharge.

B10.9.10 On receipt by the Authority of the Contractor's calculation of the TUPE Surcharge in accordance with clause B10.9.9, the Authority's Representative shall either:-

- a) notify the Contractor in writing of acceptance of the adjusted TUPE Surcharge; or
- b) request further information/evidence in respect of the calculation.

B10.9.11 Where the TUPE Surcharge adjustment is agreed in accordance with clause B10.9.10(a) or following the receipt of further information/evidence in accordance with clause B10.9.10(b), the Authority's Representative shall notify the Contractor in writing within thirty (30) days from the commencement of each Contract Year.

B10.9.12 In the event that the Contractor and the Authority's Representative are unable to agree the adjustment to the TUPE Surcharge adjustment within the period specified in clause B10.9.11 above, the Parties shall resolve the dispute using the dispute resolution procedure in clause I2.

Adjustment to the TUPE Surcharge

B10.9.13 Where the adjusted TUPE Surcharge for the Contract Year is lower than the TUPE Surcharge in the preceding Contract Year, the Contractor shall deduct the difference from the next available and where necessary, subsequent invoices for the TUPE Surcharge.

B10.9.14 The TUPE Surcharge adjusted in accordance with clause B10.9.13 above shall be used as the benchmark in the subsequent annual TUPE Surcharge review.

B10.9.15 Where the adjusted TUPE Surcharge is agreed and is more than the TUPE Surcharge in the preceding Contract Year, the Authority will pay the Contractor the amount of the TUPE Surcharge within thirty (30) days of a valid undisputed invoice.

B10.9.16 Within sixty (60) days of the end of the final Contract Year or earlier termination (whichever is earliest) and where the adjusted TUPE Surcharge is lower than the TUPE Surcharge for the final Contract Year, the Contractor will pay the Authority the difference between the adjusted TUPE Surcharge and the TUPE Surcharge.

B10.9.17 Within sixty (60) days of the expiry of the final Contract Year or earlier termination (whichever is earliest) and where the adjusted TUPE Surcharge is higher than the TUPE Surcharge for the final Contract Year, the Authority will pay the Contractor the difference between the adjusted TUPE Surcharge and the TUPE Surcharge.

Right of Audit in relation to the TUPE Surcharge

B10.9.18 The Authority's Representative reserves the right to review and audit the calculation of the TUPE Surcharge at any time and the Contractor shall repay to the Authority any over payment between the TUPE Surcharge used to adjust the costs submitted by the Contractor pursuant to the items listed in clause B10.9.1(a)-(h) and the adjusted TUPE Surcharge calculated following a review and audit of the TUPE Surcharge carried out by the Authority.

Redundancy Costs

B10.10.1 The Contractor shall remain responsible for any redundancy costs that accrue at the expiry or earlier termination of the Contract. For the avoidance of doubt, the Authority will not be responsible for redundancy liabilities in respect of staff not eligible to transfer to a Replacement Contractor at the expiry or earlier termination of the Contract.

Redundancy Surcharge

B10.10.2 This clause B10.10 sets out the process for determining Redundancy Surcharge, if a Relevant Transfer takes place. A Redundancy Surcharge shall be payable to the Contractor by the Authority in the event that:-

- a) within three (3) Months from the Relevant Transfer Date, a Transferring Employee and/or Relevant Employee is compulsorily dismissed by the Contractor by reason of redundancy (as such term is defined in section 139 of the Employment Rights Act 1996) as a result of an economic technical organisational reason entailing changes to the workforce; and
- b) the Contractor has followed a fair dismissal procedure and complied with all contractual and legislative requirements (the "**Eligible Redundant Employee**").

B10.10.3 The Redundancy Surcharge does not include any increases made by the Contractor to any Eligible Redundant Employee's contractual entitlement to redundancy or notice periods, and shall not apply to Eligible Redundant

Employees whose employment terminates by reason of redundancy more than three (3) Months after the Relevant Transfer Date to which their employment relates.

B10.10.4 Where a Relevant Transfer takes place, or will take place, the Contractor shall not make any Transferring Employee and/or Relevant Employee redundant without consulting the Authority within three (3) Months of the Relevant Transfer Date.

B10.10.5 The Redundancy Surcharge shall be zero unless the Contractor has consulted with the Authority's Representative pursuant to clause B10.10.4.

B10.10.6 The Contractor shall mitigate the effects of any Redundancy Surcharge by:-

- a) redeploying such people where it is practicable for the Contractor to do so; or
- b) where redeployment is not practicable, taking such reasonable mitigation steps to minimise the costs of redundancy where practicable; and
- c) complying with the law and any reasonable instructions from the Authority.

B10.10.7 Where redundancy is unavoidable, the Contractor shall provide the Authority with its estimate of the Redundancy Surcharge together with a breakdown and supporting evidence as may be reasonably necessary for the Authority to corroborate and assess the calculation of the Redundancy Surcharge.

B10.10.8 On receipt of the Contractor's calculation of the Redundancy Surcharge the Authority shall either:-

- a) notify the Contractor in writing of acceptance of the Redundancy Surcharge relating to the Relevant Transfer; or
- b) request further information/evidence in respect of the Redundancy Surcharge.

B10.10.9 Where the Redundancy Surcharge is agreed in accordance with clause B10.10.8(a) or following the receipt of further information/evidence in accordance with clause B10.10.8(b), the Authority's Representative shall notify the Contractor in writing within thirty (30) days of receiving such further information/evidence.

B10.10.10 In the event that the Contractor and the Authority's Representative are unable to agree the Redundancy Surcharge within the period specified in clause B10.10.9 above, the Parties shall resolve the dispute using the dispute resolution procedure in clause I2.

B10.10.11 When claiming payment for any sums under this clause, the Contractor shall forward to the Authority such evidence as the Authority reasonably requests to the Authority's reasonable satisfaction that the payments claimed by the Contractor fall within the definition of Redundancy Costs and shall include (but not limited to) providing evidence:-

- a) of the identity of the Redundant Employee
- b) that the Redundant Employee were dismissed by reason of the Redundancy;
- c) of the contractual entitlements of any Redundant Employee;
- d) to demonstrate that any Notice Payments claimed are payable; and
- e) such information relating to pay as may be necessary for the Authority to verify the Redundancy Costs.

B11 Pre-Service Transfer Obligations

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

- a) the ages, dates of commencement of employment or engagement, gender and place of work of those personnel;
- b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- c) the identity of the employer or relevant contracting party;
- d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit

schemes, share option schemes and company car schemes applicable to them;

- g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- j) any other "employee liability information" as such term is defined in Regulation 11 of the TUPE Regulations.

B11.2 Where the Contractor provides information in accordance with clause B11.1 and the Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information, the Contractor shall notify the Authority within seven (7) Working Days of any such change or discovery, provided that at least twenty (20) Working Days prior to the Service Transfer Date, the Contractor shall provide the Authority or at the direction of the Authority, to any Replacement Contractor or Replacement Sub-contractor, the Contractor's Final Personnel List (which shall identify which of those personnel are Relevant Employees) and all the information set out in clause B11.1 in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).

B11.3 The Contractor warrants that all of the information provided to the Authority pursuant to clause B11.1 and B11.2 shall be accurate and complete in all material respects at the time of providing the information. The Contractor authorises the Authority to use any and all the information as it considers necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B11.4 From the date of the earliest event referred to in clause B11.1, the Contractor shall allow the Authority and/or the Replacement Contractor and/or Replacement Sub-contractor to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.

B11.5 From the date of the earliest event referred to in clause B11.1, the Contractor shall not without the prior written consent of the Authority unless genuinely in the ordinary course of business:-

- a) vary, purport or promise to vary the terms and conditions of employment or engagement of any person listed on the Contractor's Provisional Personnel List (including any payments connected with the termination of employment);

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

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

B12 Application of the TUPE Regulations on Exit

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

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

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

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

Contractor Indemnities

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

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

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

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

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

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

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

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

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

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

B12.9 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of clauses B12.6 to B12.8, and in accordance

with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Losses arising out of the termination of employment pursuant to the provisions of clause B12.8 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Losses.

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

a) shall not apply to:-

(i) any claim for:-

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

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

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

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

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

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

Replacement Contractor Indemnities

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

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

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

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

B13 Pension Protection

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

Participation

- B13.2 The Contractor and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Contractor to participate in the Schemes in respect of the Fair Deal Employees.
- B13.3 The Contractor shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor participating in the Schemes, including without limitation MyCSP's on-boarding costs.
- B13.4 The Contractor and the Authority agree that the Authority shall be entitled to terminate this Contract in the event that the Contractor:-
- a) commits an irremediable breach of the Admission Agreement; or
 - b) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty-eight (28) days of the date of a notice giving particulars of the breach and requiring the Contractor to remedy it.
- B13.5 The Contractor shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services, or where the Fair Deal Employees are returning to the Schemes for the first time to the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services and the Contractor shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date which occurs on the commencement of the Services or any relevant part of the Services.
- B13.6 The Contractor undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes. In addition, the Contractor agrees to give Eligible Employees the right to transfer their past pensionable service from the Schemes to the broadly comparable scheme. Where at the Service Transfer Date Fair Deal Employees are participating in the broadly comparable scheme, the Contractor agrees to allow such Fair Deal Employees to transfer their past pensionable service from such broadly

comparable pension scheme to the Schemes, and for the avoidance of doubt, should the amount offered by any such broadly comparable pension scheme be less than the amount required by the Schemes to fund day to day service, the Contractor agrees to pay any such shortfall to the Schemes.

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

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

Provision of Information

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

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

Indemnity

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

Subsequent Transfers

B13.11 The Contractor shall:-

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

of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

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

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

B14 Third Party Rights in relation to TUPE and Pensions

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

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

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

C2 Payment and VAT

C2.1 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

C2.2 Where the Contractor submits an invoice to the Authority in accordance with clause C2.5, the Authority will consider and verify that invoice in a timely fashion.

C2.3 The Authority shall pay the Contract Price due to the Contractor under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

C2.4 Where the Authority fails to comply with clause C2.2 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause C2.3 after a reasonable period of time has passed.

C2.5 The Contractor shall ensure that each invoice contains a valid reference number. All appropriate references and a detailed breakdown of the Services supplied and any other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 2 (Administration Requirements).

C2.6 Where the Contractor enters into a Sub-contract for the purpose of performing its obligations under the Contract, the Contractor shall include in that Sub-contract:-

- a) provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract; and
- b) a provision requiring the counterparty to that Sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses C2.2 – C2.4 (inclusive) of the Contract.

C2.7 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following an undisputed claim for payment being notified by the Contractor in accordance with the provisions of Schedule 2 (Administration Requirements).

C2.8 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.8 shall be

paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

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

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

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

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

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

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

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

C2.14 The Contractor acknowledges that the Authority has advised the Contractor that the Contractor should seek its own specialist VAT advice in relation to the Contract and, in the event of any uncertainty following specialist advice, the Contractor should seek clarification of the Contract's VAT status with HMRC.

C3 Recovery of Sums Due

C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.

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

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

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

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F9 (Extension of Initial Contract Period), the Authority may, where applicable, in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree to a Variation in the Contract Price in accordance with the provisions of this clause C4 and the principles set out in paragraphs 6 and 7 of Schedule 4. For the avoidance of doubt both Parties accept and acknowledge that any Variation to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Contractor in a manner not provided for in the terms of the Contract and the price adjustment during any period of extension of the Contract shall not exceed the rate specified in Schedule 4 Appendix 1 of the Contract.

C4.2 If the Parties are unable to agree a Variation in the Contract Price (applicable to the period of extension) in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

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

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

C5 Euro

C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C6 Third Party Revenue

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

D.STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this clause D1 ("**Prohibited Act**"). For the purposes of this clause D1, a Prohibited Act is committed when the Contractor or any Staff:-

- a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:-
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

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

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

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

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

- D1.5 The Contractor shall immediately notify the Authority in writing if it becomes aware of or suspects any Default of clauses D1.1 or D1.2, or has reason to believe that it has or any of its Staff has:-
 - a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act in clauses D1.1 or D1.2;
 - b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; or
 - c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act in clauses D1.1 or D1.2.

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

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

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

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

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

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

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

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

D2 Discrimination

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

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

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

D3 The Contracts (Rights of Third Parties) Act 1999

A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties except as specified in this Contract.

This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

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

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

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

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

D5 Health and Safety

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

D5.2 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.3 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.

D5.4 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

D6 Requirements for Timber – Not Used

D7 Tax Compliance

D7.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any occasions of Tax Non-Compliance.

D7.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:-

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

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

D8.1 The Authority shall be entitled to terminate the Contract in the event that:-

- a) the warranty given by the Contractor pursuant to clause D7.1 is false;
- b) the Contractor fails to notify the Authority of any Occasion of Tax Non-Compliance as required by clause D7.2; or
- c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable.

For the avoidance of doubt any breach of this clause D8.1 shall constitute a Material Breach.

E.PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that data to the Authority as requested.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of that data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Contractor's Business Continuity Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than three (3) Monthly intervals.
- E1.6 The Contractor shall ensure that any system or media on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Schedule 6 Appendix A.
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:-
- a) require the Contractor (at the Contractor's expense) to restore or provide for the restoration of the Authority Data or Personal Data and Sensitive Personal Data and the Contractor shall do so as soon as practicable but not later than ten (10) days; and/or;
 - b) itself restore or provide for the restoration of the Authority Data or Personal Data and Sensitive Personal Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that the Authority Data or Personal Data and Sensitive Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Contractor and any of its Sub-contractors, shall not process or transfer Authority Data (as described in the DWP Offshoring Policy) outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.

E1.10 Where the Authority has given its prior written consent to the Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with clause E1.9 of the Contract):-

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

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

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

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

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

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

E1.15 Whilst in Administration the duty of the administrator is to help the Contractor trade. This may involve the administrator seeking an organisation to buy the Contractor's business or any part of it. The assignment or novation of this Contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior Approval obtained. Where the Contract is assigned or novated with prior Approval, [INCUMBENT CONTRACTOR] must provide the Authority with all the relevant information and records necessary for the assigned or novated contract to continue to be performed.

E2 Protection of Personal Data and Sensitive Personal Data

E2.1 Each Party, including the personnel (personnel shall include servants, agents, suppliers and sub-contractors) of each Party, shall comply with their respective obligations under Data Protection Legislation in relation to their rights and obligations under this Contract and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation.

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

E2.2 The Contractor shall:-

- a) process the Personal Data and Sensitive Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract as otherwise notified by the Authority to the Contractor during the Contract Period) and shall not process Personal Data or Sensitive Personal Data for any other purpose. The Contractor shall keep a record of any processing of Personal Data and Sensitive Personal Data it carries out on behalf of the Authority;
- b) bring into effect, implement and maintain appropriate technical and organisational measures to protect the Personal Data and Sensitive Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure but not limited to take reasonable steps to ensure the reliability and competence of Staff having access to the Personal Data and Sensitive Personal Data and provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data and Sensitive

Personal Data within the timescales required by the Authority. These measures shall be appropriate to the harm which might result from any of the above, having regard to the nature of the Personal Data and Sensitive Personal Data which is to be protected;

- c) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data and Sensitive Personal Data within the timescales required by the Authority;
- d) ensure that access to Personal Data and Sensitive Personal Data is limited to those Staff who need to access the Personal Data and Sensitive Personal Data to meet the Contractor's Data Processing duties under this Contract;
- e) obtain prior written consent from the Authority in order to amend, transfer or delete the Personal Data and Sensitive Personal Data;
- f) ensure that all Staff required to access the Personal Data and Sensitive Personal Data are informed of the confidential nature of the Personal Data and Sensitive Personal Data and that they comply with the obligations set out in this clause E2. The Contractor shall ensure that Staff receive appropriate training in data protection to ensure compliance and that Staff are aware of the Contractor's Data Processing duties and their personal obligations under the laws relating to handling Personal Data and Sensitive Personal Data in connection with this Contract;
- g) ensure that none of the Staff publish, disclose or divulge any of the Personal Data and Sensitive Personal Data to any third party unless directed in writing to do so by the Authority;
- h) notify the Authority (within five (5) Working Days) if it receives:-
 - (i) a request from a Data Subject to have access to that person's Personal Data and Sensitive Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- i) provide the Authority with full cooperation and assistance in relation to any complaint, communication received or request made, including by:-
 - (i) complying with a Data Subject access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions pursuant to a request under clause E2.2(h)(i);
 - (ii) providing the Authority with full details of the complaint, communication or request pursuant to a request under clause E2.2(h)(ii);

- (iii) providing the Authority with any Personal Data and Sensitive Personal Data it holds in relation to a Data Subject within the timescales required by the Authority;
- (iv) providing the Authority with any other information requested by the Authority; and
- j) permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract.

E2.3 The Contractor shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, losses, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Contractor or any of its Staff of this clause E2.

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

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

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

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

E4 Confidential Information

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

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

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

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the

Environmental Information Regulations pursuant to clause E5 (Freedom of Information);

- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other Party's Confidential Information.

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

E4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.5 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.

E4.6 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:-

- a) to any government department, any part of the Crown, or any other Contracting Body. All government departments, any part of the Crown or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments, other parts of the Crown or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department, the Crown or any Contracting Body;
- b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

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

E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, part of the Crown, Contracting Body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.

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

E4.9 Any breach by the Contractor of clauses E4.1-E4.3 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.

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

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

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

E5 Freedom of Information

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

- E5.2 The Contractor shall and shall procure that its Sub-contractors shall:-
- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised in writing to do so by the Authority.
- E5.5 The Contractor acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of FOIA ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:-
- a) in certain circumstances without consulting the Contractor; or
 - b) following consultation with the Contractor and having taken their views into account.
- E5.6 Where clause E5.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- E5.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- E5.8 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 5 (Commercially Sensitive Information) is of indicative value only and

that the Authority may be obliged to disclose it in accordance with clause E5.5 and/or any other legal requirement.

E6 Publicity, Media and Official Enquiries

E6.1 The Contractor shall not:-

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

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

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

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority Premises, and shall ensure that all Staff comply with such requirements.

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

E7.3 The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Plan and the Security Policy.

E7.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy. Any changes shall be agreed in accordance with the procedure in clause F3.

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

E8 Intellectual Property Rights

E8.1 Save as granted under the Contract, neither the Authority nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The Contractor acknowledges that the Authority Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may exist in the Authority Data.

E8.2 The Authority shall grant the Contractor a non-exclusive, revocable, free licence for the Contract Period to use the Authority's Intellectual Property Rights where it is necessary for the Contractor to supply the Services. The Contractor shall have

the right to sub license the Sub-contractor's use of the Authority's Intellectual Property Rights. At the end of the Contract Period the Contractor shall cease use, and shall ensure that its Staff cease use of the Authority's Intellectual Property Rights.

E8.3 The Contractor shall grant the Authority a non-exclusive, revocable, free licence for the Contract Period to use the Contractor's Intellectual Property Rights where it is necessary for the Authority in the provision of the Services. At the end of the Contract Period the Authority shall cease use of the Contractor's Intellectual Property Rights.

E8.4 All Intellectual Property Rights in any Authority Data or other material:-

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

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

E8.5 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall ensure that the owner of those rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable. That licence or sub-licence shall also include the right for the Authority to sub-license, transfer, novate or assign to another Contracting Body, the Replacement Contractor or to any other third party supplying services to the Authority.

E8.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:-

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

- E8.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:-
- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - b) shall take due and proper account of the interests of the Authority; and
 - c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- E8.8 The Authority shall at the request of the Contractor provide to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the Contract. The Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so save to the extent that such claim or demand is caused by the negligence or breach of contract of the Authority.
- E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:-
- a) modify any or all of the Services without reducing the performance or functionality, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Services or to the substitute Services;
or
 - b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms and conditions which are acceptable to the Authority,

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

E9 Audit and the National Audit Office

E9.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's Representatives such access to those records as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor including its Staff shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

E9.3 Except where an audit is imposed on the Authority by a Regulatory body, the Authority may at any time during the Contract Period and for a period of twelve (12) months after the Contract Period, conduct an audit for the following purposes:-

- a) to verify the accuracy of any charges that become due and payable by the Authority to the Contractor in respect of the Services (and proposed or actual variations to them in accordance with the Contract), or the costs of all suppliers used by the Contractor (including Sub-contractors) in the provision of Services;
- b) to review the integrity, confidentiality and security of the Authority Data;
- c) to review the Contractor's compliance with the DPA, FOIA and other Law applicable to the Services;
- d) to review the Contractor's compliance with its obligations under the Contract;
- e) to review any records created during the provision of the Services;
- f) to review any books of account kept by the Contractor in connection with the provision of the Services;
- g) to carry out the audit and certification of the Authority's accounts;

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

of audit incurred by the Authority if this was due to a Default by the Contractor within twenty (20) Working Days.

E10 Exceptional Audits

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

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

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

E10.2 If the Authority notifies the Contractor of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Contractor shall provide access in accordance with clause E9.5 as soon as reasonably practicable after such request and in any event within forty eight (48) hours.

E11 Audit Costs

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

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

E12 Malicious Software

E12.1 The Contractor shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

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

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

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

F.CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where clauses F1.4 and F1.5 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

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

F1.3 Where the Authority has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority or as soon as reasonably practicable if requested within ten (10) Working Days.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract. Any assignment under this clause F1.4 shall be subject to:-

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

F1.5 In the event that the Contractor assigns the right to receive the Contract Price under clause F1.4, the Contractor or the Assignee shall notify the Authority in

writing of the assignment and the date upon which the assignment becomes effective.

- F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least five (5) Working Days prior to submission of the relevant invoice.
- F1.7 The provisions of clause C (Payment and Contract Price) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- a) any Contracting Body;
 - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority,

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

- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall continue in full force and effect for bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):-
- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under

the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

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

F2 Waiver

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

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

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

F3 Contract Change

F3.1 No change, amendment, Variation, restatement or supplement to this Contract shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 11 (Change Control Procedure) and signed on behalf of the Parties.

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

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

F4 Severability

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

as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the Event of Inadequate Performance

F5.1 The Authority shall be entitled to take all reasonable steps to investigate any complaint it receives regarding:-

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

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

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

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

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

- a) The Authority shall either approve or reject in writing the Performance Improvement Plan within ten (10) Working Days (or such other period as notified by the Authority to the Contractor) of its receipt pursuant to this clause F5.2.2.
- b) If the Authority rejects the Performance Improvement Plan it shall set out the reasons and the Contractor shall address all such reasons in a revised Performance Improvement Plan, which it shall submit to the Authority within

a further period of ten (10) Working Days (or such other period as notified by the Authority to the Contractor) (“**Revised Performance Improvement Plan**”) of its receipt of the Authority's reasons.

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

F5.2.3 In the event that:-

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

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

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

- (i) request a Performance Improvement Plan from the Contractor in respect of the Default in accordance with clause F5.2.2, irrespective of whether a previous Performance Improvement Plan has previously been requested been approved; or

- (ii) refer the matter for resolution by the dispute resolution procedure set out in clause I.2 (Dispute Resolution); or
- (iii) deem the Default as a Material Breach and exercise its rights under clause F5.2A.

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

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

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

F6 Remedies Cumulative

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

F7 Monitoring of Contract Performance

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

F8 Financial Assurance

F8.1 The Contractor is required to disclose immediately to the Authority any material changes to its organisation that impacts on its on-going financial viability including

details of the revenue replacement strategy and impact awareness on its organisation's profitability and stability where significant contracts are due to end.

F8.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.

F8.3 Only where requested by the Authority, the Contractor is required to provide any financial information which could include but is not limited to a copy of the annual accounts and annual returns.

F8.4 Where a Parent Company Guarantee has been requested by the Authority, the Contractor is required to provide the documents detailed in clause F8.3 for the Parent Company, including a translation and conversion (profit and loss, balance sheet and key balance sheet notes) into GBP (£), stating the conversion rate used.

F9 Extension of Initial Contract Period

F9.1 The Authority may, by giving written notice to the Contractor not less than three (3) Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to twelve (12) Months. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period) throughout any such extended period.

F10 Entire Agreement

F10.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F10.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

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

- a) the clauses of the Contract;
- b) the Specification
- c) the remaining Schedules with the exception of the Tender;

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

F11 Counterparts

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

G. LIABILITIES

G1 Liability, Indemnity and Insurance

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

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

G1.1.2 The Contractor's liability in respect of the indemnities in clauses B10, B12, B13, C2.8, E8.6 and E8.8 shall be unlimited.

G1.1.3 The Authority's liability in respect of the indemnities in clause B10 shall be unlimited.

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

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor and/or its Staff or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements) which may arise out of, or in consequence of:-
 - (i) the supply (or the late or purported supply), of the Services;
 - (ii) the performance or non-performance by the Contractor of its obligations under the Contract;

- (iii) the presence of the Contractor or any of its Staff on the Authority's Premises, including financial loss arising from any advice given or omitted to be given by the Contractor; or
- (iv) any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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

G1.4 Subject always to clause G1.1 and without prejudice to clause H2, the liability of either Party for Defaults shall be subject to the following financial limit:-

- a) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed 150% of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises.

G1.5 Subject always to clause G1.1 and G2 and as specified in clause E2.3, in no event shall either Party be liable to the other for any:-

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

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

G1.7 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

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

G2.2 Any excess or deductibles under the insurance referred to in clause G2.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or Sub-contractors, as applicable.

G2.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.

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

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

G3 Warranties and Representations

G3.1 The Contractor warrants and represents that:-

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- b) in entering the Contract it has not committed any Fraud;
- c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;

- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract:-
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

G4 Deed of Guarantee

G4.1 Where a Guarantee is requested by the Authority, this Contract is conditional upon the Contractor procuring that the Guarantor shall:-

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

G4.2 On satisfaction of clause G4.1, the Authority shall promptly notify the Contractor that those conditions have been satisfied.

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

G4.4 Where a Guarantee has been requested by the Authority, for the avoidance of doubt, if clause G4.1 has not been satisfied, on or before the Commencement Date this Contract shall not take effect.

H.DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

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

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in clauses H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act

2010 ("Change of Control"). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:-

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

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

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

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

H1.4 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a partnership** and:-

- a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is for any reason dissolved;

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

H1.5 The Authority may terminate the Contract with immediate effect by notice in writing where the **Contractor is a limited liability partnership** and:-

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- b) it is for any reason dissolved;
- c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986;
- d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- e) a petition is presented for its winding up (which is not dismissed within fourteen (14) days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- f) a receiver, or similar officer is appointed over the whole of any part of its assets;
- g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

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

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

H1A Termination of Contract Under the Public Contracts Regulations 2015

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

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

H2 Termination on Default

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

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

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

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

H2.3 If:

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

has put in place measures to ensure that such Persistent Breach does not recur,

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

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

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

H3 Break

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

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

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

H4 Consequences of Expiry or Termination

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

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such Loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3. Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause H3. The Contractor shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

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

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

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

- a) repay at once to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) cease all use of all the Authority's Intellectual Property Rights, generated Intellectual Property Rights, and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same;
- c) return all Authority Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority; and
- d) plan for the orderly handover of the Services to the Authority or its Replacement Contractor including compliance by the Contractor of the provisions of this clause H4.4 at no additional charge to the Authority or its Replacement Contractor; and

- e) provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Authority may reasonably require to enable the Authority to provide the Services in-house or to procure their provision by a Replacement Contractor.

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

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration. Nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination or expiry of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses B10 Transfer of Undertakings (Protection of Employment) (TUPE), B11 (Pre-Service Transfer Obligations), B12 (Application of TUPE Regulations on Exit), B13 (Pension Protection), B14 (Third Party Rights in relation to TUPE and Pensions), C (Payment and Contract Price) for payments due in accordance with the Contract, C3 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination), I1 (Governing Law and Jurisdiction) and paragraph 15.2 of Schedule 4.

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in performing of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval in relation to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority (acting reasonably), the Authority may terminate the Contract with immediate effect or such period as specified by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In

addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H5.6 The Contractor shall have a Business Continuity Plan in place, agreed with the Authority, to ensure that the Service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to the Contractor's ICT system) to the Contractor's operations, and those of Sub-contractors, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period.

H6 Recovery upon Termination

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

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

I.DISPUTES AND LAW

I 1 Governing Law and Jurisdiction

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

I 2 Dispute Resolution

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

- I 2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and its Staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- a) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
 - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
 - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer

period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

FORM OF AGREEMENT

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

SIGNED for and on behalf of

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

Name

Position

Signature

Date Of Signature

SIGNED for and on behalf of

[REDACTED]

Name

Position

Signature

Date Of Signature

Name

Position

Signature

Date Of Signature

SCHEDULE 1 – THE SERVICES

1 General

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

Document	Dated
Terms and Conditions of Contract	
Specification	 Attachment 4A Specification v1.0.doc
Invitation to Tender	[REDACTED]
Tender	[REDACTED]
Clarifications	[REDACTED]
Implementation Plan	See paragraph 2.1 of this Schedule 1 below.
Contractor Guidance	Transparency Guidance document at https://www.gov.uk/government/publications/procurement-and-contracting-transparency-requirements-guidance

2 Plan to Set Up and Mobilise Operations

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

The Commencement Date of this Contract is 1st June 2018: All implementation activities and actions MUST be completed within the identified timescales and before the Commencement Date.		
Activity	Delivery date	
1	Implementation Plan covering activities listed below.	Within five (5) Working Days of confirmation of Contract award.
2	TUPE plans and schedule (if appropriate)	1 December 2017
3	Assignment of the role of Contractor's Representative and resources	1 December 2017
4	Provide governance and reporting structures/details	26 January 2018

5	Detailed Implementation Plan and associated assumptions, risks, issues and decisions	26 January 2018
6	Develop functional requirements – which may include <ul style="list-style-type: none"> • Process overview • Organisation • Management Information • Systems and mechanisms supporting the new processes • Forms/draft letters (if appropriate) • Dependencies, constraints, assumptions • Audit and control requirements • Any additional stakeholders impacted • Process maps and activity descriptors 	26 January 2018
7	Full Implementation Plan to cover the following but not limited to: <ul style="list-style-type: none"> • Task profile -a specific list of actions and dates, including identification of responsibilities • Business continuity/Disaster Recovery • Security-to adhere to requirements included in Schedule 6 • Performance Management • Issues and incidents processes • Complaint and escalation processes 	26 January 2018
8	Exit activities- development of plan to work with incumbent supplier (s)	23 February 2018
9	Guidance documents to be provided	23 February 2018
10	Communication strategy and plan	23 February 2018
11	Learning and Development activities and plan	23 February 2018
12	Provide Contract handbook	23 February 2018
13	Assurance process/information for any KPIs/SLAs	23 February 2018
14	Management Information terms and reporting schedules	23 February 2018
15	Testing plans and schedule	23 February 2018
16	Go live	1 st June 2018
17	Details of the Contractor's representative responsible for managing the exit and a copy of the exit management plan	Within one (1) Month of the Commencement Date

3 Working Hours

3.1 The Services shall be carried out at the following times;
Monday to Friday 8.00am – 5.00pm

3.2 The Contractor shall not provide the Services on the following public holidays;

New Year's Day	Spring Bank Holiday
Good Friday	August Bank Holiday
Easter Monday	Christmas Day
May Day	Boxing Day

The Authority will notify the Contractor of any changes to Authority operating hours in line with the Authority's transformation of services, and the Contractor shall be required to facilitate such changes to hours at no additional cost to the Authority.

4 Recruitment Through Jobcentre Plus

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

4.2 The Contractor is also encouraged to notify Jobcentre Plus of any other vacancies that may arise. The Contractor may in addition use other recruitment methods.

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS

1 Authority's Authorisation

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

Name: [REDACTED]
Title: [REDACTED]

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

2 Contractor's Authorisation

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

Name: [REDACTED]
Title: [REDACTED]

Key Personnel (Names and Job titles) to be inserted

3 Payment Information

- 3.1 The Authority shall issue a purchase order to the Contractor prior to the Commencement Date. All invoices in respect of the Services will be paid via this Purchase Order Number.

- 3.2 All invoices payable in compliance with the requirements of clause C2 of the conditions of Contract, that must include the appropriate Purchase Order Number, shall be sent to the following address;

[REDACTED]

- 3.3 The Contractor shall accept the Government Procurement Card as a means of payment for the Services where such card is agreed with the Authority to be a suitable means of payment. The Contractor shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.

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

Volumes and Performance against Service Levels as detailed in the Statement of Requirements

This will be derived from an MI Report identifying which Service Levels have been met with supporting information on calculation.

Details of Service Credits applied to the invoice and their calculation.

MI shall be sent with a copy of the monthly invoice, electronically to an email address specified in the implementation phase.

4 Disputed Claims

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

5 Final Claims

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

SCHEDULE 3 – MONITORING REQUIREMENTS

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

1 Reviewing Contract Performance

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

have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the Contract.

2 Access

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

3 Health and Safety Responsibilities of the Authority Visiting Officers

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

4 Contractor Information (MI) Requirements

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

Contractor Information Required	Frequency or Date Required by
Submit copy of Board Minutes for Parent Company where PCG has been signed	Date as outlined in clause G4
Full and final Security Plan in accordance with Schedule 6	Within twenty (20) Working Days after the Commencement Date and reviewed at least annually thereafter.
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Schedule 7	Within six (6) Months of the Commencement Date and at least annually thereafter.
Diversity & Equality Delivery Plan in accordance with Schedule 8	Within six (6) Months of the Commencement Date and at least annually thereafter.
Workforce Monitoring Data Template – Appendix 1 of Schedule 8 (Life Chances)	Within six (6) Months of the Commencement Date and at least annually thereafter.
HMG Baseline Personnel Security Standard - Contractor’s Declaration	Within four (4) weeks of the Commencement Date and submitted

see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors	for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31 st January for year ending 31 st December)
Supply chain expenditure with SMEs (Quarterly return)	The Contractor, and where applicable, its Sub-contractors shall identify the volume of expenditure they undertake with SMEs in the delivery of this Contract and submit this information to the Authority on a quarterly basis.

Appendix A –Service Levels

KPI’s/ Service Levels

1. In delivering the Services the Contractor acknowledges that it is under an obligation to meet the following Service Levels and furthermore that failure to meet all or any of the defined such Service Levels, shall constitute a Default entitling the Authority to claim Service Credits. Service Credits are without prejudice to the Authority's other rights and remedies under the Contract or at law.
2. The following Service Levels have been agreed between the Parties.

Service Level
The Contractor must provide the Authority with a verbatim transcription service which is 98% accurate within the standards specified in the Specification, priority and urgent timescales for all cases regardless of the turnaround time.
The Contractor must complete 100% of transcription activity, for standard cases, within five (5) Working Days of receipt. Standard requests will be the majority of requests.
The Contractor must complete 100% of transcription activity, for priority cases, within three (3) Working Days of receipt. Priority Requests will be between 5-10% of the total.
The Contractor must complete 100% transcription activity, for urgent cases, within one (1) Working Day of receipt. Urgent cases will be exceptional i.e. less than 2% of the total volume.
100% of Re-Work required must be completed at the latest by 3pm on the following Working Day of the day that the Contractor received the request for Re-Work. Any requests for rework received after 5pm will be treated as being received the next Working Day.
The Contractor must supply all MI as required by the Customer within seven (7) Working Days of the Month end.
100% of incidences of machines requiring repair reported to the Contractor must result in a working machine being delivered to the location stipulated by the Contracting Authority within five (5) Working Days. Any reported faults requiring repair received after 5pm will be treated as being received the next Working Day.

Appendix B – Performance Review Table for Contract Management – Not Used

SCHEDULE 4 – Contract Price

1. General

1.1. For the performance of the Services, the Contractor shall be paid the Contract Price calculated using the prices and rates specified in this Schedule 4.

1.2 The pricing matrix from the successful tender by [REDACTED] is attached
[REDACTED]

2. Types of Payment

2.1. The pricing methodology set out in this Schedule 4 governs the prices and rates payable in respect of the Services provided by the Contractor pursuant to this Contract. The payments specified shall be payable to the Contractor for the Services provided during the Contract Period, and shall be payable in arrears on a monthly basis.

2.2 The payment rate applicable to the delivery of actual recorded minutes transcribed will be calculated with reference to the rates as set out in this Schedule 4 (Contract Price) Appendix 1 (Rates Payable). Rate 1 applies per minute of recorded time up to the Contract volume of recorded time of 4,344,828 minutes. Rate 2 is paid when the Contract volume of recorded time has been exceeded. Rate 1 includes set up costs that are excluded from Rate 2. No rate is payable for hard copy submissions.

2.3 Unless otherwise stated in this Schedule 4 (Contract Price) the payments set out in this Schedule 4 shall relate to and shall constitute full consideration for the provision of the Services by the Contractor.

3. VAT

3.1 All prices submitted should be exclusive of VAT.

4. Additional Costs

4.1. Subject to the provisions of this Contract (including without limitation this Schedule 4), the charges under the Contract Price are fixed unless otherwise agreed in accordance with clause F3 (Contract Change) and this Schedule 4. Additional or unforeseen costs incurred by the Contractor in delivering the Services shall be borne solely by the Contractor.

5. Service Credits

5.1. Service Credits are calculated on a monthly basis, as specified in Appendix 1 of this Schedule 4 (Contract Price). The Service Credits are calculated against the relevant Month's total invoice value by applying the relevant Service Credit %

value. If more than one service level is failed the total Service Credit % is applied to the invoice value.

5.2. A Service Credit cap of 15% will be applied therefore the maximum % that can be applied to the invoice value is 15% in any one Month.

6. Prices for Contract Variation

6.1. The Contractor shall use the Financial Model to demonstrate any proposed revisions to the Contract Price arising as a result of any proposed Variation.

6.2. Where a Variation is requested by the Authority then the Contractor shall at no additional charge prepare a quotation for the cost which shall be based on the principles of the Financial Model and include full disclosure of any assumptions used.

6.3. If a Variation is adopted by the Authority in accordance with clause F3 (Contract Change) then the Authority shall update the Financial Model in accordance with the provisions of this Schedule 4 (Contract Price).

7. Prices for Contract Extension

7.1. The Contractor shall use the Financial Model to demonstrate any proposed revisions to the Contract Price arising as a result of any proposed Contract extension.

7.2. Where a Contract Extension is requested by the Authority then the Contractor shall at no charge prepare a quotation for the cost which shall be based on the principles of the Financial Model and include full disclosure of any assumptions used. The Price per Recorded Minute for any contract extension cannot exceed the rate 2 shown in Appendix 1 of this Schedule 4.

7.3. If a Contract Extension is adopted by the Authority in accordance with clause F3 (Contract Change) then the Authority shall update the Financial Model in accordance with the provisions of this Schedule 4 (Contract Price).

8. Indexation

8.1. Indexation shall not apply to the Contract Price under this Contract. The rates set out in Appendix 1 of this Schedule 4 (Contract Price) include the Contractor's assessment of inflation and efficiency gains over the Contract Period.

9. Methods of Payment

9.1. The Authority reserves the right to set and/or alter, at its absolute discretion, the method of payment. All payments for Services are conditional upon the Contractor providing the Services in accordance with the terms of this Contract.

9.2. Payments are made on the assumption that the Contractor's entitlement to such payments can be verified on request by the production of the records required under this Contract (including under clause E9 (Audit & the National Audit Office) and clause F7 (Monitoring of Contract Performance)). The Authority shall, acting reasonably, be entitled to assume, in the absence of such records, or of any evidence which the Authority may reasonably decide to accept in substitution, that such delivery of the Services ("**Unsupported Services**") has not taken place. The Authority shall be entitled to recover any and all sums paid in respect of such Unsupported Services from the Contractor and the Contractor shall repay such sums on demand.

10. Contractor's Records

10.1. The Contractor and any Sub-contractor appointed by it shall retain comprehensive records in accordance with clause E9 (Audit and the National Audit Office) to verify the services provided. Such records shall include (without limitation) copy invoices with all supporting information and any such other information as the Authority may reasonably require from time to time.

11. Commercial Optimisation Review

11.1. Three (3) Months prior to each twelve (12) Month anniversary of the Contract the Authority and the Contractor will work in collaboration to review the cost model as part of continuous improvement methods to deliver year on year efficiencies and innovation.

11.2. The yearly Commercial Optimisation Review will follow Open Book Contract Management principles (see paragraph 12 of this Schedule 4) to provide complete transparency in how costs are incurred and provide the basis for analysis against cost drivers and opportunities for efficiency.

11.3. As part of the process, the Contractor will provide benchmark data for the unit costs charged against market equivalent costs, to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices. The Contractor will also provide details of the actual costs they incur, and expect to incur, in the delivery of this Contract. These costs will be in Attachment 9C to the Invitation to Tender – Pricing Matrix Guidance (Post Award Open Book Data) which will use the same cost categories as Attachment 9a of the Invitation to Tender – Pricing Matrix, which was used in the tendering stage.

11.4. Control protocols will exist between the Authority and Contractor to facilitate the delivery of cost optimisation through:

11.4.1. Establishment of a Commercial Optimisation Review Board between senior representatives of the Authority and Contractor which will be agreed as part of contract implementation.

11.4.2. Maintaining suggestions for cost optimisation in a single Commercial Optimisation Review Register in accordance with the example provided

within the Government's Open Book Contract Management Guidance and;

11.4.3. Assessment of the quantitative impact of these changes that are incentivised through the Profit Share Amount (see paragraph 13 of this Schedule).

12. Open Book Contract Management

- 12.1. The Contractor agrees to work with the Authority through Open Book Contract Management principles to share the detail of how charges and costs are managed in relation to this service. The aim is to ensure a fair unit price to the Contractor, value for money to the Authority and continuous improvement during the Contract Period.
- 12.2. The Contractor will disclose and allow the Authority access to Open Book Data as part of the annual Commercial Optimisation Review and at any such time as requested by the Authority.

13. Profit Share Principles

- 13.1. The following details the method by which the Authority will share in any Profit Share Amount made by the provision of the Services during the Contract Period. The Profit Share Calculation shall be made at each Profit Share Calculation **date** in respect of the relevant Profit Share Period. The first Profit Share Calculation date shall occur twelve (12) months following the Commencement Date.
- 13.2. If this Contract is terminated or expires on a day other than a Profit Share Calculation date, a Profit Share Calculation shall fall on the date of termination or expiry and the Profit Share Period shall be from the day following the previous Profit Share Calculation date to the date of termination or expiry of the Contract. In the event these calculations show Profit Share monies is due at the time this Contract expires or is terminated the Contractor must pay the Profit Share Amount monies due to the Authority within twenty-eight (28) days of the day of this Contract expiring or being terminated.

14. Profit Share Calculation

- 14.1. Within thirty (30) days of the Profit Share Calculation date, the Contractor shall deliver to the Authority the Profit Share Calculation as at the Profit Share Calculation date.
- 14.2. The Profit Share Calculation shall be prepared in accordance with this Schedule and the profit sharing rates set out in the Appendix to this Schedule.

14.3. Each Profit Share Calculation shall:-

14.3.1. Be supplied in electronic copy;

14.3.2. Be certified as correct and accurate by an authorised officer;

14.3.3. Be submitted by completion of a financial statement detailing all costs and income relating to the Contract. Costs are to be itemised to the level of detail contained in the Financial Model provided by the Contractor as part of its Tender.

14.3.4. Show separately the amounts of Earned Profit (falling into Band 1 and Band 2 as defined in the Appendix to this Schedule); and

14.3.5. Show separately the Profit Share Amount, the Contractor's Profit Share Amount and the Authority's Profit Share Amount for Band 2.

14.4. Following receipt by the Authority of a Profit Share Calculation, the Contractor shall at its own expense provide to the Authority any such additional information as it may reasonably request in line with the Open Book arrangements detailed in this Schedule 4 so that the Authority can verify the accuracy of the Profit Share Calculation. This shall include the detailed workings and supporting spread sheets constructed in accordance with the format of the Financial Model and shall be supplied in electronic copy.

14.5. Within thirty (30) days of receipt of the Profit Share Calculation and all additional information required the Authority shall notify the Contractor whether it agrees with or disputes the Profit Share Calculation.

14.6. If the Authority notifies the Contractor that it disputes any item contained in the Profit Share Calculation the Contractor shall within twenty (20) days of receipt of the Authority's notification, deliver to the Authority a revised version of the Profit Share Calculation and such further financial information certified by its external auditors as it believes will prove its case.

14.7. Within thirty (30) days of receipt of the revised version of the Profit Share Calculation provided the Authority shall notify the Contractor whether it agrees with or disputes the revised version of the Profit Share Calculation. If the Authority notifies the Contractor that it disputes the revised version of the Profit Share Calculation, then the matter shall be referred to the Dispute and Law Procedure in clause I of the terms and conditions of Contract.

15. Profit Share Threshold

15.1. The Profit Share calculation will take into account a Profit Share Threshold that will be set at [REDACTED]% above the profit percentage included in the Financial Model provided by the Contractor as part of its Tender. Profit above the Profit Share Threshold will be shared with the Authority as per the rates in the Appendix

to this Schedule. Calculation of the Profit Share Threshold is demonstrated in the following table. Figures are purely for explanatory purposes.

15.2. Example Profit Share Threshold Calculation

Profit as per Contractor's Financial Model	[REDACTED]
Profit Share Buffer	[REDACTED]
Profit Share Threshold	[REDACTED]

16. Profit Share Threshold to be applied:-

	Contract year 1	Contract year 2	Contract year 3	Contract year 4
Profit as per Contractor's Financial Model	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Profit Share Buffer	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Profit Share Threshold	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

17. Payment of Profit Share

17.1. Following agreement of the Profit Share Calculation based on the final Reconciliation, the Contractor shall pay the Authority the Authority's Profit Share Amount calculated in accordance with the Appendix to this this Schedule.

17.2. The Contractor shall pay the Authority's Profit Share Amount to the Authority as a cash sum within twenty-eight (28) days of the Authority notifying the Contractor that it agrees with the Profit Share Calculation.

17.3. Any of the Authority's Profit Share Amount that is payable by the Contractor in accordance with this Schedule but remains unpaid shall accrue interest on a daily basis at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 for each day that any such Profit Share Amount remains unpaid following the due date specified in Paragraph 17.2 of this Schedule 4.

17.4. As an alternative to the payment described in Paragraph 17.3 of this Schedule 4 the Authority may, at its sole discretion, require the Contractor to issue it with a credit note to the value of the Authority's Profit Share Amount (the Contractor shall issue such credit note to the Authority within twenty-eight (28) days of the Authority notifying the Contractor that it agrees with the Profit Share Calculation in which the Authority may offset against any future Charges.

17.5. The Authority's Profit Share Amount cannot be clawed back by the Contractor to offset any losses in subsequent Profit Share Periods.

Appendix 1

1 Rates Payable

- 1.1 The Contractor will be paid at the rates shown in the table below. The amount due to the Contractor will be determined by the monthly volume of actual recorded minutes transcribed delivered by the Contractor.

Price Per Minute of Recorded Time

- 1.2 The rates payable to the Contractor are shown in the table at paragraph 1.3 of this Appendix 1 of Schedule 4. The total amount payable must be calculated on a monthly basis (excluding VAT) as set out above and invoiced to the Authority.

- 1.3 The rates payable is set out in the table below :

Rate	Output	Rate payable in pence
Rate 1	Per Minute of recorded time Transcribed up to initial contract volumes of 4,344,828	[REDACTED]
Rate 2	Per Minute of recorded time Transcribed in excess of the initial contract volumes (Excess Volume Rate)	[REDACTED]

- 1.4 The Price Per Recorded minute for any Contract extension cannot exceed Rate 2 shown in the above table.

Service Credits

Service Credit	Definition	Service Credit % to be applied to the total monthly invoice value
1a	Where the Contractor completes greater than 80% but less than 100% of Standard transcription cases within 5 Working Days a Service Credit of 1% of invoice value will be applied.	1%
1b	Where the Contractor completes 80% or less of Standard transcription cases within 5 Working Days a Service Credit of 1.5% of invoice value will be applied.	1.5%
2a	Where the Contractor completes greater than 80% but less than 100% of Priority transcription cases within 3 Working Days a Service Credit of 1.5% of invoice value will be applied.	1.5%
2b	Where the Contractor completes 80% or less of Priority transcription cases within 3 Working Days a Service Credit of 2.0% of invoice value will be applied.	2%
3a	Where the Contractor completes greater than 80% but less than 100% of Urgent transcription cases within 1 Working Day a Service Credit of 2% of invoice value will be applied.	2%
3b	Where the Contractor completes 80% or less of Urgent transcription cases within 1 Working Day a Service Credit of 2.5% of invoice value will be applied.	2.5%
3c	Additional service credit where more than 5 Urgent cases per month are not completed within 1 Working Day. The 1% Service Credit is applied for each day of delay incurred, in excess of the standard 1 Working Day turnaround.	1%
4a	Where the Contractor completes greater than 80% but less than 100% of Re-Work required at the latest by 3pm on the following Working Day of the day the Contractor received the request for rework a Service Credit of 2.5% of the total invoice value will be applied.	2.5%
4b	Where the Contractor completes 80% or less of Re-Work required at the latest by 3pm on the following Working Day of the day the Contractor received the request for rework a Service Credit of 3% of the total invoice value will be applied.	3%
5a	Where the Contractor achieves greater than 80% and less than 98% accuracy regardless of turnaround time a Service Credit of 2% of the total invoice value will be applied	2%
5b	Where the Contractor achieves 80% or less accuracy regardless of turnaround time a Service Credit of 2.5% of the total invoice value will be applied	2.5%

6a	Where the Contractor completes greater than 80% but less than 100% of Hard Copy transcription cases within 3 Working Days of receipt a Service Credit of 0.5% of invoice value will be applied.	0.5%
6b	Where the Contractor completes 80% or less of Hard Copy transcription cases within 3 Working Days of receipt a Service Credit of 1% of invoice value will be applied.	1%

2 Profit Sharing Table

The following table details the manner in which Earned Profit achieved by the Contractor over the Contract Period shall be shared between the Authority and the Contractor:

Band	Where the Earned Profit is	Contractor % share of Profit Share Amount	Authority % share of Profit Share Amount
Band 1	Less than or equal to Threshold Profit Margin	N/A	N/A
Band 2	More than the Threshold Profit Margin	50%	50%

SCHEDULE 5 – COMMERCIALY SENSITIVE INFORMATION

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

Document	Page Number	Section	Condition or Paragraph Number	Explanation of harm which may result from disclosure and time period applicable to sensitivity.
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2. The Contractor acknowledges that circumstances may arise that require disclosure and are outside the control of the Authority, for example, due to a legal requirement including a court order.
3. The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
4. The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
5. The Authority will automatically publish all information provided by the Contractor **not** identified in this Schedule 5 as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
6. The Authority reserves the right to determine whether any information provided in this Schedule 5 does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

1 Introduction

1.1 This Schedule 6 covers;

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

2 Principles of Security

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

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

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

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

- a) loss of integrity of Authority Data;

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

3 Security Plan Introduction

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

Development

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

Content

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

Amendment and Revision

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

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

4 Audit and Testing

- 4.1 The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.
- 4.2 Where the Authority has notified the Contractor that prior to the Commencement Date the Contractor shall commission CHECK compliant Penetration Testing with an approved CESG provider and annually thereafter, then on or prior to the Commencement Date, the Contractor must have delivered to the Authority evidence of the same.
- 4.3 The Contractor shall during the Contract Period, deliver to the Authority evidence of renewal of a valid CHECK Penetration Testing Certificate on each anniversary of the first applicable certificate obtained by the Contractor under paragraph 4.2 of this Schedule 6.
- 4.4 Any breach of the Contractor of paragraphs 4.2 and 4.3 of this Schedule 6 shall be deemed to be a Material Breach entitling the Authority to exercise its rights under clause F5.2A.
- 4.5 The Authority shall be entitled to send the Authority's Representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.
- 4.6 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Contract, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.
- 4.7 Where any Security Test carried out pursuant to paragraphs 4.5 or 4.6 of this Schedule 6 reveals any actual or potential security failure or weaknesses, the

Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.12 of this Schedule 6, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance with ISO/IEC 27001

5.1 Not Used

5.2 Not Used

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

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

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

6 Breach of Security

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

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

a) immediately take all reasonable steps necessary to;

- (i) remedy such breach or protect the Contractor ICT system against any such potential or attempted breach or threat; and
- (ii) prevent an equivalent breach in the future.

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

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

7 Authority Data relevant to the Contract

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

8 Accreditation

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

9 Ongoing Assurance

- 9.1 The Contractor shall adhere to the DWP Security Working Group Terms of reference as described below in order to provide the following functions and ongoing assurance to the Authority:-
 - a) Chairing, facilitating and active participation of Security Working Group;
 - b) Completion and distribution of Security Working Group Minutes, Actions and Tracker within five (5) Working Days of the meeting;

- c) Collaborate with the DWP's "Supplier Security Team" to demonstrate continued compliance against ISO27001 controls;
- d) The Contractor shall act as a conduit between the DWP's "Supplier Security Team" and relevant DWP "Supplier Security Team" Stakeholders, ensuring issues and activities are progressed;
- e) The Contractor shall collaborate with the relevant DWP's "Supplier Security Team", ensuring issues and activities are progressed;
- f) The Contractor shall ensure contractual Security Obligations are fully understood and complied with;
- g) The Contractor shall provide required statistics against, but not limited to:
 - Security Awareness Training
 - Security Incidents
 - Security Clearance
 - Privileged Users
 - Offshore Status
 - Internal Audit/Compliance

Appendix A – DWP Security Policies and Standards

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

The above policies can be found at: gov.uk

4. Each Contractor must appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all Staff working for the Contractor and where relevant Sub-contractors, with access to DWP IT Systems, Services, DWP information or DWP sites must be made aware of these requirements and must comply with them.
5. The policies and requirements are based on and follow ISO27001 and Cyber Essentials, but with specific reference to DWP use.
6. Whilst Departmental policies are written for internal Departmental requirements all Contractors must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and government requirements. These arrangements will clearly vary according to the size of the organisation so should be applied proportionately.
7. It is the Contractor's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP as requested.
8. Failure to comply with any of these Policies and Standards could result in termination of current Contract.
9. The following are some key basic requirements that all Contractors must apply:
- 10. Personnel Security**
 - 10.1 Staff recruitment in accordance with government requirements for pre-employment checks; including Baseline Personnel Security Standard.

- 10.2 Staff training and awareness of DWP security and any specific contract requirements.
- 11. Secure Information Handling and Transfers**
 - 11.1 Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
- 12. Portable Media**
 - 12.1 The use of encrypted laptops and encrypted storage devices and other removable media when handling DWP information.
- 13. Offshoring**
 - 13.1 DWP data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.
- 14. Physical Security**
 - 14.1 Security of premises and control of access.
- 15. Security Incidents**
 - 15.1 Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

Appendix B – Draft Security Plan

[REDACTED]

SCHEDULE 7 – SUSTAINABLE DEVELOPMENT REQUIREMENTS

This Schedule 7 sets out the Sustainable Development Requirements which are applicable to the provision of the Services.

1 General

- 1.1 The Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development through its environmental, social and economic responsibilities.

- 1.2 In delivering the Services, the Contractor shall and shall ensure that its Staff assist and cooperate with the Authority, by fully complying with the requirements of this Schedule 7.

2 Compliance

- 2.1 The Contractor shall produce a Sustainable Development Policy Statement and Sustainable Development Plan in accordance with paragraphs 2.2 and 2.3 of this Schedule 7, within six (6) months of the Commencement Date and annually thereafter. The Sustainable Development Policy Statement and Sustainable Development Plan must be specific to the Contract and include all Sub-contractors involved in delivery of the Contract. The Contractor must obtain the required information from Sub-contractors and then collate and submit as stated above.

- 2.2 In delivering the Services, the Contractor shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the Contract an overarching commitment to:-

- a) dispose of Contract waste in a legal manner (i.e. waste is disposed of via a registered waste collector, the Waste Electrical and Electronic Equipment (WEEE) regulations are adhered to where relevant);
- b) reduce energy consumption;
- c) promote waste management including recycling;
- d) promote green or public transport;
- e) promote Corporate Social Responsibility (CSR); and
- f) the Sustainable Development Policy and that of continuous improvement which should be signed and dated by senior management.

- 2.3 In delivering the Services, the Contractor shall prepare and deliver a Sustainable Development Plan which should be used to turn the commitment shown in the Sustainable Development Policy into action and which as a minimum, detail how each organisation involved in delivery of the Contract will:-

- a) reduce their **Environmental** footprint of this Contract through:
 - (i) minimising the use of energy, water and materials;
 - (ii) minimising waste and increasing recycling levels;
 - (iii) utilising recycled goods within operations;
 - (iv) providing efficient low carbon delivery methods; and
 - (v) promoting the use of green or public transport.

- b) contribute to **Social** sustainability of this Contract through:
 - (i) purchasing goods and services that are produced and delivered in line with International Labour Organisation principles in respect to human rights and conditions of employment;
 - (ii) supporting a diverse supply chain by cultivating opportunities for Minority Owned Businesses; and
 - (iii) providing adequate training opportunities for Staff.
- c) drive **Economic** sustainability of this contract through:
 - (i) supporting job creation both locally and nationally; and
 - (ii) facilitating opportunities for Minority Owned Businesses and Small and Medium-sized Enterprises.

2.4 To aid the Department in monitoring the progress of each organisation the following information should also be included in your plan:

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

SCHEDULE 8 – LIFE CHANCES

1 General

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

2 Diversity and Equality Delivery Plan

- 2.1 In addition to complying with its obligations set out in clause D and this Schedule 8, the Authority requires the Contractor to provide such information as the Authority may request on (a) the action(s) the Contractor is taking in the course of supplying the Services to comply with its obligations set out in clause D2 and in this Schedule 8 and (b) the effect such action(s) have on the Staff used in the performance of its obligations under the Contract.
- 2.2 As part of the information to be provided by the Contractor under paragraph 2.1 of this Schedule 8, the Authority requires the Contractor to provide to the Authority a diversity and equality delivery plan ("**Diversity and Equality Delivery Plan**") six (6) Months after the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details:-
- a) of all Staff including but not limited to all Sub-contractors involved in the performance of the Contractors obligations under the Contract.
- b) details of the action(s) the Contractor is taking to support the Crown's social value agenda including but not limited to the action(s) the Contractor is taking to meet its obligations under paragraph 2.3 of this Schedule.
- 2.3 The Contractor shall, and shall ensure that its Sub-contractors, take the following action(s) in respect of DWP Priority Groups:-
- a) **Apprentices**
- Ensure that (5) % of the Staff used in the performance of the Contractor's obligations under the Contract are Apprentices.

- Make available to potential members of Staff used in the performance of the Contractor's obligations information about the National Apprenticeship Service.

b) Disabled People

- Take steps to become a Disability Confident Employer.
- Make appropriate use of Access to Work to support recruit and retain disabled workers.
- When recruiting Staff to be used in the performance of the Contractor's obligations under the Contract, offer Disabled People interviews under a guaranteed interview scheme for vacancies for Staff where the Disabled People meet the minimum criteria for such vacancies.
- Offer Work Trials to Disabled People to support filling vacancies for Staff.
- Provide Employment Experience to Disabled People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

c) Young People – Under 25

- Offer Work Trials to Young People to support filling vacancies for Staff.
- Provide Employment Experience to Young People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

d) Older Workers – Over 50

- Offer Work Trials to Older Workers to support filling vacancies for Staff.
- Provide Employment Experience to Older People as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

e) Ex-Offenders

- Offer Work Trials to Ex-Offenders to support filling vacancies for Staff.
- Provide Employment Experience to Ex-Offenders as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

f) Black and Minority Ethnic People

- Offer Work Trials to Black and Minority Ethnic people to support filling vacancies for Staff.
- Provide Employment Experience to Black and Minority Ethnic people as members of Staff used in the performance of the Contractor's obligations under the Contract to develop their skills and experience and increase their employability.

g) Employee Vacancies

- Advertise all vacancies for Staff via Universal Jobmatch in addition to any other recruitment agencies with whom the Contractor advertises such vacancies and any other actions the Contractor takes to recruit Staff.

2.4 The Diversity and Equality Delivery Plan must also include:-

- (a) an overview of Contractor and any Sub-contractor's policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:-
- i) age;
 - ii) disability;
 - iii) gender reassignment;
 - iv) marriage and civil partnership;
 - v) pregnancy and maternity;
 - vi) race;
 - vii) religion or belief;
 - viii) sex; and
 - ix) sexual orientation.
- (b) an overview of Contractor and any Sub-contractor's policies and procedures covering:
- i) harassment;
 - ii) bullying;
 - iii) victimisation; and
 - iv) Staff training and development
- (c) details of the way in which the above policies and procedures are, or will be (and by when), communicated to Staff;
- (d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff; and
- (e) details of what structure and resources are currently directed towards active promotion of diversity and equality within the Staff used in the performance of the Contractor's obligations under this Contract, or if not currently in place, what will be put in place and by when.

2.5 The Authority will consider and must agree the contents of Diversity and Equality Delivery Plan. Any issues will be raised with the Contractor by the Authority's Representative. If an issue relates to a Sub-contractor, the Contractor must raise and resolve the issue with the Sub-contractor.

Life Chances Workforce Monitoring Template

- 2.6 The Contractor shall provide the Life Chances Workforce Monitoring template (contained in Appendix 1 to this Schedule 8), duly completed in full by the Contractor in respect of all Staff (including but not limited to all Sub-contractors used in the performance of the Contractor's obligations under the Contract), six (6) Months after the Commencement Date and annually thereafter.
- 2.7 The Contractor shall complete the Life Chances Workforce Monitoring template in line with the 'Life Chances through Procurement Guidance for DWP Contractors' and the contract definitions.
- 2.8 The Contractor will compare figures in all categories listed in the Appendix 1 - Workforce Monitoring template and provide (where possible) comparisons against any official national/regional statistics that are publicly available in accordance with the 'Social Value Guidance for Contractors' provided by the Authority to the Contractor.
- 2.9 The 'Social Value Guidance for Contractors' provides links to a number of data collection sources, this is not an exhaustive list and other sources are available. The Authority recognises that there may be regional variations in terms of population demographics and some data categories and coverage may not be complete or fully aligned, however, the Contractor agrees to provide high level analysis and identification of trends as and when requested by the Authority.
- 2.10 The Contractor shall provide and shall ensure that its Sub-contractors provide such evidence as the Authority may require of action(s) undertaken or planned by the Contractor and/or any Sub-contractor to improve the numbers in the Social Value Workforce Monitoring template (contained in Appendix 1 to this Schedule 8) to the satisfaction of the Authority.
- 2.11 Diversity and Equality, the Crown's social value agenda and DWP Priority Groups will be discussed jointly by the Authority and the Contractor as an on-going item at Contract review meetings. Such meetings will discuss the information provided by the Contractor in accordance with paragraph 2.2 of this Schedule 8.

SCHEDULE 8 APPENDIX 1 – LIFE CHANCES WORKFORCE MONITORING TEMPLATE

Important – the figures the Contractor provides must relate specifically to the Staff used in the performance of the Contractor’s obligations under the Contract only, which for the avoidance of doubt includes any Sub-contractor.

Name of Contract:	
Contract Number:	
Name of Contractor:	
Commencement Date:	
Total Number of Staff, which for the avoidance of doubt includes any Sub-contractors	

1 – Number of new Staff posts created in the performance of the Contractor’s obligations under the Contract

New Staff Posts	Number of new Staff posts created in period	
	1-34 hr per week posts	35 hr + per week posts
Baseline return (at 6 months for months 0-6)		
1 st annual return (at 18 months for months 7-18)		
2 nd annual return (at 30 months for months 19 - 30)		
3 rd annual return (at 42 months for months 31-42)		

2 – Number of Apprentices in Staff used in the performance of the Contractor’s obligations under the Contract

DWP Priority Group - Apprentices	Number of Apprentices in Staff which have been employed for 26 weeks or longer in period	% of Apprentices in Staff at the end of the period	Number of Apprentices who began apprenticeships as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

3 – Number of Disabled People in Staff used in the performance of the Contractor’s obligations under the Contract

DWP Priority Group - Disabled People	Number of Disabled People in Staff which have been employed for 26 weeks or longer in period	% of Disabled People in Staff at end of period	Number of Disabled People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

4 – Number of Disabled People, who had been interviewed by the Contractor under the Guaranteed Interview Scheme (GIS) for Staff posts used in the performance of the Contractor’s obligations under the Contract,

DWP Priority Group – Disabled People in the Staff who had been interviewed by the Contractor under the GIS	Number of Disabled People who have been interviewed for Staff posts by the Contractor under the GIS during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	

5 – Number of Young People in Staff used in the performance of the Contractor’s obligations under the Contract

DWP Priority Group - Young People	Number of Young People in Staff which have been employed for 26 weeks or longer in period	% Young People in Staff at end of period	Number of Young People who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

6 – Number of Older Workers in Staff used in the performance of the Contractor’s obligations under the Contract

DWP Priority Group - Older Workers	Number of Older Workers in Staff which have been employed for 26 weeks or longer in period	% Older Workers in Staff at end of period	Number of Older Workers who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

7 – Number of Ex-Offenders in Staff used in the performance of the Contractor’s obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number of ex-offenders in Staff which have been employed for 26 weeks or longer in period	% ex-offenders in Staff at end of period	Number of ex-offenders who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

8 – Number of Black or Minority Ethnic (BME) in Staff used in the performance of the Contractor’s obligations under the Contract.

DWP Priority Group - Ex-Offenders	Number BME in Staff which have been employed for 26 weeks or longer in period	% BME in Staff at end of period	Number of BME who began employment as part of the Staff during the period
Baseline return (at 6 months for months 0-6)			
1 st annual return (at 18 months for months 7-18)			
2 nd annual return (at 30 months for months 19 - 30)			
3 rd annual return (at 42 months for months 31-42)			

9 – Number of Employment Experience placements conducted in the performance of the Contractor’s obligations under the Contract

Employment Experience placements	Number of Employment Experience placements conducted during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	

10 – Number of Work Trials conducted as part of the recruitment of Staff used in the performance of the Contractor’s obligations under the Contract.

Work Trials	Number of Work Trials conducted during the period
Baseline return (at 6 months for months 0-6)	
1 st annual return (at 18 months for months 7-18)	
2 nd annual return (at 30 months for months 19 - 30)	
3 rd annual return (at 42 months for months 31-42)	

11 – Number of vacancies for Staff advertised via Universal Jobmatch

Staff vacancies advertised via Universal Jobmatch	Number of vacancies for Staff advertised via Universal Jobmatch during the period	% of all vacancies for Staff advertised via Universal Jobmatch during the period.
Baseline return (at 6 months for months 0-6)		
1 st annual return (at 18 months for months 7-18)		
2 nd annual return (at 30 months for months 19 - 30)		
3 rd annual return (at 42 months for months 31-42)		

SCHEDULE 9 – WELSH LANGUAGE SCHEME

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

1 General

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

2 The DWP Welsh Language Scheme

- 2.1 The DWP Welsh Language Scheme can be found at:

<https://www.gov.uk/government/organisations/department-for-work-pensions/about/welsh-language-scheme>

- 2.2 The Contractor shall, in the delivery of the Services, ensure that it complies with the Department for Work and Pensions Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

3 Delivery of Services Through the Medium of Welsh

- 3.1 The Contractor undertakes that those who have dealings with them are able to do so in English or Welsh, whichever is their preference.
- 3.2 The Contractor will ensure that:
 - a) those who want, or are required, to correspond with the Contractor will be able to do so in English or Welsh;
 - b) those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
 - c) any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
 - d) staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
 - e) any help lines set up to deliver the service must offer a Welsh or English option and sufficient Welsh language speakers must be available to deal with callers through the medium of Welsh, if they select the Welsh option;

- f) any answer phones in the Contractor's offices in Wales will have a pre-recorded bilingual message;
- g) all people who participate in the Services are able to contribute through the medium of English or Welsh;
- h) all material published and printed for use in Wales shall be available in English and Welsh, and available for use within the same timescales. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
- i) all forms and explanatory material be available in both English and Welsh and available for use within the same timescales; and
- j) any complaints or grievance procedure should be provided in both English and Welsh.
- k) any websites, including any interactive pages, set up to support the delivery of the service must be available in both Welsh and English;
- l) where DWP has notified the contractor or the participant has identified that Welsh is their preferred language this should be recorded, ensuring all future dealings with that participant will be in Welsh.

SCHEDULE 10 – PARENT COMPANY GUARANTEE

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

[REDACTED]

THIS DEED is dated

2017

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA (“the **Authority**”); and
- (2) [REDACTED] incorporated and registered in [REDACTED] with company registration number [REDACTED] whose registered office is at [REDACTED]

BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee (“the **Contract**”, which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Authority has agreed to engage [REDACTED] (“the **Contractor**”) to deliver The Provision of Off-Site Transcription, Typing and Equipment Maintenance.
- (2) It is a condition of the Contract that the Contractor ensures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor.
- (4) It is the intention of the Parties that this document be executed as a deed.

AGREED TERMS

1 Interpretation

- 1.1 Unless the context requires otherwise, the definitions and rules of interpretation in the Contract shall apply in this guarantee.
- 1.2 A reference in this deed to this guarantee shall be construed as a reference to this deed of guarantee.

2 Obligations of The Guarantor

- 2.1 In consideration of the Authority entering into the Contract with the Contractor, the Guarantor agrees:
 - 2.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;
 - 2.1.2 in addition to its obligations set out in clause 2.1.1, to indemnify the Authority against all losses which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute,

contract or at common law including without limitation by reason of any default by the Contractor of its obligations, representations, warranties, duties and undertakings under and/or pursuant to the Contract save that, subject to the other provisions of this guarantee (including without limitation clause 2.1.3), this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the Contractor under the Contract; and

- 2.1.3 to indemnify the Authority against all losses whether arising under statute, contract or at common law which may be awarded against the Authority or which the Authority may otherwise incur if any obligation guaranteed by the Guarantor is or becomes totally or partially unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3 Liability

3.1 The Guarantor agrees that it shall not in any way be released from liability under this guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this guarantee including, without limitation and whether or not known to the Guarantor:

- 3.1.1 any arrangement made between the Contractor and the Authority;
- 3.1.2 any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise;
- 3.1.3 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;
- 3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;
- 3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Contractor's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or
- 3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, Liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

4 Addendum or Variation

The Guarantor by this guarantee authorises the Contractor and the Authority to make any addendum or variation to the Contract, the due and punctual

performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

5 Guarantee

- 5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Authority brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.
- 5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6 Outstanding Payments

- 6.1 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in default of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.
- 6.2 The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in default of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.
- 6.3 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of clause 6.1 and clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

7 Change of Control

The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Contractor within the meaning of section 1124 of the Corporation Tax Act 2010, save unless the Authority gives its

prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

8 Payment and Expenses

- 8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

9 Settlement

Any settlement or discharge between the Authority and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or law relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

10 Warranties

- 10.1 The Guarantor warrants and confirms to the Authority that:
- 10.1.1 it is duly incorporated with limited liability and validly existing under the laws of England;
 - 10.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
 - 10.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
 - 10.1.4 it has been duly authorised to enter into this guarantee;
 - 10.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;

- 10.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
 - 10.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and
 - 10.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.
- 10.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.
- 10.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11 Assignment

The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

12 Notices

- 12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this clause 12.
- 12.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

13 Waiver

- 13.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

13.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

13.3 A waiver by the Authority shall not constitute a continuing waiver and shall not prevent the Authority from subsequently enforcing any of the provisions of this guarantee.

14 Severability

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

15 Contracts (Rights of Third Parties) Act 1999

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with clause 11.

16 Governing Law

16.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims).

17 Entire Agreement

17.1 This guarantee contains the whole agreement between the Parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the Parties relating to the transactions.

17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in clause 17.2 limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

Executed as a Deed for and on behalf of:

[REDACTED]	
Signed by:- Director Name: Director Signature: Date of Signature:	Witnessed in the presence of:- Witness Name: Witness Signature: Date of Signature:
AND	
(2) The Secretary of State for Work and Pensions, for and on behalf of the Authority.	
Signed by:- Name: Signature: Date of Signature: Position in Organisation:	Secretary of State Seal

SCHEDULE 11 – CHANGE CONTROL PROCEDURE

1 General Principles of Change Control Procedure

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

2 Costs

- 2.1 The Contractor shall be entitled to increase the Contract Price only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and the Authority agrees to pay such increase.
- 2.2 The Contractor shall decrease the Contract Price if the Impact Assessment demonstrates that the proposed Contract Change would result in fewer resources being required to deliver the Services after that Contract Change is implemented than before that Contract Change is implemented.
- 2.3 Any change to the Contract Price resulting from a Contract Change, whether the change will cause an increase or a decrease in the Contract Price, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change and shall be made in accordance with paragraph 5 of this Schedule 11.
- 2.4 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Operational Change Procedure

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

Change Request to other Party at any time during the Contract Period, and which may be sent by electronic mail or by letter.

- 3.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.
- 3.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 3.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

4 Contract Change Procedure

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

5 Impact Assessment

- 5.1 An Impact Assessment shall be substantially in the form of Appendix 2 of this Schedule 11.
- 5.2 Each Impact Assessment shall be completed in good faith and shall include:
 - (a) details of the impact the proposed Contract Change will have on the Services and the Contractor's ability to meet its other obligations under

this Contract;

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

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

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;
- (c) include evidence of the cost of any assets required for the Change; and
- (d) include details of any new Sub-contracts necessary to accomplish the Change.

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

6 Authority's Right of Approval

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

6.4 Any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.

6.5 If the Authority approves the proposed Contract Change pursuant to paragraph 6.1 of this Schedule 11 and it has not been rejected by the Contractor in accordance with paragraph 7 of this Schedule 11, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 of this Schedule 11 and send them to the Contractor. The Contractor shall sign both copies and deliver both signed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.

7 Contractor's Right Of Rejection

7.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Authority would:

(a) materially and adversely affect the risks to the health and safety of any person; and/or

(b) require the Services to be performed in a way that infringes any Law,

7.2 then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 5.2 of this Schedule 11.

7.3 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 7.1 of this Schedule 11.

8 Failure to Comply

8.1 If the Contractor fails to complete an Impact Assessment, implement or successfully comply with the Contract Change by the required date, the Authority may:-

(a) give the Contractor a further opportunity to implement or comply with the Contract Change; or

(b) escalate any issues arising out of the failure to implement or comply with the Contract Change to the Contractor's finance director (or equivalent) under the dispute resolution procedure set out in clause 12 (Dispute Resolution).

8.2 If, despite the measures taken under paragraphs 8.1 (a) & 8.1(b) of this Schedule 11, the Contractor fails to implement or comply with the Contract

Change, the Authority may elect to refer the matter for resolution by the dispute resolution procedure set out in clause 12 (Dispute Resolution).

9 Contract Management

9.1 The Parties shall update the Contract to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Request and annotate with a reference to the Change Authorisation Note or Operational Change Request pursuant to which the relevant Contract Changes or Operational Changes were agreed.

APPENDIX 1 - Change Request Form

(For Completion by the Party Requesting Change)

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

APPENDIX 2 - Impact Assessment

(For Completion by DWP Contractor)

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

APPENDIX 3 - Change Authorisation Note

(For Completion by DWP)

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

(If the original was entered into as a Deed this Change Authorisation Note will need to be executed as a Deed – delete this signature box and use alternative below)

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

(Remove the signature box below if original was not entered into as a Deed)

Executed as a Deed for and on behalf of:

Signed on behalf of the Contractor:- Director Name: Director Signature: Date of Signature:	Witnessed on behalf of the Contractor in the presence of:- Witness Name: Witness Signature: Date of Signature:
AND	
The Secretary of State for Work and Pensions, for and on behalf of the Authority.	
Signed by:- Name: Signature: Date of Signature: Position in Organisation:	Secretary of State Seal:-

SCHEDULE 13 - SUB-CONTRACTORS [REDACTED]

1. The Supplier is entitled to sub-contract its obligations under this Contract to the Sub-Contractors listed below.

Full Name	Type of Organisation	SME	The approximate % of contractual obligations assigned to each Sub-Contractor	The role each Sub-Contractor will take in providing the works and for supplies e.g. key deliverables	Trading Status	Registered Office Address	Registration Number	Head Office DUNS number
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]