



Department  
for Work &  
Pensions

**CONTRACT**

**For**

**ESTATES PROJECT STRATA PMO PHASE 2**

**Between**

**THE SECRETARY OF STATE FOR WORK AND PENSIONS**

**(the “Authority”) acting as part of the Crown.**

**And**

**Incendium Consulting Ltd  
Company Registration Number 08216440**

**CONTRACT REFERENCE NUMBER: ecm\_9697**

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This Contract is made on the	3rd November 2021
<b>between the Parties</b>	The Secretary of State for Work and Pensions
	("the <b>Authority</b> ") acting as part of the Crown.
Of	Caxton House, Tothill Street London SW1H 9DA
And	Incendium Consulting Ltd
with Company Registration Number	08216440
having the main or registered office at	Blue Fin Building, Southwark Street, London, SE1 0TA
	("the <b>Contractor</b> ")
	individually referred to as " <b>Party</b> " and collectively as " <b>the Parties</b> "

## **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 (as amended).

**"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 Assets”** mean any Authority Devices and Authority Data.

**“Authority Data”** means the data, guidance, specifications, instructions, toolkits, plans, databases, patents, patterns, models, design, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:-

- (i) supplied to the Contractor by or on behalf of the Authority; or
- (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract.

**“Authority Device”** means any asset that provides an ICT function and is used by the Authority to conduct its business and operations.

**“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 and shall be the person(s) named in paragraph 1.1 of Schedule 2.

**“Authority’s Security Requirements”** means the Authority’s security requirements set out in the Contract which include the requirements set out in Schedule 6 to the Contract.

**“Authority Supply Chain Contract”** means a contract between the Authority and the relevant Authority Supply Chain Member and references to Authority Supply Chain Contracts shall be construed accordingly.

**“Authority Supply Chain Members”** means the principal suppliers to the Authority notified to the Contractor from time to time and/or of which the Contractor should have been aware, including the Supply Chain Integrator.

**“Authority Supply Chain Services”** means the services provided by the Authority Supply Chain Members.

**“Authority’s Systems Environment”** means all of the Authority’s ICT systems which are or may be used for the provision of the Services.

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

**“Breach of Security”** means the occurrence of:

- (i) any unauthorised access to or use of Authority Assets, the Authority’s Systems Environment (or any part thereof) and Contractor’s Systems Environment (or any part thereof);

- (ii) the loss and/or unauthorised disclosure of any Authority Assets, the Authority's Systems Environment (or any part thereof) and Contractor's Systems Environment (or any part thereof);
- (iii) any unauthorised event resulting in loss of availability of any Authority Assets, Authority's Systems Environment (or any part thereof) and Contractor's Systems Environment (or any part thereof);
- (iv) any unauthorised changes or modification to any Authority Assets, the Authority's Systems Environment (or any part thereof) and Contractor's Systems Environment (or any part thereof).

**"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 (Recovery upon Termination), 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 which must be sent pursuant to the Change Control Procedure.

**"Change Control Procedure"** means the procedure for proposing a Contract Change, as set out in Schedule 9 (Change Control Procedure).

**"Change in Law"** means any change in law which impacts on the performance of the Services which comes into force from and including the Commencement Date.

**"Change Request"** means a written request for a Contract Change which include the information as specified in the form of Appendix 1 of Schedule 9 (Change Control Procedure).

**"Charges"** means the amount payable for the provision of the Services in the relevant Month, as calculated in accordance with Schedule 4 (Contract Price).

**"Commencement Date"** means the date on which this Contract is signed/sealed.

**"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.

**"Comparable Supply"** means the supply of services to another customer of the Contractor that are the same or similar to any of the Services.

**“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 the disclosure of which shall be carried out in accordance with clause E4 (Confidential Information); 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, the Tender and the Contractor Guidance.

**“Contract Change”** means any change to this Contract other than an Operational Change, including, for the avoidance of doubt, the Services, any restatement and any supplement to the Contract.

**“Contracting Body”** or **“Contracting Bodies”** means the Department for Work and Pensions and any contracting body described in the published advert using the Find a Tender service with reference number 2021/S 000-013685.

**“Contract Budget”** means three million, seven hundred and fifty pounds (£3,750,000) in respect of the Initial Contract Period, plus an additional £1.875 million (£1,875,000) for each extension period, where utilised.

**“Contractor”** means the person, partnership or company with which 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, 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 Related Party”** means all Staff, any Affiliate of the Contractor and any directors, officers employees, agents, consultants and contractors of such Affiliates.

**“Contractor’s Systems Environment”** means any ICT systems provided by the Contractor (and any Sub-contractor) which are or may be used for the provision of the Services.

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

- a) the date of expiry set out in clause A2.1 (Contract Period), or
- b) following an extension pursuant to clause A2.2 (Contract Period), the date of expiry of the extended period, or
- c) such earlier date of termination 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.

**“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 given in Data Protection Legislation.

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

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

**“Data Protection Impact Assessment”** means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means (i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the DPA and the regulations

made under the DPA 2018 and (iii) all applicable Laws and regulations relating to the processing of Personal Data and privacy.

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

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

**“Data Subject Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

**“Day Rates”** means the daily rate for Staff of each grade as set out in Appendix 1 (Day Rates) to Schedule 4 (Contract Price).

**“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 personnel including directors, officers, employees, sub-contractors, servants, agents and consultants 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.

**“Disallowed Costs”** means:

- a) any amount in respect of time spent on the Services which exceeds the Resource Allocation for the relevant Month in the Resource Forecast and which has not been Approved;
- b) any amount in respect of time within a day that exceeds the time the relevant member of Staff was engaged in the provision of the Services on such day, calculated according to the relevant Day Rate on a pro rata basis;
- c) any costs incurred by the Contractor in providing the Service to the extent that the same arise out of or in connection with any default, negligence and/or breach of any provision of this Contract by the Contractor (including its Staff) including in connection with:
  - (i) any failure to:
    - (A) follow a procedure stated in this Contract;
    - (B) take into account and apply Good Industry Practice; and/or

- (ii) costs arising in connection with the preparation, revision and/or implementation of a Performance Improvement Plan;
- d) any costs that are deemed to be included within the Day Rates;
- e) any costs, disbursements and/or expenses incurred by the Contractor arising out of or in connection with:
  - (i) any dispute save to the extent that such costs are awarded against the Authority; and
  - (ii) the preparation and issuing of a Change Request and/or an Impact Assessment;
- f) any costs which:
  - (i) are not justified by the Contractor's accounts and/or records;
  - (ii) should not have been paid to the Contractor in accordance with this Contract; and/or
  - (iii) are not expressly permitted to be chargeable by the Contractor to the Authority pursuant to this Contract; and
- g) fines and/or royalties.

**"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 2018.

**"EEA"** means the European Economic Area.

**"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 equipment, materials, property, other than real property, and such other items as are issued or made available to the Contractor by the Authority in connection with the Contract.

**“Ethical Wall Agreement”** means an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2 to Schedule 11 (Exit Management).

**“EU References”** shall have the meaning given in clause A1.2(g)(i) (Definitions and Interpretation).

**“Exit Day”** shall have the meaning in the European Union (Withdrawal) Act 2018.

**“Exit Information”** has the meaning given in paragraph 2.1 of Schedule 11 (Exit Management).

**“Exit Manager”** means the person appointed by each the Contractor pursuant to paragraph 1.2 of Schedule 11 (Exit Management) for managing the Contractor’s respective obligations under Schedule 11 (Exit Management).

**“Exit Plan”** means the plan produced by the Contractor during the Contract Period in accordance with paragraph 4 of Schedule 11 (Exit Management).

**“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.

**“Find a Tender”** means the UK government’s procurement advertising service found at the URL: [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk).

**“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.

**“General Change in Law”** means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply.

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

**“Government Apprenticeship Programme”** means training which is funded by the Government via the National Apprenticeship Service.

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

**“ICT”** means information and communications technology.

**“Impact Assessment”** means an assessment of a Change Request in accordance with paragraph 5 of Schedule 9 (Change Control Procedure).

**“Incumbent Contractor”** means any contractor providing services to the Authority before the Activity 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).

**“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 A2.1 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Integrator Agreement”** the integrator agreement dated 13 June 2017 entered into by (1) the Authority and (2) Sodexo.

**“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.

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

**“Invitation to Tender”** means the invitation and instructions to tenderers issued by the Authority on 02 September 2021.

**“Job Seekers”** means people looking for work.

**“Key Personnel”** means those persons performing the Key Roles from time to time.

**“Key Roles”** means the programme director and any other roles described as being key roles in the Specification.

**“Key Performance Indicator” or KPI** means a key performance indicator in respect of the Contractor’s provision of the Services, as set out in Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

**“KPI Failure”** means a failure to meet the Target Performance Level in respect of a Key Performance Indicator.

**“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 law, Act of Parliament, subordinate legislation including legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, regulation, directive, order, mandatory guidance, code of practice and/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 (Life Chances) 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 loss, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such loss is 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.

**“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;
- b) any of the obligations set out in clauses A (General Provisions), B (Supply of Services), D (Statutory Obligations and Regulations), E (Protection of Information), F (Control of the Contract), H (Default, Disruption and Termination), Schedule 3 (Monitoring Requirements) and Schedule 8 (Life Chances) over any two (2) month period during the Contract Period;
- c) the Contractor’s obligation to achieve a Service Milestone by the relevant Milestone Date;
- d) any of the obligations in clauses A7.1 to A7.3 (Independence and Conflict of Interests); or

- e) 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.

**"Material KPI Failure"** means a Serious KPI Failure or a Severe KPI Failure.

**"Milestone Date"** means the forecasted date for commencement of the relevant procurement as set out in the Resource Forecast.

**"Minor KPI Failure"** shall be as set out against the relevant Key Performance Indicator in Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

**"Monitoring Requirements Schedule"** means the monitoring arrangements more particularly described in Part A (Monitoring Requirements) of Schedule 3.

**"Month"** means calendar month.

**"MyCSP"** means the body that administers the Schemes and any replacement body from time to time.

**"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.

**"Notified Sum"** means the amount stated in the Authority's notice under paragraph 3.3 of Schedule 2 (Administration Requirements) or in the absence of such notice, the amount stated in the Contractor's application for payment.

**"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.

**"Older Worker"** means a person 50 years of age and over.

**"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's Systems Environment; 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.

**"Parent Company"** is a company that owns enough voting stock in another firm known as its subsidiaries to control management and operation by influencing or electing its board of directors.

**"Party"** means a party to the Contract.

**"Performance Improvement Plan"** means the plan to be provided by the Contractor in accordance with clauses F5.4 and F5.6(i) (Remedies in the Event of Inadequate Performance).

**"Performance Monitoring Report"** has the meaning given in paragraph 1.1 of Part A (Monitoring Requirements) of Schedule 3 (Performance Monitoring).

**"Performance Review Meeting"** has the meaning given in paragraph 1.4 of Part A (Monitoring Requirements) of Schedule 3 (Performance Monitoring).

**"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 given in Data Protection Legislation and shall include Special Categories of Personal Data.

**"Personal Data Breach"** shall have the same meaning as given in Data Protection Legislation.

**"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.

**"Prohibited Act"** shall have the meaning given in clause D1 (Prevention of Bribery and Corruption).



**“Proscribed Conduct”** means the following activities or circumstances:

- (a) performing or delivering any works or services in or in relation to the Contract other than the Service;
- (b) agreeing, permitting or entering into any arrangement (whether by contract, joint venture or otherwise) other than by the Contract to carry out any Authority Supply Chain Services, either as a Authority Supply Chain Member or as any part of the supply chain;
- (c) receiving or being entitled to receive any benefit, financial, commercial or otherwise which is derived expressly or impliedly from the Supply Chain, save for the consideration and/or benefit expressly provided for or impliedly permitted by the Contract;
- (d) being connected by a shareholding (controlling or otherwise) or by any arrangement (whether written or oral, by contract (other than the Contract), joint venture or otherwise) with any member of the Supply Chain including but not limited to the Authority Supply Chain Members);
- (e) allowing any member of the Supply Chain (including but not limited to the Authority Supply Chain Members) to exercise any control or influence over the Contractor or any Sub-contractor save as expressly or impliedly permitted by the Contract;
- (f) exercising any control or influence over or permitting any Sub-contractor to exercise and control or influence over any member of the Supply Chain (including but not limited to the Authority Supply Chain Members) save as expressly or impliedly permitted by the Contract; or
- (g) appointing any member of the Supply Chain (including but not limited to the Authority Supply Chain members) as a Sub-contractor.

**“Protective Measures”** means appropriate technical and organisational measures which shall be sufficient to secure that the Data Processor will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the Data Subject and may include (without limitation):

- (i) Pseudonymisation and encrypting Personal Data;
- (ii) ensuring on-going confidentiality, integrity, availability and resilience of systems and services used for data processing;
- (iii) measures to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident
- (iv) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident; and
- (v) regularly assessing and evaluating the effectiveness of such measures adopted by it.

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

**“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.

**“Registers”** means the register and configuration database referred to in paragraph 1.1(a) and 1.1(b) of Schedule 11 (Exit Management).

**“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.

**“Release”** means an amount previously subject to a Retention that is to be repaid to the Contractor in accordance with Part B (Key Performance Indicators) of Schedule 3 (Performance Monitoring).

**“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 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).

**“Resource Allocation”** means the Staff resource reasonably required to provide the Services for the relevant Month on the basis of the procurement timetable set out in the Resource Forecast.

**“Resource Forecast”** means the timetable forecasting the Authority’s procurement requirements over the Contract Period set out at Appendix 1 (Resource Forecast) to Schedule 1 (The Services), as updated and/or amended by the Authority from time to time in accordance with paragraph 4 of Schedule 9 (Change Control Procedure).

**“Retention”** means a retention of some or all of the Charges for a relevant Month calculated in accordance with Part B (Key Performance Indicators) of Schedule 3 (Performance Monitoring).

**“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 Policies”** mean the Authority’s Security Policies published by the Authority from time to time and shall include any successor, replacement or additional Security Policies. The Security Policies are set out in Annex A to Schedule 6 (Security Requirements).

**“Security Policies and Standards”** mean the Security Policies and the Security Standards.

**“Security Standards”** mean the Authority’s Security Standards published by the Authority from time to time and shall include any successor, replacement or additional Security Standards. The Security Standards are set out in Annex B to Schedule 6.

**“Serious KPI Failure”** shall be as set out against the relevant Key Performance Indicator in Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

**“Service(s)”** means the services to support the transition from the first iteration of the DWP Estates Integrator Model to the second DWP Estates Operating Model, as more particularly described in the Specification.

**“Service Failure Points”** means, in relation to a KPI Failure, the points that are set out against the relevant KPI in the table in Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

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

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

**“Service Milestone”** means the provision of outputs to be agreed in relation to activities set out in the Resource Forecast.

**“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.

**“Severe KPI Failure”** shall be as set out against the relevant Key Performance Indicator in Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

**“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 under this Contract as set out in Schedule 1 (The Services).

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

**“Staff”** mean all persons employed by the Contractor to perform its obligations under the Contract including directors, officers, employees together with the Contractor’s servants, agents, consultants, contractors of the Contractor, suppliers and Sub-contractors used or engaged 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.

**“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.

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

**“Supply Chain”** means the Contractor and the Authority Supply Chain Members and its and their sub-contractors and suppliers of any tier, and all employees and agents engaged by any of them in relation to the Contract.

**“Supply Chain Integrator”** means the supplier under the Integrator Agreement, and such supplier(s) that the Authority appoints as its replacement or successor from time to time (whether or not under the Integrator Agreement) to provide all or part of the Supply Chain Integrator Services.

**“Supply Chain Integrator Services”** means the management and co-ordination services provided by the Supply Chain Integrator in respect of the Authority Supply Chain Members.

**“Sustainable Development”** means the sustainable development requirements specified in Schedule 7 (Sustainable Development Requirements).

**“Target Performance Level”** means the minimum level of performance for a Key Performance Indicator which is required by the Authority, as set out against the relevant Key Performance Indicator in the column headed 'Target Performance' in the table at Annex 1 (Key Performance Indicators) to Schedule 3 (Performance Monitoring).

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

**“Termination Assistance Notice”** has the meaning given in paragraph 5.1 of Schedule 11 (Exit Management).

**“Termination Assistance Period”** means in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Contractor is required to provide the Termination Services as such period may be extended pursuant to paragraph 5.2 of Schedule 11 (Exit Management).

**“Termination Services”** means the services and activities to be performed by the Contractor pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 11 (Exit Management).

**“Third Parties”** means any supplier to the Authority (other than the Contractor) which is notified to the Contractor from time to time and/or which the Contractor should have been aware.

**“Transferable Contracts”** means the Sub-contracts, software licences, or other agreements which are necessary to enable the Authority or any Replacement Contractor to perform the Services, including in relation to licences all relevant documentation.

**“Transferring Contracts”** has the meaning given in paragraph 6.2 of Schedule 11 (Exit Management).

**“Transferring Employee(s)”** means each employee of the Incumbent Contractor or the Authority (as applicable) engaged immediately prior to the Activity Date in the performance of the activities to be performed as the Services (or part of the Services) and who are the 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.

**“UK GDPR”** means the retained European Union law version of the General Data Protection Regulation (EU) 2016/679 as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 as in force in the UK from time to time;

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

**“VCSE”** means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

**“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”;
- f) The words “integrity”, “availability”, “related properties of information” and “threat landscape” shall have the meaning ascribed to them in accordance with Good Security Practice (as defined in Schedule 6 (Security Requirements)); and
- g) any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
  - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“EEA”) agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

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

## **A2 Contract Period**

A2.1 This Contract shall commence on the Commencement Date and shall expire automatically on 20<sup>th</sup> November 2022, unless it is otherwise terminated earlier in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under clause A2.2 (Contract Period).

A2.2 The Authority may, by giving written notice to the Contractor of not less than six (6) weeks prior to the last day of the Initial Contract Period or the extended period (as the case may be), extend the Contract Period on not more than two (2) occasions, in each case for a period of up to six (6) Months. The provisions of the Contract will apply (subject to any Contract Change) throughout any such extended period(s).

### **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 or by letter (such letter may be delivered by hand or sent by registered post or by recorded delivery). 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 (Notices).

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

a) For the Authority:

Address: Caxton House, Tothill Street London SW1H 9DA

For the attention of: [REDACTED]

Email: [REDACTED]

b) For the Contractor:

Address: The Blue Fin Building, 110 Southwark Street, London, SE1 0TA

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 due to the Authority as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Authority.

## **A7 Interface with the Authority Supply Chain**

Independence and Conflicts of Interest

A7.1 The Contractor shall carry out (and shall procure that Staff shall carry out) the Services in the Authority's best interest and independently and impartially.

A7.2 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff or Contractor Related Party is placed in a position of potential or actual conflict between the financial, commercial or other interests of the Contractor and/or any Contractor Related Party and the Contractor's duties to the Authority under this Contract. Should any conflict arise or become apparent, the Contractor will disclose the same to the Authority immediately with full details.

A7.3 Without prejudice to the Contractor's general obligation under clauses A7.1 and A7.3 (Independence and Conflicts of Interest), the Contractor shall not and shall procure that any Staff or any Contractor Related Party shall not engage in Proscribed Conduct and shall notify the Authority immediately on any breach of this requirement.

A7.4 Without prejudice to the Authority's rights under clause H2.1 (Termination on Default), where the Contractor is in breach of clauses A7.1 to A7.3 (Independence and Conflicts of Interest), the Contractor shall, within five (5) Working Days of any breach becoming apparent to it, provide proposals to the Authority for remedying and/or mitigating such breach. Upon any breach of clauses A7.1 to A7.3 (Independence and Conflicts of Interest) becoming apparent to the Authority (whether or not notified by the Contractor), the Authority may, at the Contractor's cost:

- a) require the Contractor to put such measures in place (including but not limited to information barriers) as required by the Authority in its absolute discretion to rectify and/or mitigate the effect of any such breach; and/or
- b) undertake additional monitoring activities to ensure that notwithstanding any breach of clauses A7.1 to A7.3 (Independence and Conflicts of Interest) the Contractor continues to comply with its other obligations pursuant to the



Contract and in accordance with clause A7.1 (Independence and Conflicts of Interest).

- A7.5 Save in the event of and to the extent consequential on termination of all or part of the Service, where as a result of the matter(s) leading or contributing to a breach of clauses A7.1 to A7.3 (Independence and Conflicts of Interest), the Contractor or any Staff or a Contractor Related Party realises a profit or other financial benefit:
- a) the Contractor shall account to the Authority in respect of the same on a monthly basis; and
  - b) the Authority shall be entitled to set off an amount equivalent to that financial benefit (as accounted for by the Contractor or otherwise as the Authority may determine) from any amount due to the Contractor under this Contract or under any other agreement between the Consultant and the Authority.

#### Defaults Caused by Authority Supply Chain Members

- A7.6 Where an Authority Supply Chain Member default causes, or the Contractor reasonably believes will cause, the Contractor to be in material Default under this Contract, within five (5) Working Days of any material Default becoming apparent to it the Contractor shall notify the Authority of such material Default, setting out the details of the Default or likely Default, how such Authority Supply Chain Member default has caused or will cause the relevant Default and what steps the Contractor has undertaken or will undertake to mitigate the Default. The Authority may, at the Authority's cost (but subject always to compliance with this clause A7.6 (Defaults Caused by Authority Supply Chain Members) and clauses A7.7 to A7.9 (Defaults Caused by Authority Supply Chain Members)), require the Contractor to put such measures in place (including but not limited to information barriers) as required by the Authority (acting reasonably) to rectify and/or mitigate the effect of any such material Default.
- A7.7 The Contractor shall at all times:
- a) use all reasonable endeavours to mitigate the effects of the Authority Supply Chain Member default and proactively liaise with the relevant Authority Supply Chain Member as necessary;
  - b) continue to provide the Service in accordance with the requirements of this Contract; and
  - c) comply with any reasonable requirements of a Authority Supply Chain Member.
- A7.8 The Authority shall, acting reasonably, determine whether and to what extent the Authority Supply Chain Member default has caused the material Default and shall notify the Contractor of its determination in writing. If there is any dispute in relation to the effects of such Default, either Party may refer the dispute to the dispute resolution procedures in clause I2 (Dispute Resolution). Pending the resolution of the dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, such Default.
- A7.9 Where it is determined in accordance with clause A7.8 (Defaults Caused by Authority Supply Chain Members) that:

- a) the Authority Supply Chain Member default is not the cause of the relevant Default; and/or
- b) the Authority Supply Chain Member default would not have occurred if the Contractor had performed its obligations under and in accordance with this Contract,

the relief set out in clause A7.10 (Defaults Caused by Authority Supply Chain Members) shall not apply and the Contractor shall be liable for the consequences of such Default in accordance with the terms of this Contract.

A7.10 Subject to clause A7.9 (Defaults Caused by Authority Supply Chain Members), where the Authority determines that the material Default would not have occurred but for an Authority Supply Chain Member default:

- a) the Contractor shall not be treated as being in breach of this Contract to the extent that such Default was caused by the Authority Supply Chain Member default; and
- b) the Authority shall not be entitled, to the extent that the Default is caused by the Authority Supply Chain Member default, to exercise any right that may arise as a result of the relevant Default to
  - (i) terminate this Contract pursuant to clause H2 (Termination on Default); or
  - (ii) accrue Service Failure Points or apply Retentions pursuant to Part B of Schedule 3 (Performance Monitoring).

#### Authority Supply Chain Indemnity

A7.11 The Contractor shall not, and shall ensure that the Staff do not (due to any default or breach of duty):

- a) cause any impediment, prevention or default to any Authority Supply Chain Member; and/or
- b) cause or contribute to any breach by the Authority of its obligations to a Authority Supply Chain Member under the relevant Authority Supply Chain Contract.

A7.12 The Contractor shall indemnify the Authority for all expenses, costs, damages and losses incurred by it arising out of or in connection with clause A7.11 (Authority Supply Chain Indemnity).

### **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 Contract performance targets;
- c) ensure a segregation of duties within the Contractor's and/or Sub-contractor's 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 this clause A8.3 shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

## **A9 Exclusion of Sub-contractors**

A9.1 Where the Authority considers under Regulation 71(8) of the Public Contracts Regulations 2015 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 required under this Contract and that the volumes referred to in the Invitation to Tender, the Resource Forecast or elsewhere in this Contract 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.
- B1.3 The Contractor shall ensure that it has sufficient Staff resource at the times and grades required to provide the Service in support of the Authority's procurement timetable as set out in the Resource Forecast.

### **B2 Provision of Equipment**

- B2.1 Where the Authority provides Equipment free of charge to the Contractor such Equipment shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any Premises of the Contractor during normal business hours on reasonable notice to recover any such Equipment. The Contractor shall not in any circumstances have a lien or any other interest on the Equipment and the Contractor shall at all times have access to or custody of the Equipment as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Equipment and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Authority's request, store the Equipment separately and ensure that it is clearly identifiable as belonging to the Authority.
- B2.2 The Equipment shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise in writing within five (5) Working Days of receipt.

- B2.3 The Contractor shall maintain the Equipment in good order and condition (excluding fair wear and tear), and shall use the Equipment solely in connection with the Contract and for no other purpose without prior Approval.
- B2.4 The Contractor shall ensure that all the Equipment whilst in its custody, either on the Authority's Premises or elsewhere during the supply of the Services, is secured in accordance with the Authority's Security Requirements.
- B2.5 The Contractor shall be liable for all loss of, or damage to, the Equipment (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or loss or damage occurring to, the Equipment.
- B2.6 The Contractor shall return all Equipment issued to the Contractor or its Staff to the Authority on expiry or earlier termination of this Contract.

### **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 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.
- B3.3 The Parties shall comply with the terms of Schedule 3 (Performance Monitoring) in relation to the management of the Contractor's performance of the Services.

### **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 Approval under clauses B4.2 or B4.3 (Key Personnel), provided that such Approval shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **B5 Contractor's Staff**

B5.1 The Authority may, by written notice to the Contractor, refuse to admit on to, or withdraw permission to remain on, the Authority's Premises and/or direct the Contractor to end the involvement in the provision of the Services of:

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

where the admission or continued presence or continued involvement in the provision of the Services by such person-would, in the reasonable opinion of the Authority, be undesirable.

B5.2 The Contractor shall, by no later than five (5) Working Days after the Commencement Date, provide to the Authority a list of names and contact details of all persons who may require admission to the Authority's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request. The Contractor shall maintain and update this list (including maintaining up to date contact details for each person). In the event that additional persons require admission to the Authority's Premises, the Contractor shall provide an updated version of the list at least five (5) Working Days before admission is required (unless agreed otherwise between the Parties).

B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises shall be final and conclusive.

B5.4 The Staff, working from the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) including Schedule 6 (Security Requirements) of this Contract as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.

B5.5 The 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/or accessing the Authority's Premises.

B5.6 The Contractor shall provide updates and training on a continuing basis for all Staff employed or engaged in the provision of the Services to ensure such are and remain in compliance with the Security Policies and Standards.

B5.7 The Contractor shall further use all reasonable endeavours and promptly take all reasonable steps to ensure that its Staff are legally entitled to reside in the United Kingdom and have a work permit, where applicable.

B5.8 If the Contractor, in the reasonable opinion of the Authority, fails to comply with clauses B5.4, B5.5 and B5.6 (Contractor's Staff) the Authority will be entitled to consider that failure a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

## **B6 Contractor Due Diligence**

B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have made all appropriate enquiries in relation to:

- a) its use of the Authority's Premises; and
- b) the provision of the Equipment,

so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract.

## **B7 Occupation of Authority Premises**

B7.1 The Authority may grant permission to the Contractor from time to time for the Contractor and the Staff to use the Authority's Premises solely for the purpose of performing its obligations under this Contract. The Authority may revoke this permission at any time in accordance with clause B5.1 (Contractor's Staff).

B7.2 The Contractor shall limit access to the land or Authority's Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Authority's Premises as the Authority may reasonably request.

B7.3 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Authority's Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.4 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Authority retains the right at any time to use any Authority's Premises owned or occupied by it in any manner it sees fit.

## **B8 Offers of Employment**

B8.1 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.

## **B9 Transfer of Undertakings (Protection of Employment) (TUPE)**

B9.1 The Authority and the Contractor agree that if at the commencement of the Services (or any relevant part of the Services) there is a Relevant Transfer in relation to the Transferring Employees clause B9 (Transfer of Undertakings (Protection of Employment) (TUPE)) shall apply.

B9.2 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.

- B9.3 The Parties acknowledge that the Authority 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**

- B9.4 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out their respective duties under Regulation 13 of the TUPE Regulations.

#### **Authority Indemnities**

- B9.5 Subject to clause B9.6 (Authority Indemnities), the Authority 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 Authority 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 Authority 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 Authority 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 Authority to comply with any legal obligations to such trade union, body or person arising before the Relevant Transfer Date;
  - (iv) any failure by the Authority 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 Authority 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 from time to time); 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 Authority 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.

B9.6 The indemnities in clause B9.5 (Authority Indemnities) shall not apply to the extent that the Loss 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 Loss:-

- 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**

B9.7 Subject to clause B9.8 (Contractor Indemnities), the Contractor shall indemnify the Authority 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.

B9.8 The indemnities in clause B9.7 (Contractor Indemnities) shall not apply to the extent that the Loss arises or is attributable to an act or omission of the Authority 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.

## **B10 Pre-Service Transfer Obligations**

B10.1 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.
- B10.2 Where the Contractor provides information in accordance with clause B10.1 (Pre-Service Transfer Obligations) 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 B10.1 (Pre-Service Transfer Obligations) in relation to the Contractor’s Final Personnel List (insofar as such information has not previously been provided).
- B10.3 The Contractor warrants that all of the information provided to the Authority pursuant to clause B10.1 and B10.2 (Pre-Service Transfer Obligations) 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).
- B10.4 From the date of the earliest event referred to in clause B10.1 (Pre-Service Transfer Obligations), 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.
- B10.5 From the date of the earliest event referred to in clause B10.1 (Pre-Service Transfer Obligations), 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.
- B10.6 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.
- B11 Application of the TUPE Regulations on Exit**

- B11.1 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.
- B11.2 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).
- B11.3 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:-
- a) the Contractor and/or the Sub-Contractor; and
  - b) the Replacement Contractor and/or the Replacement Sub-Contractor.

#### **Contractor Indemnities**

- B11.4 Subject to clause B11.5 (Contractor Indemnities), 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 or is attributable to the failure of the Authority and/or the Replacement Contractor to comply with Regulation 13(4) of the TUPE Regulations.

B11.5 The indemnities in clause B11.4 (Contractor Indemnities) 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.

B11.6 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.

B11.7 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.

B11.8 If after the fifteen (15) Working Day period specified in clause B11.6(b) (Contractor Indemnities) 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.

B11.9 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of clauses B11.6 to B11.8 (Contractor Indemnities), 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 Loss arising out of the termination of employment pursuant to the provisions of clause B11.8 (Contractor Indemnities) provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Loss.

B11.10 The indemnity in clause B11.9 (Contractor Indemnities):-

- 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 B11.6(a) (Contractor Indemnities) is made by the Replacement Contractor and/or

Replacement Sub-contractor to the Contractor within six (6) months of the Service Transfer Date.

- B11.11 If any such person as is described in clause B11.6 (Contractor Indemnities) 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 B11.6 to B11.8 (Contractor Indemnities), such person shall be treated as a Relevant Employee.

#### **Replacement Contractor Indemnities**

- B11.12 Subject to clause B11.13 (Replacement Contractor Indemnities), 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.

- B11.13 The indemnities in clause B11.12 (Replacement Contractor Indemnities) shall not apply to the extent that the Loss arises from or is 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 Loss arising from or attributable to the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the TUPE Regulations.

## **B12 Pension Protection**

- B12.1 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**

- B12.2 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.
- B12.3 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.
- B12.4 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.
- B12.5 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.
- B12.6 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.

B12.7 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.

B12.8 The Contractor shall indemnify and keep the Authority indemnified 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**

B12.9 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 B12 (Pension Protection), 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 B12 (Pension Protection) without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **Indemnity**

B12.10 The Contractor undertakes to indemnify the Authority and keep the Authority indemnified 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**

B12.11 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) Approval (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.

### **B13 Third Party Rights in relation to TUPE and Pensions**

- B13.1 Notwithstanding any other provisions of this Contract for the purposes of clauses B9 to B13 (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.
- B13.2 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.
- B13.3 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, Contract Change or termination.
- B13.4 Clauses B9 to B12 and this clause B13 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 Contractor shall comply with the provisions of Schedule 2 (Administration Requirements).
- C2.2 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 requiring undisputed invoices to be paid within a period of no more than thirty (30) days from the date on which it is determined that the invoice is valid and undisputed; 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 clause C2.2(a).
- C2.3 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 application for payment being made by the Contractor in accordance with the provisions of Schedule 2 (Administration Requirements).
- C2.4 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 (Payment and VAT) 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.
- C2.5 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).
- C2.6 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).
- C2.7 Without prejudice to clause C2.4 (Payment and VAT), 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**").
- C2.8 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 C2.8(d), the Contractor shall be obliged to repay any overpayment by the Authority on demand.

C2.9 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.

C2.10 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 Euro**

C4.1 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.

C4.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C4.1 (Euro) by the Contractor.

### **C5 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 (Prevention of Bribery and Corruption) ("**Prohibited Act**"). For the purposes of this clause D1 (Prevention of Bribery and Corruption), 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 a relevant function or activity improperly; 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) relating to defrauding, attempting to defraud or conspiring to defraud the Authority.

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

D1.3 The Contractor shall if requested, provide the Authority with any reasonable assistance, 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 it implements actively to prevent any Staff from committing any Prohibited Acts as set out in clause D1.1 (Prevention of Bribery and Corruption) 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 (Prevention of Bribery and Corruption), 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 (Prevention of Bribery and Corruption);
- 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 (Prevention of Bribery and Corruption).

Any Default by the Contractor in connection with this clause D1.5 shall entitle the Authority to exercise its rights under clause F5 (Remedies in the Event of Inadequate Performance).

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 (Prevention of Bribery and Corruption), 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 (Prevention of Bribery and Corruption), 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.

## **D5 Health and Safety**

- D5.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- D5.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- D5.3 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D5.4 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D5.5 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other 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.

- D5.6 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 Tax Compliance**

- D6.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any occasions of Tax Non-Compliance.
- D6.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:-
- a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - b) promptly provide to the Authority:-
    - (i) details of the steps taken by the Contractor and any steps that the Contractor will take to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may require.

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

- D7.1 The Authority 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 Authority 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 Business Continuity Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request. Confirmation that secure back-ups have been performed in accordance with the Authority's requirements as specified in this clause E1.5 shall be provided to the Authority no less than every three (3) Months.
- 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 Policies and Standards detailed in Schedule 6 (Security Requirements).
- 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 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 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 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 The Contractor and any of its Sub-contractors, shall not access, process, host or transfer Authority Data 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. The provisions set out in this paragraph E1.9 shall apply to Landed Resources.
- E1.10 Where the Authority has given its prior written consent to the Contractor to access, process, host or transfer 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 F5.7 (Remedies in the Event of Inadequate Performance).
- 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/Information in accordance with the Authority's 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, the Contractor (as at the date immediately preceding such assignment or novation) 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**

E2.1 Each of the Parties including the personnel of each Party (personnel shall include directors, officers, employees, servants, agents, consultants, suppliers and sub-contractors) will comply with all of its applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This clause is in addition to and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

E2.2 With respect to the Parties' rights and obligations under the Contract, the Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor unless otherwise specified in Schedule 10.

E2.3 The Contractor shall comply with the Authority's instructions in accordance with Schedule 10 (Personal Data and Data Subjects) and shall notify the Authority

immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

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

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E2.5 The Contractor shall, in relation to any Personal Data processed or to be processed in connection with its obligations under this Contract:-

- a) process that Personal Data only to the extent and in such manner as is necessary for the purposes specified in this Contract and in accordance with Schedule 10, unless the Contractor is required to process the Personal Data otherwise by Law. In such case, the Contractor shall inform the Authority of that legal requirement unless the Law prevents such disclosure on the grounds of public interest;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Data Controller may reasonably reject (but failure to reject shall not amount to approval by the Data Controller of the adequacy of the Protective Measures) having taken account of the:-

- (i) nature of the Personal Data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and

implement any Protective Measures at the Contractor's own expense and at no cost to the Authority;

- c) ensure that it and its Staff:-
  - (i) do not process Personal Data except in accordance with this Contract and Data Protection Legislation and access to such data is limited to those Staff who need to access Personal Data to meet the Contractor's Data Processor duties under the Contract and Data Protection Legislation
  - (ii) and only collect Personal Data on behalf of the Authority in the format agreed with the Authority which shall contain a data protection notice informing the Data Subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed,

the purpose(s) for which the Data Subject's Personal Data will be processed and any other information, which is necessary to comply with Data Protection Legislation. The Contractor shall not modify the format agreed with the Authority without the prior written consent of the Authority;

- (iii) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:-
  - (A) are aware of and comply with the Contractor's duties under this clause E2;
  - (B) are subject to appropriate confidentiality undertakings including between the Contractor and any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract or required to do so under a legal requirement/court order (provided that the Contractor shall give notice to the Authority of any disclosure of Personal Data that it or any of its Staff is required to make under such a legal requirement or court order immediately when it is made aware of such a requirement); and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- d) not transfer Personal Data outside of the European Economic Area or International Organisation unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
  - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data.
- e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) using a secure method of transfer to the Authority on expiry or earlier termination of the Contract unless the Contractor is required by Law to retain the Personal Data;
- f) permit the Authority or the Authority's designated representative or external auditors to inspect and audit the Contractor's Data Processor activities (and/or those of its Staff) and comply with all reasonable requests or directions by the

Authority to enable the Authority to verify that the Contractor is in full compliance with its obligations under the Contract.

- E2.6 Subject to clause E2.7, the Contractor shall notify the Authority immediately if it:-
- a) receives a Data Subject Request (or purported Data Subject Request);
  - b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, notice, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f) becomes aware of a Data Loss Event.
- E2.7 The Contractor's obligation to notify the Authority under clause E2.6 shall include the provision of further information to the Authority as soon as reasonably practicable as details become available.
- E2.8 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E2.6 (and insofar as possible within the timescales reasonably required by the Authority) at no cost to the Authority including by promptly providing:-
- a) the Authority with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request promptly and in any event within the relevant timescales set out in the Data Protection Legislation;
  - c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Authority following any Data Loss Event including but not limited to such assistance to enable the Authority to mitigate the impact of the Data Loss Event, to ensure that a Data Loss Event of the same nature does not occur again, to notify the competent regulatory body of the Data Loss Event and/or to notify the Data Subjects of the Data Loss Event;
  - e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- E2.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with its Data Processor obligations under this clause E2.

This requirement does not apply where the Contractor employs fewer than 250 staff, unless:-

- a) the Authority determines the processing is not occasional;
  - b) the Authority determines the processing includes any Special Categories of Personal Data and/or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E2.10 The Contractor shall keep a record of any processing of Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR and upon request provide a copy of the record of the processing of any Personal Data it carries out on behalf of the Authority including (without limitation) the records specified in Article 30(2) of the GDPR.
- E2.11 The Contractor shall designate its own Data Protection Officer if required by Data Protection Legislation or by the Authority in writing.
- E2.12 Before allowing any Sub-processor to process any Personal Data under this Contract, the Contractor must:-
- a) notify the Authority in writing of the intended Sub-processor and processing;
  - b) obtain the advance written consent of the Authority to allow the Sub-processor to process any Personal Data under the Contract;
  - c) enter into a written contract with the Sub-processor which reflects the terms set out in this clause E2 such that they apply to the Sub-Processor as a Data Processor; and
  - d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonable require.
- E2.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor and/or Staff.
- E2.14 The Authority may, at any time on not less than thirty (30) Working Days' advance notice, revise this clause by replacing it with any applicable Data Controller/Data Processor standard clauses or similar terms forming part of an applicable certification scheme under the Data Protection Legislation (which shall apply when incorporated by an attachment to this Contract).
- E2.15 The Contractor shall comply with guidance issued by the Information Commissioner's Office. The Authority may on not less than thirty (30) Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer and/or any changes to Data Protection Legislation.
- E2.16 The Contractor shall indemnify and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, loss, penalties, fines, levies, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of

or in connection with, any breach by the Contractor or any of its Staff of this clause E2.

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

E3.1 The Contractor shall comply with, and shall ensure that 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 F5.7 (Remedies in the Event of Inadequate Performance).

**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 to the information owner prior to its disclosure;
- 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 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 F5.7 (Remedies in the Event of Inadequate Performance).

- E4.5 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.
- E4.6 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.
- E4.7 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.
- E4.8 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.
- E4.9 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.
- E4.10 Clauses E4.1-E4.7 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 and/or Confidential Information, which is specified as being exempt from disclosure under this Contract, 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 Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Authority's Security Requirements. The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Contractor's Systems Environment.
- E7.2 The Contractor shall ensure that its Staff comply with the Authority's Security Requirements.

## **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, royalty 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-licence, 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, loss, 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 Authority's negligence or breach of contract.
- E8.9 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 E8.9(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 availability 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's Systems 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 F5.3 (Remedies in the Event of Inadequate Performance);
- 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 representatives access to conduct an audit (an "**Exceptional Audit**") of the Contractor in any of the following circumstances:-

- a) actual or suspected impropriety or Fraud;
- b) there are reasonable grounds to suspect that:-
  - (i) the Contractor is in Default under the Contract;
  - (ii) the Guarantor may be in default of the Guarantee;
  - (iii) the Contractor 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 Policies and Standards 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. The requirement to give up to forty eight (48) hours under this clause E9.2 shall not apply if the Authority reasonably believes that the Contractor is in Material Breach of any of its obligations under this Contract or Data Protection Legislation.

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

E12.2 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause E12.1 shall be borne by the Parties as follows:-

- a) by the Contractor where the Malicious Software originates from the Contractor's Systems Environment 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's Systems Environment 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 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 Subject to clause F1.6, 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.

F1.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.4, 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.

F1.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.4 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.

F1.7 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.

F1.8 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 Contract Change shall be effective unless it is made in writing in accordance with the Change Control Procedure as specified in Schedule 9 (Change Control Procedure) and signed on behalf of the Parties except for the changes described in clauses E2.14 and E2.15 and where specified in clauses F3.3 and F3.4, which shall be made by the Authority without the requirement to be made through the Change Control Procedure and shall be made by the Contractor at no additional cost to the Authority.
- 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 the original terms of this Contract as at the original signature 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 signature date of this Contract; or
  - c) extending the scope of this Contract substantially.

### **Change in Law**

- F3.3 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the Contract nor be entitled to an increase in the Contract Price as a result of:-
- a) a General Change in Law; or
  - b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
- F3.4 If a Specific Change in Law occurs or will occur during the Contract Period (other than as referred to in clause F3.3(b), the Contractor shall:
- a) notify the Authority as soon as is reasonably practicable of the likely effects of that Specific Change in Law, including:
    - (i) whether a Contract Change is required, including to the Services, the Contract Price and/or any other part of this Contract; and
    - (ii) whether any relief from the Contractor's obligations is required, including an obligation to meet a KPI; and
  - b) provide the Authority with evidence:
    - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractor(s);
    - (ii) as to how the Specific Change in Law has affected the cost of providing the Services;
    - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

F3.5 Any Contract Change required as a result of a General Change in Law or a Specific Change in Law as referred to in clause F3.3(b) shall be made by the Authority to the Contract without the requirement to be made through the Change Control Procedure.

F3.6 Any Contract Change to the Contract including for the avoidance of doubt, the Contract Price or relief from the Contractor's obligations, that is required as a result of a Specific Change in Law (other than as referred to in clause F3.3(b)) shall be implemented in accordance with the Change Control Procedure.

#### **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.

F5.2 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 F5.3 or clause F5.7 of the Contract (as appropriate).

F5.3 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, and/or where there has been a KPI Failure, 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 F5.4

F5.4 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 F5.4 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 F5.4.
- 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 F5.4 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 to be a Material Breach and exercise its rights under clause F5.7.

F5.5 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 F5.3(b) or F5.6(i) which occurs within six (6) months of the request by the Authority for a Performance Improvement Plan to be provided under clause F5.4; or
- b) the Contractor is requested to provide a Performance Improvement Plan or Revised Performance Improvement Plan (as appropriate) in accordance with clause F5.4 or F5.6(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.

F5.6 In the event that a Default is not remedied to the satisfaction of the Authority in accordance with clause F5.3 (a) or (b) the Authority may:-

- (i) request a Performance Improvement Plan from the Contractor in respect of the Default in accordance with clause F5.4, irrespective of whether a previous Performance Improvement Plan has previously been requested been and/or 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 F5.7.

F5.7 Without prejudice to clause F5.3, 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 (and a proportionate reduction shall be made to the Contract Price payable to the Contractor in respect of such period) 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).

F5.8 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 F5.7 (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.

## **F9 Entire Agreement**

- F9.1 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.
- F9.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on 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 as referred to in this clause F9.2 shall be for breach of contract under the terms of the Contract.
- F9.3 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 the following order of precedence:-
- a) the clauses of the Contract;
  - b) the Schedules;
  - c) any other document(s) referred to in the clauses of the Contract with the exception of the Tender;
  - d) Tender.

## **F10 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**

- 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:

- a) loss of or damage to the Authority's Premises;
- b) deliberate and/or wilful default;
- c) the indemnities in clauses A7.12 (Authority Supply Chain Indemnity), B10 (Pre-Service Transfer Obligations), B12 (Pension Protection), B13 (Third Party Rights in relation to TUPE and Pensions), C2.8 (Payment and VAT), E2.16 (Protection of Personal Data), E8.6 and E8.8 (Intellectual Property Rights); and
- d) any third party claim made against the Authority (including any costs, damages or expenses payable to any third party) to the extent that such claim is due to of any negligent act, omission or default of the Contractor,

shall be unlimited and amounts payable by the Contractor under such provisions shall not count towards the limit of the Contractor's liability under this Contract in clause G1.4.

G1.1.3 The Authority's liability in respect of the indemnities in clause B10 (Pre-Service Transfer Obligations) 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 performance or non-performance by the Contractor of its obligations under the Contract;
  - (ii) 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;
  - (iii) infringement or alleged infringement of copyright, patent, registered design or other property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Authority; or

- (iv) any other loss which is caused directly 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, G1.2(a), G1.2(b), G1.2(c)(ii), G1.2(c)(iii), G1.2(iv) and without prejudice to clause H2, the annual aggregate liability of either Party for all Defaults (including any liability incurred under clause G1.5a) shall in no event exceed £5,000,000 (five million pounds).
- G1.5 Subject always to clause G1.1 and G2 and as specified in clauses E2.16 and G1.2(b)(iv), 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 five million pounds (£5,000,000) 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 and during the Contract Period the Contractor shall disclose any change to the information referred to in this clause G3.1(c) and information in relation to the Prohibited Acts;
  - 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.

## **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<sup>1</sup>:-

- 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

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<sup>1</sup> Update for CIGA

- 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 (as amended) (“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 dissolved for any reason;

- 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 dissolved for any reason;
- 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 of 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; or
- 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 F5.7 (Remedies in the Event of Inadequate Performance).

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 Exit Management**

H3.1 The Contractor shall comply with the provisions of Schedule 11 (Exit Management).

### **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:

- a) 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; and
- b) the Authority shall take all reasonable steps to mitigate such additional expenditure,

and 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 On the expiry or termination of this Contract or any part thereof the Contractor shall repay at once to the Authority any moneys paid up to and including such date of expiry or termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract.

H4.3 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 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), C3 Recovery of Sums, D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E4 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E5 (Confidential Information), E6 (Freedom of Information), E9 (Intellectual Property Rights), E10 (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) and I1 (Governing Law and Jurisdiction).

## **H5 Disruption**

- H5.1 The Contractor shall take reasonable care to ensure that in performing 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 Systems Environment) 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 Equipment (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**

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

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

### **I2 Dispute Resolution**

- I2.1 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.
- I2.2 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.
- I2.3 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.
- I2.4 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.
- I2.5 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.
- g) Unless agreed otherwise in writing, in any mediation each Party shall bear its own costs of such mediation.

12.6 Subject to clause I 2.2, the Parties shall not initiate court proceedings until the procedures set out in clauses I 2.1 and I 2.3 have been completed save that:-

- a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I 2.7;
- b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I 2.7;
- c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I 2.7, to which the Authority may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause I 2.6:-



- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- b) the Authority shall give a written notice of arbitration to the Contractor ("**Arbitration Notice**") stating:-
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- c) the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I 2.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause I 2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- f) the arbitration proceedings shall take place in London and in the English language; and
- g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

**FORM OF AGREEMENT**

This Contract has been entered into on the Commencement Date stated at A2 (Contract Period).

**SIGNED** for and on behalf of **SIGNED** for and on behalf of

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

Name	[REDACTED]	Name	[REDACTED]
Position	Commercial Director	Position	Senior Director
Signature	[REDACTED]	Signature	[REDACTED]

## **SCHEDULE 1 – THE SERVICES**



Project Strata PMO  
Phase 2 - Statement

## **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: Authority's Representative

- 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: Contractor's Representative

### **3 Payment Information**

- 3.1 An application for payment may be submitted no earlier than the tenth (10<sup>th</sup>) Working Day of the Month and no later than the twentieth (20<sup>th</sup>) Working Day of the Month. Each application for payment shall be supported by:

- a) a statement by the Contractor of the amount considered to be due and the basis upon which it is calculated including:
  - (i) a description of the Services provided in the relevant Month;
  - (ii) the dates on which such Services were performed and the grades of the Staff who performed such Services;
  - (iii) the Day Rates used to calculate the Charges;
  - (iv) details of any VAT or other sales tax payable in respect of the Charges;
  - (v) the banking details for payment to the Contractor via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
  - (iv) any other information required by the Authority;
- b) the Contractor's calculation of:
  - (i) any Retentions or Releases;

- (ii) entitlement of the Authority to any other payment by the Contractor under this Agreement; and/or
- (iii) the entitlement of the Authority to payment of any over-payment made to the Contractor.

- 3.2 The due date for payment of the Charges (or as the case may be any balance due to the Authority) will be the date which is the fifth (5th) Working Day of the Month following the Month in which the submission of the Contractor's application was made or should have been made.
- 3.3 No later than five (5) days after the due date for payment, the Authority shall issue a notice to the Contractor stating the amount that it considers to be due and the basis on which it is calculated. The amount due to the Contractor (or the Authority) in respect of the Charges shall be the amount stated in the Authority's notice under this paragraph 3.3.
- 3.4 In the absence of a notice by the Authority under paragraph 3.3, the amount due to the Contractor (or the Authority) in respect of the Charges shall be the amount stated in respect of the Charges in the Contractor's application under paragraph 3.2.
- 3.5 No sooner than six (6) Working Days after the due date, the Contractor (or Authority as the case may be) may submit an invoice for the Notified Sum.
- 3.6 Any invoice shall be cross referenced to the application to which it relates and shall be submitted to:

NEWPORT SSCL – DEPARTMENT FOR WORK AND PENSIONS, PO Box 406,  
NEWPORT NP10 8FZ.

with a copy to such other person and at such place as the Authority may notify the Contractor from time to time.

- 3.7 The final date for payment for Charges (or as the case may be any balance due to the Authority) shall be the later of the date which is:
- a) thirty (30) days after the submission of the application pertaining to such Charges; and
  - b) five (5) days after the submission of an invoice complying with paragraph 3.6.
- 3.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Schedule. Where any invoice does not conform to the Authority's requirements set out in this Schedule, the Authority shall promptly return the disputed invoice to the Contractor and the Contractor shall promptly issue a replacement invoice which shall comply with such requirements.
- 3.9 The Contractor undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate any invoice.
- 3.10 Subject to the relevant provisions of this Schedule, the Authority (or the Contractor as the case may be) shall make payment to the Contractor or the Authority (as the case may be) by the final date for payment.

#### **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 – PERFORMANCE MANAGEMENT**

### **PART A – 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 On the fifth (5th) Working Day of each Month, the Contractor shall provide a report to the Authority's Representative which summarises the performance by the Contractor against each of the Key Performance Indicators (the "**Performance Monitoring Report**").
- 1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:
- a) for each Key Performance Indicator, the actual performance achieved over the relevant Month and that achieved in the previous Month;
  - b) a summary of all KPI Failures that occurred during the relevant Month;
  - c) the severity level of each KPI Failure which occurred during the relevant Month;
  - d) for any Material KPI Failures occurring during the relevant Month, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
  - e) the status of any Performance Improvement Plan processes;
  - f) the number of Service Failure Points awarded in respect of each KPI Failure;
  - g) the Retentions to be applied, indicating the KPI Failure(s) to which the Retentions relate;
  - h) the Retentions applied in respect of the previous Month; and
  - i) such other details as the Authority may reasonably require from time to time.
- 1.3 The Performance Monitoring Report shall be reviewed and the contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.4.
- 1.4 The Parties shall attend meetings (the "**Performance Review Meetings**") on a Monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- a) take place within five (5) Working Days of the Performance Monitoring Report being issued by the Contractor pursuant to Paragraph 1.1;
  - b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
  - c) be attended by the Contractor's Representative and the Authority's Representative.

- 1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Contractor regarding any KPI Failure.
- 1.6 Performance Review meetings between the Authority and the Contractor shall also cover, as appropriate, dispute resolution 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.
- 1.7 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.
- 1.8 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.
- 1.9 The Contractor will be expected to continuously improve the quality of the provision of the Services including that delivered by its Sub-contractors. Where there are Performance Failures, the Contractor will be expected to have suitable internal escalation procedures in place to resolve this issue and, in respect of sub-contracted provision, take action where necessary to terminate the Sub-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 in relation to the Contract. Failure to provide such reasonable assistance shall be deemed a "Default" for the purposes of clause H2 (Termination on Default).

## **3 Management Information**

- 3.1 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:-

<b>Contractor Information Required</b>	<b>Frequency or Date Required by</b>
Sustainable Development Policy Statement & Sustainable Development Plan in accordance with Schedule 7	Within three (3) Months of the Commencement Date and at least annually thereafter.
Diversity & Equality Delivery Plan in accordance with Schedule 8	Within three (3) Months of the Commencement Date and at least annually thereafter.
Workforce Monitoring Data Template – Appendix 3 of Schedule 8 (Life Chances)	Within three (3) Months of the Commencement Date and at least annually thereafter.
HMG Baseline Personnel Security Standard - Contractor's Declaration see HMG Baseline Personnel Security Standard - A Guide for DWP Contractors	Within four (4) weeks of the Commencement Date and submitted for each calendar year thereafter within one Month of the end of each calendar year (i.e. by 31st January for year ending 31st 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.
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### Management Charges and Information

- 3.2 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge to the Authority, provide timely, full, accurate and complete management information reports for SME's to the Authority which incorporate the data described in the MI Reporting template at Schedule 3 Appendix C ("**SME Management Information Reports**") which is:-
- c) the total contract revenue received directly on the contract;
  - d) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
  - e) the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.3 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template at Schedule 3 Appendix C and any guidance issued by the Authority from time to time. The Contractor shall use the initial MI Reporting Template at Schedule 3 Appendix C and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days advance notice in writing of any such change and shall specify the date from which it must be used.
- 3.4 The Contractor further agrees and acknowledges that it may not make any amendment to the MI Reporting Template without Approval.

## **PART B – KEY PERFORMANCE INDICATORS**

### **1 Key Performance Indicators**

- 1.1 Annex 1 sets out the Key Performance Indicators (“**KPIs**”) which the Parties have agreed shall be used to measure the performance of the Services by the Contractor.
- 1.2 The Contractor shall monitor its performance against each KPI and shall send the Authority a report detailing the level of service actually achieved in accordance with Part A (Monitoring Requirements) of this Schedule.
- 1.3 Service Failure Points shall accrue for any KPI Failure and shall be calculated in accordance with Paragraph 2 (Service Failure Points).
- 1.4 Retentions shall be applied for any KPI Failure and shall be calculated in accordance with paragraph 3 (Retentions and Releases).

### **2 Service Failure Points**

- 2.1 The Contractor shall at all times provide the Services to meet or exceed the Target Performance Level for each KPI.
- 2.2 If the level of performance of the Contractor during a Month achieves the Target Performance Level in respect of a KPI, no Service Failure Points shall accrue to the Contractor in respect of the relevant KPI.
- 2.3 If the level of performance of the Contractor during a Month is below the Target Performance Level in respect of a KPI, Service Failure Points shall accrue to the Contractor in respect of the relevant KPI as set out in paragraph 2.4.
- 2.4 The number of Service Failure Points that shall accrue to the Contractor in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure (all as identified in Annex 1 of this Schedule 3).
- 2.5 If the Contractor accrues:
  - a) 16 or more Service Failure Points in a single Month; or
  - b) 20 or more Service Failure Points over a period of three (3) Months,it shall be deemed to be a Material Breach of the Contract entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

### **3 Retentions and Releases**

- 3.1 Retentions shall be calculated by reference to the number of Service Failure Points accrued in any one Month pursuant to Annex 1 to this Schedule 3 (Performance Measurement) and this Part B of this Schedule 3.
- 3.2 For each Month:

- a) the Service Failure Points accrued shall be converted to a percentage Retention from the Charges for the relevant Month on the basis of one point equating to a 0.5% Retention of the Charges; and
- b) the total Retention applicable for the relevant Month shall be calculated in accordance with the following formula:

$$R = TSFP \times Z \times C$$

where:

R is the total Retention for the relevant Month;

TSFP is the total Service Failure Points that have accrued for the relevant Month;

Z is 0.5%;

C is the total Charges payable for the relevant Month (prior to deduction of application Retentions and discounting any Releases).

- 3.3 Retentions shall be shown as a deduction from the amount due from the Authority to the Contractor in the invoice for the Month immediately succeeding the Month to which they relate.
- 3.4 Where the Performance Monitoring Report agreed by the Parties pursuant to paragraph 1 (Reviewing Contract Performance) of Part A of this Schedule 3 (Performance Monitoring) in respect of the Month immediately succeeding the Month in respect of which a Retention was made:
  - a) includes a KPI Failure (of any level of severity) against the same KPI to which such Retention related, the Contractor shall not be entitled to recover any amount of the Retention; and
  - b) subject to paragraph 3.5, reports that the Contractor's performance of the Service against the KPI to which such Retention related has met or exceeded the Target Performance Level for such KPI, the Contractor shall be entitled to a Release of the amount of the Retention.
- 3.5 Paragraph 3.4(b) shall not apply to, and the Contractor shall not be entitled to any Release in respect of, Retentions that were applied as a result of a Severe KPI Failure and a Release in respect of such a Retention shall be at the absolute discretion of the Authority.
- 3.6 Releases shall be shown as a sum due to the Contractor from the Authority in the invoice for the Month immediately succeeding the Month to which the performance referred to in paragraph 3.4(b) relates.

#### **4 Changes to Key Performance Indicators**

- 4.1 Throughout the Contract Period, the Authority shall assess the appropriateness of each KPI, and the Authority reserves the right to instruct a change to any KPI, to omit any KPI and/or to insert a new KPI if the Authority considers (acting reasonably) that a more appropriate measure should be used to assess the performance of the Contractor.

Provided that any proposed change shall not materially adversely affect the performance measures and/or any the delivery of the Services, the Supplier shall not be required to approve such change and the change shall be implemented by the Authority without any additional costs being paid to the Contractor.

- 4.2 If the Contractor considers (acting reasonably) that the proposed change will have a material adverse impact on the performance measures and/or the delivery of the Services, it shall, within three (3) Working Days of receipt of the Authority instruction, provide the Authority with its reasons and all supporting documentation. If the Contractor does not provide its reasons within such period, it shall be deemed that the proposed change shall not have a material adverse impact on the performance measures and/or the delivery of the Services.
- 4.3 Where the Authority agrees with the reasons provided by the Contractor, the proposed change shall be implemented under the Change Control Procedure.
- 4.4 Where the Authority disagrees with the Contractor's reasons, the Authority may instruct the change and the Contractor shall comply with such instruction and shall continue to provide the Services in accordance with the Contract.

## **5 Bedding-In Period**

- 5.1 Without prejudice to the remedies available to the Authority under the Contract where a KPI Failure occurs during the period of two (2) Months commencing on the Commencement Date (the "**Bedding-In Period**") the Authority and the Contractor acknowledge and agree that:
  - a) notwithstanding the other provisions of this Schedule, the Contractor shall comply with its obligations under the Contract;
  - b) the Service Failure Points accrued by the Contractor shall be recorded on the Performance Monitoring Reports;
  - c) Retentions shall not be deducted from the Charges pursuant to Schedule 2 (Administration Requirements); and
  - d) notwithstanding paragraph 5.1(b), Service Failure Points recorded in respect of the Bedding-in Period shall not accrue nor be taken into account for the purposes of:
    - (i) Clause F5.3 (Performance Improvement Plan); and
    - (ii) paragraph 2.5 (Service Failure Points) of this Part B of Schedule 3 (Performance Monitoring).

### Annex 1 – Performance Review Table

KPI	Service Area	KPI Description	Target Performance	KPI Failure	Service Failure Points
1	Delivery Timescales	Where the Contractor is instructed to do so by the Authority, minutes and action logs drafted within one (1) Working Day of the meeting to which they relate, agreed with the Chair and circulated to attendees within five (5) Working Days of such meeting.	95%	Minor: 90% - 94.9%	1
				Serious: 85% - 89.9%	2
				Severe: below 85%	3
2	Delivery Timescales	Individual Contractor and Authority plans accurately integrated by the Contractor within two (2) Working Days of receipt.	99%	Minor: 95% - 98.9%	1
				Serious: 90% - 94.9%	2
				Severe: below 90%	3
3	Delivery Timescales	RAID and Change Management Logs accurately updated at least weekly by the Contractor.	99%	Minor: 90% - 98.9%	1
				Serious: 80% - 89.9%	2
				Severe: below 80%	3
4	Delivery Timescales	All governance forum reports and data agreed with the Chair and issued to attendees at least three (3) Working Days before the meeting to which they refer.	99%	Minor: 95% - 98.9%	1
				Serious: 90% - 94.9%	2
				Severe: below 90%	3

5	Delivery Timescales	<p>The provision by the Contractor of Staff to provide the Service during the relevant Month that:</p> <p>a) satisfy the requirements of Clause B3.2 (Manner of Carrying out the Services, as determined by the Authority acting reasonably; and</p> <p>b) in the case of Key Personnel, are not provided in breach of Clause B4 (Key Personnel).</p>	100%	Minor: 90% - 99.9%	2
				Serious: 80% - 89.9%	4
				Severe: below 80%	6
6	Delivery Timescales	The delivery by the Contractor of all handover documents (e.g. Knowledge Transfer Plan) within the prescribed timescales.	100%	Minor: 95% - 99.9%	1
				Serious: 90% - 94.9%	3
				Severe: below 90%	5

## Annex 2 – MI Reporting Template

### [Dept] SME Data Collection

v2.1

The UK government has made a commitment that 33% of central government procurement spend should go to Small and Medium-sized Enterprises (SMEs), either directly or via the supply chain, before the end of this parliament (2022). To support this key agenda item and to measure progress, the UK government is now requesting that from 1 April 2018 all new contracts valued over £5 million per annum provide data on supply chain spend.

Guidance about the data required is provided below.

PLEASE NOTE YOU WILL NEED TO COMPLETE A SEPARATE TEMPLATE FOR EACH CONTRACT .

1) When answering the survey please endeavour to answer every section in full to the best of your knowledge. 2) Please only report on the relevant contract - do not include spend you have with the departments on other contracts

Questions A1-A3: Please specify the numbers in full. All figures should be in GBP pounds sterling. Please see an example of how to complete the questions

**A1. Total contract revenue (£) received directly from selected department including arms length bodies (ALBs)**

Supplier X has received £1,200,000 revenue directly from the selected department within the requested financial reporting period. Enter **£1,200,000** for

£1,200,000 ✓

£1.2m ✗

1.2m ✗

**A2. Total value of subcontracted revenues (£)**

(Please note that this is the total value of all sub-contracted revenues for SMEs and non-SMEs.

Of the £1,200,000 Supplier X received directly from the selected department, £50,000 was subcontracted to SMEs and £140,000 was subcontracted to organisations not covered by the definition of an SME. Enter **£190,000** for question A2.

£190,000 ✓

£190k ✗

190k ✗

**A3. Total value of subcontracted revenues to SMEs (£)**

Of the £1,200,000 Supplier X received from the selected department, £50,000 was subcontracted to an SME. Enter **£50,000** for question A3.

£50,000 ✓

£0.05m ✗

0.05m ✗

**Data provided by**

In the event we need to contact you about your return, please provide your full contact details. Please provide details of the preferred contact for future reporting (if different).

Please also provide your DUNS Number. The Data Universal Numbering System (DUNS) is a system developed and regulated by Dun & Bradstreet which assigns a unique numeric identifier, referred to as a 'DUNS Number' to a single business entity.

### Definitions and Interpretations:

In this document and all documentation from the Crown Commercial Service SME team:

1. Department(s) – means central government department that you have a contract with.
2. Supplier(s) – means a company or organisation that sells or supplies goods or services not limited to the UK.
3. SMEs – means Suppliers with less than 250 employees and whose annual turnover does not exceed €50m or annual balance sheet total does not exceed €43m. The organisation also has to be autonomous.
4. Autonomous – means that the SME does not have more than 25% of its capital or voting rights owned by an organisation or multiple organisations that
5. Contract Revenue – means the monetary value (Excl VAT) received through a contract between you and a Central Government Department or its ALBs.
6. Subcontracted Revenue – means the monetary value of the contract (Excl VAT) that has been passed to a supplier within the supply chain. It should not include the suppliers overhead expenditure e.g. cleaning services, that might be provided by an SME.
7. Supply Chain – means all suppliers that are involved in the production, handling, provision and /or distribution of any part of the contract.
8. Contract – means the commercial agreement between the department or its ALB and the supplier for the provision of goods or services.

## [Dept] SME Data Collection

v2.1

Please refer to the guidance tab.  
Please answer questions A1 to A6 (populating yellow cells only) as applicable and return to [DEPARTMENTAL CONTACT]

INSERT YOUR ORGANISATION/COMPANY NAME	Full Year 2018/19 (Apr 2018- Mar 2019)	
SELECT DEPARTMENT	£	%
CONTRACT NAME		
A1. Total contract revenue (£) received directly from selected contract.	£0.00	
A2. Total value of subcontracted revenues (£)	£0.00	
A3. Total value of subcontracted revenues to SMEs (£)	£0.00	

Breakdown of Departmental Contract Revenue (100%=£0)

- Total Revenue retained (£)
- Total subcontracted revenues to non SME (£)
- Total subcontracted revenues to SMEs (£)

Data provided by:	
Name	
Organisation	INSERT YOUR ORGANISATION/COMPANY NAME
JUNS Number	
Email	
Phone	
Date	

Please provide details of the preferred contact for future reporting (If a)	
Name	
Email	
Phone	



## **SCHEDULE 4 – CONTRACT PRICE**

### **1 Calculation of Contract Price**

1.1 During the Contract Period (for the avoidance of doubt, including any extension periods), the Contractor shall be paid the Contract Price. The part of the Contract Price payable in each Month is the sum of:

- a) the Day Rates for the time spent by the Contractor performing the Services in the relevant Month, calculated on a pro rata basis where the time spend is less than a full day;
- b) any Releases; and
- c) any other amounts that the Authority has agreed in writing to be paid to the Contractor;

*less:*

- d) any Disallowed Costs;
- e) any Retentions that the Authority has determined pursuant to paragraph 3 (Retentions and Releases) of Part B of Schedule 3 (Performance Monitoring); and
- f) any other amounts to be paid by or retained from the Contractor.

**APPENDIX 1 – DAY RATES [REDACTED]**

<b>Grade</b>	<b>Daily Rate (exc VAT)</b>
Partner / Managing Director*	
Managing Consultant / Associate Director / Director	
Principal Consultant	
Senior Consultant / Manager	
Consultant	
Junior Consultant	

**Key Personnel [REDACTED]**

<b>Name</b>	<b>Role</b>	<b>Grade</b>

## **SCHEDULE 5 – COMMERCIALLY 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 Paragraph Number or	Explanation of harm which may result from disclosure and time period applicable to sensitivity.
Project Strata PMO Phase 2 Contract	94-95	Appendix 1: Day Rates and Key Personnel	All	Sensitive due to personal information that could lead to resource targeted for recruitment by competitors and commercial sensitivity of rates offered under the contract

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 publish without prior consent from the Contractor all information provided by the Contractor **not** identified in this Schedule 5 as constituting Commercially Sensitive Information under the Authority's transparency reporting requirements provided that such disclosure 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**

The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Authority's security requirements as set out in the Contract which include the requirements set out in this Schedule 6 to the Contract (the "**Authority's Security Requirements**"). The Authority's Security Requirements include, but are not limited to, requirements regarding the confidentiality, integrity and availability of Authority Assets, the Authority's Systems Environment and the Contractor's Systems Environment.

Terms used in this Schedule 6 which are not defined below shall have the meanings given to them in clause A1 (Definitions and Interpretations) of the Contract.

### **1. DEFINITIONS**

1.1 In this Schedule 6, the following definitions shall apply:

<b>"Authority Personnel"</b>	shall mean all persons employed by the Authority including directors, officers, employees together with the Authority's servants, agents, consultants, contractors and suppliers but excluding the Contractor and any Sub-contractor (as applicable).
<b>"Availability Test"</b>	shall mean the activities performed by the Contractor to confirm the availability of any or all components of any relevant ICT system as specified by the Authority.
<b>"CHECK"</b>	shall mean the scheme for authorised penetration tests which scheme is managed by the NCSC.
<b>"Cloud"</b>	shall mean an off-premise network of remote ICT servers on the Internet to store, process, manage and transmit data.
<b>"Cyber Essentials"</b>	shall mean the Government-backed, industry-supported scheme managed by the NCSC to help organisations to protect themselves against online threats or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>"Cyber Security Information Sharing Partnership" or "CiSP"</b>	shall mean the cyber security information sharing partnership established by the NCSC or the relevant successor or replacement scheme which is published and/or formally recommended by the NCSC.
<b>"Good Security Practice"</b>	shall mean: <ul style="list-style-type: none"><li>a) the technical and organisational measures and practices that are required by, or recommended in, nationally or internationally accepted management standards and codes of practice relating to Information Security (such as published by the International Organization for Standardization or the National Institute of Standards and Technology);</li><li>b) security standards and guidelines relating to Information Security (including generally accepted principles regarding the segregation of the duties of governance, implementation and control) provided to</li></ul>

		the general public or Information Security practitioners and stakeholders by generally recognised authorities and organisations; and
		c) the Government's security policies, frameworks, standards and guidelines relating to Information Security.
<b>"Information Security"</b>		shall mean: <ul style="list-style-type: none"> <li>a) the protection and preservation of: <ul style="list-style-type: none"> <li>i) the confidentiality, integrity and availability of any Authority Assets, the Authority's Systems Environment (or any part thereof) and the Contractor's Systems Environment (or any part thereof);</li> <li>ii) related properties of information including, but not limited to, authenticity, accountability, and non-repudiation; and</li> </ul> </li> <li>b) compliance with all Law applicable to the processing, transmission, storage and disposal of Authority Assets.</li> </ul>
<b>"Information Manager"</b>	<b>Security</b>	shall mean the person appointed by the Contractor with the appropriate experience, authority and expertise to ensure that the Contractor complies with the Authority's Security Requirements.
<b>"Information Management ("ISMS")"</b>	<b>Security System</b>	shall mean the set of policies, processes and systems designed, implemented and maintained by the Contractor to manage Information Security Risk as certified by ISO/IEC 27001.
<b>"Information Questionnaire"</b>	<b>Security</b>	shall mean the Authority's set of questions used to audit and on an ongoing basis assure the Contractor's compliance with the Authority's Security Requirements.
<b>"Information Risk"</b>	<b>Security</b>	shall mean any risk that might adversely affect Information Security including, but not limited to, a Breach of Security.
<b>"ISO/IEC 27001, ISO/IEC 27002 and ISO 22301"</b>		shall mean # <ul style="list-style-type: none"> <li>a) ISO/IEC 27001;</li> <li>b) ISO/IEC 27002/IEC; and</li> <li>c) ISO 22301</li> </ul> in each case as most recently published by the International Organization for Standardization or its successor entity (the <b>"ISO"</b> ) or the relevant successor or replacement information security standard which is formally recommended by the ISO.
<b>"NCSC"</b>		shall mean the National Cyber Security Centre or its successor entity (where applicable).
<b>"Penetration Test"</b>		shall mean a simulated attack on any Authority Assets, the Authority's Systems Environment (or any part thereof) or the Contractor's Systems Environment (or any part thereof).

<b>“PCI DSS”</b>	shall mean the Payment Card Industry Data Security Standard as most recently published by the PCI Security Standards Council, LLC or its successor entity (the “PCI”).
<b>“Risk Profile”</b>	shall mean a description of any set of risk. The set of risks can contain those that relate to a whole organisation, part of an organisation or as otherwise applicable.
<b>“Security Test”</b>	shall include, but not be limited to, Penetration Test, Vulnerability Scan, Availability Test and any other security related test and audit.
<b>“Tigerscheme”</b>	shall mean a scheme for authorised penetration tests which scheme is managed by USW Commercial Services Ltd.
<b>“Vulnerability Scan”</b>	shall mean an ongoing activity to identify any potential vulnerability in any Authority Assets, the Authority’s Systems Environment (or any part thereof) or the Contractor’s Systems Environment (or any part thereof).

- 1.1 Reference to any notice to be provided by the Contractor to the Authority shall be construed as a notice to be provided by the Contractor to the Authority’s Representative.

## **2. PRINCIPLES OF SECURITY**

- 2.1 The Contractor shall at all times comply with the Authority’s Security Requirements and provide a level of security which is in accordance with the Security Policies and Standards, Good Security Practice and Law.

## **3. ISO/IEC 27001 COMPLIANCE AND AUDIT**

- 3.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, comply with ISO/IEC 27001 in relation to the Services during the Contract Period.
- 3.2 The Contractor shall appoint an Information Security Manager and shall notify the Authority of the identity of the Information Security Manager on the Commencement Date and, where applicable, within 5 Working Days following any change in the identity of the Information Security Manager.
- 3.3 The Contractor shall ensure that it operates and maintains the Information Security Management System during the Contract Period and that the Information Security Management System meets the Security Policies and Standards, Good Security Practice and Law and includes:
- a) a scope statement (which covers all of the Services provided under this Contract);
  - b) a risk assessment (which shall include any risks specific to the Services);
  - c) a statement of applicability;
  - d) a risk treatment plan; and
  - e) an incident management plan

in each case as specified by ISO/IEC 27001.

The Contractor shall provide the Information Security Management System to the Authority upon request within 10 Working Days from such request.

- 3.4 The Contractor shall carry out regular Security Tests in compliance with ISO/IEC 27001 and shall within 10 Working Days after completion of the relevant audit provide any associated security audit reports to the Authority.
- 3.5 Notwithstanding the provisions of paragraph 3.1 to paragraph 3.4, the Authority may, in its absolute discretion, notify the Contractor that it is not in compliance with the Authority's Security Requirements and provide details of such non-compliance. The Contractor shall, at its own expense, undertake those actions required in order to comply with the Authority's Security Requirements within one calendar month following such notification or on a date as agreed by the Parties. For the avoidance of doubt, any failure to comply with the Authority's Security Requirements within the required timeframe (regardless of whether such failure is capable of remedy) shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

#### **4. CYBER ESSENTIALS SCHEME**

- 4.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, obtain and maintain certification to Cyber Essentials (the "Cyber Essentials Certificate") in relation to the Services during Contract Period. The Cyber Essentials Certificate shall be provided by the Contractor to the Authority annually on the dates as agreed by the Parties.
- 4.2 The Contractor shall notify the Authority of any failure to obtain, or the revocation of, a Cyber Essentials Certificate within 2 Working Days of confirmation of such failure or revocation. The Contractor shall, at its own expense, undertake those actions required in order to obtain a Cyber Essentials Certificate following such failure or revocation. For the avoidance of doubt, any failure to obtain and/or maintain a Cyber Essentials Certificate during the Contract Period after the first date on which the Contractor was required to provide a Cyber Essentials Certificate in accordance with paragraph 4.1 (regardless of whether such failure is capable of remedy) shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

#### **5. RISK MANAGEMENT**

- 5.1 The Contractor shall operate and maintain policies and processes for risk management (the **Risk Management Policy**) during the Contract Period which includes standards and processes for the assessment of any potential risks in relation to the Services and processes to ensure that the Authority's Security Requirements are met (the **Risk Assessment**). The Contractor shall provide the Risk Management Policy to the Authority upon request within 10 Working Days of such request. The Authority may, at its absolute discretion, require changes to the Risk Management Policy to comply with the Authority's Security Requirements. The Contractor shall, at its own expense, undertake those actions required in order to implement the changes required by the Authority within one calendar month of such request or on a date as agreed by the Parties.
- 5.2 The Contractor shall carry out a Risk Assessment (i) at least annually, (ii) in the event of a material change in the Contractor's Systems Environment or in the threat landscape or (iii) at the request of the Authority. The Contractor shall provide the report of the Risk Assessment to the Authority, in the case of at least annual Risk Assessments, within 5

Working Days of completion of the Risk Assessment or, in the case of all other Risk Assessments, within one calendar month after completion of the Risk Assessment or on a date as agreed by the Parties. The Contractor shall notify the Authority within 5 Working Days if the Risk Profile in relation to the Services has changed materially, for example, but not limited to, from one risk rating to another risk rating.

- 5.3 If the Authority decides, at its absolute discretion, that any Risk Assessment does not meet the Authority's Security Requirements, the Contractor shall repeat the Risk Assessment within one calendar month of such request or as agreed by the Parties.
- 5.4 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, co-operate with the Authority in relation to the Authority's own risk management processes regarding the Services.
- 5.5 For the avoidance of doubt, the Contractor shall pay all costs in relation to undertaking any action required to meet the requirements stipulated in this paragraph 5. Any failure by the Contractor to comply with any requirement of this paragraph 5 (regardless of whether such failure is capable of remedy), shall constitute a Material Breach entitling the Authority to exercise its rights under clause F5.7 (Remedies in the Event of Inadequate Performance).

## **6. SECURITY AUDIT AND ASSURANCE**

- 6.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, complete the information security questionnaire in the format stipulated by the Authority (the "**Information Security Questionnaire**") at least annually or at the request by the Authority. The Contractor shall provide the completed Information Security Questionnaire to the Authority within one calendar month from the date of request.
- 6.2 The Contractor shall conduct Security Tests to assess the Information Security of the Contractor's Systems Environment and, if requested, the Authority's Systems Environment. In relation to such Security Tests, the Contractor shall appoint a third party which i) in respect of any Penetration Test, is duly accredited by CHECK, CREST (International), or Tigerscheme and, ii) in respect of any Security Test to which PCI DSS apply, is an approved scanning vendor duly accredited by the PCI. Such Security Test shall be carried out (i) at least annually, (ii) in the event of a material change in the Contractor's Systems Environment or in the Authority's System Environment or (iii) at the request of the Authority which request may include, but is not limited to, a repeat of a previous Security Test. The content, and format of any report of such Security Tests shall be approved in advance of the Security Test by the Authority. The Contractor shall provide any report of such Security Tests within one calendar month following the completion of such Security Test or on a date agreed by the Parties. The Contractor shall, at its own expense, undertake those actions required to rectify any risks identified by any Security Test in the manner and within the timeframe required by the Authority in its absolute discretion.
- 6.3 The Authority shall be entitled to send the Authority's Representative to witness the conduct of any Security Test. The Contractor shall provide to the Authority notice of any Security Test at least one month prior to the relevant Security Test.
- 6.4 Where the Contractor provides code development services to the Authority, the Contractor shall comply with the Authority's Security Requirements in respect of code development within the Contractor's Systems Environment and the Authority's Systems Environment.



- 6.5 Where the Contractor provides software development services, the Contractor shall comply with the code development practices specified in the Specification or in the Authority's Security Requirements.
- 6.6 The Authority, or an agent appointed by it, may undertake Security Tests in respect of the Contractor's Systems Environment after providing advance notice to the Contractor. If any Security Test identifies any non-compliance with the Authority's Security Requirements, the Contractor shall, at its own expense, undertake those actions required in order to rectify such identified non-compliance in the manner and timeframe as stipulated by the Authority at its absolute discretion. The Contractor shall provide all such co-operation and assistance in relation to any Security Test conducted by the Authority as the Authority may reasonably require.
- 6.7 The Authority shall schedule regular security governance review meetings which the Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, attend.

## **7. PCI DSS COMPLIANCE AND CERTIFICATION**

- 7.1 Where the Contractor obtains, stores, processes or transmits payment card data, the Contractor shall comply with the PCI DSS.
- 7.2 The Contractor shall obtain and maintain up-to-date attestation of compliance certificates ("AoC") provided by a qualified security assessor accredited by the PCI and up-to-date self-assessment questionnaires ("SAQ") completed by a qualified security assessor or an internal security assessor, in each case accredited by the PCI (each with the content and format as stipulated by the PCI and such reports the "PCI Reports"), during the Contract Period. The Contractor shall provide the respective PCI Reports to the Authority upon request within 10 Working Days of such request.
- 7.3 The Contractor shall notify the Authority of any failure to obtain a PCI Report or a revocation of a PCI Report within 2 Working Days of confirmation of such failure or revocation. The Contractor shall, at its own expense, undertake those actions required in order to obtain a PCI Report following such failure or revocation within one calendar month of such failure or revocation.

## **8. SECURITY POLICIES AND STANDARDS**

- 8.1 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, comply with the Security Policies and Standards set out Annex A and B.
- 8.2 Notwithstanding the foregoing, the Authority's Security Requirements applicable to the Services may be subject to change following certain events including, but not limited to, any relevant change in the delivery of the Services. Where any such change constitutes a Contract Change, any change in the Authority's Security Requirements resulting from such Contract Change (if any) shall be agreed by the Parties in accordance with the Contract Change Procedure. Where any such change constitutes an Operational Change, any change in the Authority's Security Requirements resulting from such Operational Change (if any) shall be agreed by the Parties and documented in the relevant Operational Change Confirmation.
- 8.3 The Contractor shall, and shall procure that any Sub-contractor (as applicable) shall, maintain appropriate records and is otherwise able to demonstrate compliance with the Security Policies and Standards.

## **9. CYBER SECURITY INFORMATION SHARING PARTNERSHIP**

- 9.1 The Contractor may become a member of the Cyber Security Information Sharing Partnership in accordance with the recommendations by the NCSC during the Contract Period. The Contractor may participate in the Cyber Security Information Sharing Partnership for the exchange of cyber threat information.
- 9.2 Where the Contractor becomes a member of the Cyber Security Information Sharing Partnership, it shall review the NCSC weekly threat reports on a weekly basis and implement recommendations in line with the Contractor's Risk Management Policy.

## **ANNEX A – AUTHORITY SECURITY POLICIES AND STANDARDS**

The Security Policies are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>  
unless specified otherwise:

- a) Acceptable Use Policy
- b) Information Security Policy
- c) Physical Security Policy
- d) Information Management Policy
- e) Email Policy
- f) Technical Vulnerability Management Policy
- g) Remote Working Policy
- h) Social Media Policy
- i) Forensic Readiness Policy
- j) SMS Text Policy
- k) Privileged Users Security Policy
- l) User Access Control Policy
- m) Security Classification Policy
- n) Cryptographic Key Management Policy
- o) HMG Personnel Security Controls – May 2018  
(published on <https://www.gov.uk/government/publications/hmg-personnel-security-controls>)
- p) NCSC Secure Sanitisation of Storage Media (published on <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)

## ANNEX B – SECURITY STANDARDS

The Security Standards are published on:

<https://www.gov.uk/government/publications/dwp-procurement-security-policies-and-standards>:

- a) SS-001 - Part 1 - Access & Authentication Controls
- b) SS-001 - Part 2 - Privileged User Access Controls
- c) SS-002 - PKI & Key Management
- d) SS-003 - Software Development
- e) SS-005 - Database Management System Security Standard
- f) SS-006 - Security Boundaries
- g) SS-007 - Use of Cryptography
- h) SS-008 - Server Operating System
- i) SS-009 - Hypervisor
- j) SS-010 - Desktop Operating System
- k) SS-011 - Containerisation
- l) SS-012 - Protective Monitoring Standard for External Use
- m) SS-013 - Firewall Security
- n) SS-014 - Security Incident Management
- o) SS-015 - Malware Protection
- p) SS-016 - Remote Access
- q) SS-017 - Mobile Devices
- r) SS-018 - Network Security Design
- s) SS-019 - Wireless Network
- t) SS-022 - Voice & Video Communications
- u) SS-023 - Cloud Computing
- v) SS-025 - Virtualisation
- w) SS-027 - Application Security Testing
- x) SS-028 - Microservices Architecture
- y) SS-029 - Securely Serving Web Content
- z) SS-030 - Oracle Database
- aa) SS-031 - Domain Management
- bb) SS-033 - Patching

## **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 three (3) 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**") three (3) 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**
    - 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**

- Disability Confident is a scheme that supports employers to attract, recruit and retain disabled people. Detailed Information about Disability Confident can be accessed via Gov.UK. The Authority strongly encourages Contractors, and their suppliers, to sign up to Disability Confident, declaring their support for disabled workers by displaying the values and behaviours set out therein.
  - 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) **Job Seekers**
- 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 contract manager acting on behalf of the Authority. 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), three (3) Months after the Commencement Date and annually thereafter.
- 2.7 The Contractor shall complete the Life Chances Workforce Monitoring template inline 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.**

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

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

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

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

3 <sup>rd</sup> annual return (at 42 months for months 31-42)			
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### **3 – Number of Disabled People in Staff used in the performance of the Contractor's obligations under the Contract**

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

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

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

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

<b>DWP Priority Group - Ex-Offenders</b>	<b>Number of ex- offenders in Staff which have been employed for 26 weeks or longer in period</b>	<b>% ex-offenders in Staff at end of period</b>	<b>Number of ex-offenders who began employment as part of the Staff during the period</b>
Baseline return (at 6 months for months 0-6)			

1 <sup>st</sup> annual return (at 18 months for months 7-18)			
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)			
3 <sup>rd</sup> 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.**

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

<b>Employment Experience placements</b>	<b>Number of Employment Experience placements conducted during the period</b>
Baseline return (at 6 months for months 0-6)	
1 <sup>st</sup> annual return (at 18 months for months 7-18)	
2 <sup>nd</sup> annual return (at 30 months for months 19 - 30)	
3 <sup>rd</sup> 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.**

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

#### 11 – Number of vacancies for Staff advertised via Universal Jobmatch

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

## **SCHEDULE 9 – CHANGE CONTROL PROCEDURE**

### **1 General Principles of Change Control Procedure**

- 1.1 This Schedule 9 sets out the procedure for dealing with changes to the Resource Forecast, Contract Changes and Operational Changes.
- 1.2 If either Party is in doubt about whether a change to the Contract 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 9, 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 the Impact Assessment satisfies the requirement in paragraph 6.2 of the Schedule 9, that the Contract Change is not exempt from a change in Contract Price as specified in clause F3 and 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 or a change to the Resource Forecast, whether the change will cause an increase or a decrease in the Contract Price, will be based on the Day Rates and be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.4 Each 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 Changes in the Resource Forecast**

- 4.1 Subject to paragraph 4.2, the Authority may, at any time by giving written notice to the Contractor, amend the Resource Forecast to reflect changes in its procurement timetable and/or requirements and, as a consequence, the level of Services it requires under this Contract from time to time, without following the Change Control Procedure, provided that such amendment would not cause the Contract Price to exceed the Contract Budget.
- 4.2 The Authority shall advise the Contractor of any amendments to, and provide an updated version of, the Resource Forecast no later than fourteen (14) days prior to the start of the first Month to which the amended resource requirement relates.
- 4.3 Where and to the extent the Authority wishes to amend the Resource Forecast in a manner that would result in the Contract Price exceeding the Contract Budget, such amendment must be processed as a Contract Change in accordance with this Schedule 9.

#### **5 Contract Change Procedure**

- 5.1 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 9.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.

#### **6 Impact Assessment**

- 6.1 An Impact Assessment shall be substantially in the form of Appendix 2 of this Schedule 9.



6.2 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;
  - (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's Systems Environment;
- (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.

6.3 The calculation of costs for the purposes of paragraphs 6.2(g) and (h) of this Schedule 9 shall:

- (a) include estimated volumes of resource required to implement the Change, including the relevant grade and applicable Day Rates;
- (b) be based on the pricing assumptions and Day Rates set out in Schedule 4 (Contract Price);
- (c) include full disclosure of any assumptions underlying such Impact Assessment;
- (d) include evidence of the cost of any assets required for the Change; and
- (e) include details of any new Sub-contracts necessary to accomplish the Change.

- 6.4 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).
- 6.5 Subject to the provisions of paragraph 5.6 of this Schedule 9, the Authority shall review the Impact Assessment and respond to the Contractor in accordance with paragraph 7 of this Schedule 9 within fifteen (15) Working Days of receiving the Impact Assessment.
- 6.6 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.
- 6.7 At the Authority's discretion, the Parties may repeat the process described in paragraph 6.6 of this Schedule 9 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 7 of this Schedule 9.

## **7 Authority's Right of Approval**

- 7.1 Subject to paragraphs 6.6 and 6.7 of this Schedule 9, 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 7.5 of this Schedule 9; 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.
- 7.2 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 7.5 of this Schedule 9.
- 7.3 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.
- 7.4 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.
- 7.5 If the Authority approves the proposed Contract Change pursuant to paragraph 7.1 of this Schedule 9 and it has not been rejected by the Contractor in accordance with paragraph 8 of this Schedule 9, then the Authority shall prepare two copies of a Change Authorisation Note in the form of Appendix 3 of this Schedule 9 and send them to the Contractor. The Contractor shall sign/executed as a deed (as appropriate) both copies and deliver both

signed/executed copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign/seal (as appropriate) 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.

## **8 Contractor's Right Of Rejection**

- 8.1 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,
- 8.2 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 6.2 of this Schedule 9.
- 8.3 The Contractor shall have the right to reject a Change Request solely in the manner set out in paragraph 8.1 of this Schedule 9.

## **9 Failure to Comply**

- 9.1 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 I2 (Dispute Resolution).
- 9.2 If, despite the measures taken under paragraphs 9.1 (a) and 9.1(b) of this Schedule 9, 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 I2 (Dispute Resolution).

## **10 Management Information**

- 10.1 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:		
<b>(For Completion by Party Receiving Request for Change)</b> 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

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:		
<p>Any additional changes to this Contract that will be required as a result of the change – including any:</p> <ul style="list-style-type: none"> <li>1. Service</li> <li>2. Authority deliverables (including reports)</li> <li>4. Amendments to contract wording</li> <li>5. Cost of implementing the change – ongoing/increase/decrease in costs</li> <li>6. Alteration in Resources – estimated volumes and applicable Day Rates</li> </ul>		
Impact Assessment Completed by: (Name & Position in Organisation)		
Impact Assessment Approved by: (Name & Date)		
Impact Assessment Rejected by: (Name & Date)		
Reason for Rejection:		

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.		

<b>Signed on Behalf of the Authority:</b>	<b>Signed on Behalf of the Contractor:</b>
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

## **SCHEDULE 10 – PERSONAL DATA AND DATA SUBJECTS**

### **DATA PROCESSING**

1. The Data Processor shall comply with any further written instructions with respect to processing by the Data Controller.
2. Any such further instructions shall be incorporated into this Schedule 10 Annex A.
3. This Schedule 10 Annex A shall be completed by the Data Controller, who may take account of the view of the Data Processor, however the final decision as to the content of this Schedule 10 Annex A shall be with the Data Controller at its absolute discretion.
4. The contact details of the Data Processor's Data Protection Officer are: **REDACTED**

## ANNEX A – DATA INSTRUCTIONS

Description	Details
Identify of the Data Controller and the Data Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor in accordance with clause E2.2
Subject matter of the processing	The processing is needed in order to ensure that the Data Processor can effectively deliver the Contract to provide the services to the Authority.
Duration of the processing	<p>The processing will occur for the duration of the Contract.</p> <p>21/11/2021-20/02/2023.</p> <p>If extension options are used this would be extended to 20/02/2024. Dates are inclusive of transition period.</p>
Nature and purposes of the processing	<p>The nature of the processing shall include collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, use, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The purpose of the processing is for the delivery of a Contract, as set out in Schedule 1 (The Services).</p>
Type of Personal Data	Name, telephone number



Categories of Data Subject	Staff, suppliers
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under European Union or European member state law to preserve that type of data</p>	<p>The Contractor shall return all Authority equipment where the data is stored upon Contract expiry or termination. The Contractor is not permitted to have any Authority data on any other device and therefore all data will be returned to the Authority.</p>

## **SCHEDULE 11 – EXIT MANAGEMENT**

### **1 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT**

1.1 During the Contract Period, the Contractor shall:

- (a) create and maintain a register of all:
  - (i) Equipment, detailing its:
    - (A) make, model and asset number; and
    - (B) condition and physical location; and
  - (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
- (b) create and maintain a database detailing the personnel infrastructure and operating procedures through which the Contractor provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Contractor to understand how the Contractor provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Sub-contracts or other relevant agreements are added to or removed from the Services.

1.2 The Contractor shall appoint a person for the purposes of managing the Contractor's obligations under this Schedule and provide written notification of such appointment to the Authority within three (3) Months of the Commencement Date. The Exit Manager shall be responsible for ensuring that the Contractor and its employees, agents and Sub-contractors comply with this Schedule. The Contractor shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Contractor as are reasonably necessary to enable the Contractor to comply with the requirements set out in this Schedule. The Exit Manager shall liaise with the Authority in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and the Contractor's compliance with it.

### **2 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

2.1 On reasonable notice at any point during the Contract Period, the Contractor shall provide to the Authority and/or its potential Replacement Contractor (subject to the potential Replacement Contractor entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Contractor undertaking due diligence:

- (a) details of the Service(s);

- (b) a copy of the Registers, updated by the Contractor up to the date of delivery of such Registers;
- (c) an inventory of Authority Data in the Contractor's possession or control;
- (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to the Contractor's Transferring Employees required to be provided by the Contractor under this Contract; and
- (g) such other material and information as the Authority shall reasonably require, (together, the "**Exit Information**").

2.2 The Contractor acknowledges that the Authority may disclose the Contractor's Confidential Information to an actual or prospective Replacement Contractor or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this paragraph 2.2 disclose any of the Contractor's Confidential Information which is information relating to the Contractor's or its Sub-contractors' prices or costs).

2.3 The Contractor shall:

- (a) notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

2.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Contractor (if the Contractor is invited to participate).

### **3 OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**

3.1 The Authority may require the Contractor to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.

- 3.2 If required to enter into the Ethical Wall Agreement, the Contractor will return a signed copy of the Ethical Wall Agreement within ten (10) Working Days of receipt. The Contractor's costs of entering into the Ethical Wall Agreement will be borne solely by the Contractor.

#### **4 EXIT PLAN**

- 4.1 The Contractor shall, within three (3) Months after the Commencement Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Contractor's proposed methodology for achieving an orderly transition of the relevant Services from the Contractor to the Authority and/or its Replacement Contractor on the expiry or termination of the Contract and in the event that the Contract is terminated in part;
- (b) complies with the requirements set out in paragraph 4.3; and
- (c) is otherwise reasonably satisfactory to the Authority.

- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such dispute shall be resolved in accordance with clause I2 (Dispute Resolution).

- 4.3 The Exit Plan shall set out, as a minimum:

- (a) how the Exit Information is obtained;
- (b) a mechanism for dealing with partial termination on the assumption that the Contractor will continue to provide the remaining Services under this Contract;
- (c) the management structure to be employed during both transfer and cessation of the Services;
- (d) the management structure to be employed during the Termination Assistance Period;
- (e) how the Services will transfer to the Replacement Contractor and/or the Authority, including details of the processes, documentation, data transfer, systems migration and security;
- (f) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (g) a timetable and critical issues for providing the Termination Services;
- (h) how the Termination Services would be provided (if required) during the Termination Assistance Period;
- (i) procedures to deal with requests made by the Authority and/or a Replacement Contractor for staffing information pursuant to clause B10 (Pre-Service Transfer Obligations); and
- (j) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Contractor to the Replacement

Contractor and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services.

### **Finalisation of the Exit Plan**

- 4.4 Within ten (10) Working Days of receipt of written notice from the Authority that the Contract is or is to be terminated or one (1) month prior to the expiry of the Contract Period, the Contractor will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately.
- 4.5 For the avoidance of doubt, if the Authority notifies the Contractor that the Contract will be extended pursuant to clause A2.2 (Contract Period), the Contractor's obligations under paragraph 4.4 shall apply to the Contract Period as so extended.
- 4.6 The final form of the Exit Plan provided in accordance with paragraphs 4.4 of this Schedule shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 4.5 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within five (5) Working Days following its delivery to the Authority then such dispute shall be resolved in accordance with clause I2 (Dispute Resolution). Until the agreement of the final form of the Exit Plan, the Contractor shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

## **5 TERMINATION SERVICES**

### **Notification of Requirements for Termination Services**

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Contract Period (including where required to support any partial termination of the Contract) by giving written notice to the Contractor (a "**Termination Assistance Notice**") at least one (1) Month prior to the date of expiry of the Contract Period or as soon as reasonably practicable (but in any event, not later than one (1) Month) following notice from the Authority of termination of this Contract. The Termination Assistance Notice shall specify:
  - (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than three (3) Months after the date that the Contractor ceases to provide the terminated Services.

### **Termination Assistance Period**

- 5.2 The Authority shall have:
  - (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six (6) Months after the date the Contractor ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period

and provided that it shall notify the Contractor to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

- (b) the right to terminate its requirement for Termination Services by serving not less than two (2) Working Days' written notice upon the Contractor to such effect.

## **6 TERMINATION SERVICES**

### **Termination Assistance**

6.1 Throughout any Termination Assistance Period, or such shorter period as the Authority may require, the Contractor shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to paragraph 5.1 of this Schedule, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the remaining Services or replacement services to continue without interruption following the partial termination, termination or expiry of the Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Contractor at no additional cost to the Authority;
- (c) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with paragraph 6.2; and
- (d) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

6.2 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) to take account of such adverse effect

### **Termination Obligations**

6.3 The Contractor shall comply with all of its obligations contained in the Exit Plan in respect of any termination or, to the extent such obligations are relevant, a partial termination.

6.4 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Contractor shall:

- (a) 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;

- (b) return all Authority Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority
  - (c) return all Personal Data or destroy or dispose of it in a secure manner (regardless of form and whether computerised or physical) and in accordance with any specific instructions issued by the Authority, where the Authority is the Data Controller and delete existing copies unless the Law requires storage of Personal Data and/or unless the Contractor is required to retain the Personal Data by Law;
  - (d) return to the Authority any Equipment that is in the Contractor's possession or control; and
  - (e) vacate any Authority Premises unless access is required to continue to deliver the Services.
- 6.5 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Contractor's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 6.6 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Contractor in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

## 7 SUB-CONTRACTS AND SOFTWARE

- 7.1 Following notice of termination or partial termination of this Contract and during the Termination Assistance Period, the Contractor shall not, in respect of the terminated Services, without the Authority's prior written consent:
- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges; or
  - (b) terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Where requested by the Authority and/or its Replacement Contractor, the Contractor shall provide all reasonable assistance to the Authority and/or its Replacement Contractor to enable it to determine which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Contractor (the "**Transferring Contracts**") in order for the Authority and/or its Replacement Contractor to provide the Services from the expiry of the Contract.
- 7.3 The Contractor shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Contractor of the Transferring Contracts. The Contractor shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

7.4 The Authority shall:

- (a) accept assignments from the Contractor or join with the Contractor in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Contractor, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Contractor does the same.

7.6 The Contractor shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Contractor has been effected.

7.7 The Contractor shall indemnify the Authority (and/or the Replacement Contractor, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Contractor) pursuant to paragraph 7.3 both:

- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Contractor's failure to comply with clause E (Protection of Information) and clause F1 (Transfer and Sub-Contracting).

## **8 CONTRACTOR PERSONNEL**

8.1 The Authority and the Contractor agree and acknowledge that in the event of the Contractor ceasing to provide the Services or part of them for any reason, Clauses B9 (Transfer of Undertakings (Protection of Employment) (TUPE)) to B13 (Third Party Rights in relation to TUPE and Pensions) (inclusive) shall apply.

8.2 The Contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Contractor.

8.3 During the Termination Assistance Period, the Contractor shall give the Authority and/or the Replacement Contractor reasonable access to the Contractor's personnel to present the case for transferring their employment to the Authority and/or the Replacement Contractor.

8.4 The Contractor shall immediately notify the Authority or, at the direction of the Authority, the Replacement Contractor of any period of notice given by the Contractor or received from any person included in the Contractor's Provisional Personnel List or Contractor's Final Personnel List (as the case may be), regardless of when such notice takes effect.

8.5 The Contractor shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement



Contractor, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **9 COSTS**

- 9.1 The services provided by the Contractor pursuant to this Schedule 11 (Exit Management) (including any Termination Services) are deemed to be included in the Day Rates and the Contractor shall not make any charges for such services, and the Authority shall not be obliged to pay for costs incurred by the Contractor in relation to its compliance with, this Schedule 11 (Exit Management), except as otherwise expressly agreed between the Parties.

## **ANNEX 1: SCOPE OF THE TERMINATION SERVICES**

- 1.1 The Termination Services to be provided by the Contractor shall include such of the following services as the Authority may specify:
- (a) ceasing all non-critical software changes (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Contractor after the end of the Termination Assistance Period;
  - (d) providing details of work volumes and staffing requirements over the twelve (12) Month period immediately prior to the commencement of the Termination Services;
  - (e) with respect to work in progress at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (f) providing the Authority with any issues logs (including RAID logs and Change Management Logs) which have not previously been provided to the Authority;
  - (g) providing assistance and expertise as required by the Authority in relation to the governance and reports in place for the provision of the Services;
  - (h) providing assistance and expertise as required by the Authority in relation to the roles and responsibilities in place for the provision of the Services;
  - (i) providing information, assistance and expertise as necessary to support the Authority and/or the Replacement Contractor in planning and executing the hand-over of business operations and the migration of Authority Data to the Replacement Contractor;
  - (j) agreeing with the Authority a handover plan for all of the Contractor's responsibilities as set out in Schedule 6 (Security Requirements);
  - (k) providing an information pack listing and describing the Services for use by the Authority in the procurement of the replacement Services;

- (l) answering all reasonable questions from the Authority and/or the Replacement Contractor regarding the Services;
- (m) providing co-operation and assistance in relation to any procurement challenge raised in relation to any of the procurements which the Contractor has been involved in as part of the Services, including the provision of evidence (written or in person) in relation thereto;
- (n) providing access to the Authority and/or the Replacement Contractor during the Termination Assistance Period and for a period not exceeding six (6) Months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Contractor:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Contractor or its Sub-contractors (and the Contractor agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Contractor's normal business hours, to members of the Staff who have been involved in the provision or management of the Services and who are still employed or engaged by the Contractor or its Sub-contractors;
- (o) knowledge transfer services, including:
  - (i) providing for transfer to the Authority and/or the Replacement Contractor of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;
  - (ii) providing a summary of the procedures and operations used to provide the Services, including the change management process and other standards and procedures; and
  - (iii) providing the Authority and/or the Replacement Contractor with access to such members of the Contractor's or its Sub-contractors' personnel as have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (p) any other services as the Authority reasonably requires in relation to the exit of the Contractor from this Contract and/or the transfer of responsibility for and provision of the Services to the Authority and/or the Replacement Contractor.

1.2 The information which the Contractor shall provide to the Authority and/or the Replacement Contractor pursuant to paragraph 1.1(i) shall include:

- (a) copies of up-to-date procedures and operations manuals;
- (b) Sub-contracts and licences which are to be transferred to the Authority and/or the Replacement Contractor;
- (c) key support contact details for personnel under Sub-contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
- (d) information regarding any unresolved issues in the provision of the Service (including any aspect that is subject to a Performance Improvement Plan) or, to the extent the Contractor is aware of them, in the Authority's procurement programme in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period; and
- (e) details of physical and logical security processes and tools which will be available to the Authority.

## **ANNEX 2: FORM OF ETHICAL WALL AGREEMENT**

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [ ] 20[ ]

Between

- (1) **[INSERT NAME OF AUTHORITY]** (the "**Authority**") [acting on behalf of the Crown] of [insert Authority's address]; and
- (2) **[NAME OF COUNTERPARTY]** a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

## BACKGROUND

- (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the PCR). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least "any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure" (Regulation 24(2)). "Staff members" refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "Procurement service provider" refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

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

**“Agreement”** means this ethical walls agreement duly executed by the Parties;

**“Bid Team”** means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

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

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

**“Conflicted Personnel”** means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty’s relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest;

**“Contract”** means the [contract for [ ] ] dated [ ] between the Authority and the Counterparty and/or an Affiliate;

**“Control”** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and "Controls" and "Controlled" shall be interpreted accordingly;

**“Effective Date”** means the date of this Agreement as set out above;

**“Invitation to Tender”** or **“ITT”** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

**“ITT Process”** means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

**“ITT Response”** means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

**“Other Affiliate”** any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

**“Other Bidder”** means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

**“Parties”** means the Authority and the Counterparty;

**“Professional Advisor”** means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

**“Purpose”** has the meaning given to it in recital (B) to this Agreement;

**“Representative”** refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

**“Third Party”** means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

## **2. ETHICAL WALLS**

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
  - (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;



- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

## 2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Authority, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Authority's approval thereto,

which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.

2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.

2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.

2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

2.9 In no event shall the Authority be liable for any bid costs incurred by:

- (a) the Counterparty or any Affiliate or Representative; or
- (b) any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and

- (b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

### **3. SOLE RESPONSIBILITY**

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority shall discharge the Counterparty's obligations.

### **4. WAIVER AND INVALIDITY**

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

### **5. ASSIGNMENT AND NOVATION**

- 5.1 Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
  - (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - (c) the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

### **6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

## 7. TRANSPARENCY

- 7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

## 8. NOTICES

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Agreement:

	Counterparty	Authority
Contact		
Address		
Email		

- 8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## **9. WAIVER AND CUMULATIVE REMEDIES**

- 9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

## **10. TERM**

- 10.1 Each party's obligations under this Agreement shall continue in full force and effect for period of [ ] years from the Effective Date.

## **11. GOVERNING LAW AND JURISDICTION**

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty: