

**THE INFORMATION COMMISSIONER’S**

**INVITATION TO TENDER: PART A**

**ITT for the provision of Health cash plan (HCP) and an employee assistance programme (EAP)**

**Closing date for submission of tender**

**2 September 2015 17.00**

**CONTENTS**

This document is in two parts:

**PART A**

Part A is the ITT and provides all the background information, a description of what is required, and instructions for the completion and submission of the tender document.

Note: Part A does not need to be returned to ICO.

**Contents**

[1. INTRODUCTION 4](#_Toc380409600)

[2. REQUIREMENT & SPECIFICATION 7](#_Toc380409601)

[3. PROCUREMENT PROCESS 9](#_Toc380409602)

[4. EVALUATION OF TENDERS 11](#_Toc380409603)

[5. INSTRUCTIONS FOR COMPLETING AND SUBMITTING A TENDER 17](#_Toc380409604)

[6. CONDITIONS OF TENDER 19](#_Toc380409605)

[7. TERMS AND CONDITIONS OF THE CONTRACT 23](#_Toc380409606)

APPENDIX 1 - DRAFT CONTRACT

**PART B**

Part B is the tender submission document that you should complete in full and return to ICO in advance of the deadline and in accordance with the instructions given (see section 5, Instructions for Completing and Submitting a Tender).

**Key Terms**

Tenderers will find a full description of the requirement, together with any formal definitions for terms and phrases, in the rest of this document and/or any accompanying Appendices. For tenderers’ convenience however, the following key terms are used throughout this document and are defined as follows:

|  |  |
| --- | --- |
| **Contract** | means the contract to be entered into between the successful Tenderer and the Information Commissioner; |
| **ICO** | means the Information Commissioner and the Information Commissioner’s Office, being the employees and officers, which functions as the administrative and operational body carrying out the duties and powers of the Information Commissioner; |
| **ITT** | means this Invitation To Tender document, inviting Tenderers to submit a Tender; |
| **Services** | means the requirements and specification for the Services as detailed in section 2 of this document Requirements and Schedule 1 of the Contract |
| **Tender** | means the Tender submitted by the Tenderer; |
| **Tenderer** | means an organisation that submits a completed Tender in response to this ITT. |

1. **INTRODUCTION**

In this ITT information, instructions and guidance are contained in Part A.

Any Tenderer wishing to submit a Tender in response should complete and return Part B to ICO in accordance with the instructions.

## Background on the ICO

The Information Commissioner is the UK's independent public body set up to promote access to official information and to protect personal information. Through his administrative and operational office, the ICO, he regulates and enforces the Data Protection Act, the Freedom of Information Act, the Privacy and Electronic Communications Regulations and the Environmental Information Regulations.

Further information about the ICO and what we do can be found on the ICO website: [www.ico.gov.uk](http://www.ico.gov.uk).

ICO’s head office is in Wilmslow, Cheshire, where most of its 360 employees are based. There are smaller regional offices in Edinburgh, Cardiff and Belfast.

**Brief Overview**

As part of its overall package of benefits the ICO has provided both a Health Cash Plan (HCP) and an Employee Assistance Programme (EAP) to its staff via a third party provider since 2008.

The ICO now seeks to procure a single provider of an EAP, HCP and associated staff benefits (together the Services) for our staff. Full details of the requirements and specification are set out in Part Two below. Tenderers must be able to provide both elements of the contract i.e. both EAP and HCP (and associated benefits).

The services currently provided by the third party can be broken down into two elements:

* Employee Assistance Programme (EAP) – branded as the ‘Colleague Assistance Programme’ (CAP) at the ICO
* Health Cash Plan (HCP).

For clarity, the ICO requires that staff do not have to enter into a HCP in order to use or access the EAP.

In addition to the EAP and HCP, Tenderers are invited to propose additional services or facilities to the ICO as part of the contract, for example access to staff discounts or other advice and information helplines and services.

Tenderers should note however that such additional services are required to be available to the ICO on a **low cost or no cost basis**.

The estimated value of the resulting Contract is expected to be approximately £60,000 exclusive of VAT for the initial period of the Contract, however this figure could vary however dependent upon the numbers of ICO staff who sign up for the HCP element of the Services. Please note is it **not** possible to predict how many staff will sign up for a HCP.

The value could rise to within the range of £100,000 to £130,000 if (for example) all ICO employees join the HCP and/or if all options to extend are exercised. However this should not be seen by any Tenderer as a target cost for their Tender as the Contract will be awarded to the most economically advantageous Tender.

**Objectives**

The objectives of the procurement include the provision of independent advice and support which can help support an employee’s health and welfare. Both the EAP and HCP help demonstrate our commitment to the health of our staff and their families.

Additionally, the EAP programme can help to reduce sickness absence, reduce levels of stress and anxiety which do not result in sickness absence, and contribute to achieving a healthier workforce.

The ICO is also committed to providing a HCP for its employees. Staff can choose to join the plan and the ICO pays the basic level of membership. ICO will pay £5 per month for each employee who chooses to join.

Staff can take out higher levels of HCP membership themselves or for their families (Users) if they wish and pay the balance of the additional payments direct to the HCP provider via deductions from payroll.

**Duration**

We would like to engage one Supplier to provide us with these EAP and HCP Services under a contract for an initial period of 3 years, with an option for the ICO to extend for two further periods of up to 12 months each, taking the contract term to a total maximum of 5 years.

The provision of HCP and EAP Services is intended to start on 1 January 2016 or as otherwise agreed.

Any extension to the Contract will be agreed between the contracting parties. The ICO may ask the Supplier to demonstrate improvements and/or price reductions before considering an extension. Discussions will be conducted sufficiently far in advance of the Contract expiry date to arrive at an agreed position.

**Contract Management**

The Contract will be managed by ICO with review meetings being held on a six-monthly basis. The review meetings will enable ICO and the Supplier to review performance and discuss matters which may include, but not be limited to;

* Delivery of the Services;
* Feedback from ICO staff and end Users;
* Complaints and actions to address them;

The Supplier under the Contract will be expected to field the appropriate personnel for each review meeting. They will also be expected to provide management information on a periodic basis relative to all activity undertaken under the Contract at no additional cost to ICO. The content, frequency and formatting of management information will be agreed with the successful Tenderer prior to commencement of the Contract

**Questions and Contact Details**

All requests for clarification on and questions about this ITT (whether about the ICO’s requirements or Tender submission) should be sent as soon as possible in writing by email (using reference “**ITT for the provision of Health cash plan (HCP) and an employee assistance programme (EAP)**”) to:

**procurement2@ico.org.uk**

The contact for this ITT in the ICO is:

**Carol Knights, Solicitor**

**Information Commissioner’s Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**SK9 5AF**

**Tel: 01625 545620**

**Email:** [**procurement2@ico.org.uk**](mailto:procurement2@ico.org.uk)

A copy of all questions raised (anonymised) and answers given will be maintained and distributed periodically to all Tenderers who have contacted ICO to express an interest in submitting a Tender. It is therefore in your interests to let us know if you are interested in submitting a Tender as soon as possible.

Tenderers should not ask confidential questions unless absolutely necessary. Any such question must be clearly marked “In Confidence” and must set out reasons for this. However, if ICO does not consider that the question should be treated as confidential we will inform the Tenderer who may withdraw the question without getting an answer. If the question is not withdrawn the question and any answers will be circulated as above.

Please consider the deadline for raising clarifications and questions in your Tender response planning. ICO is not obliged to answer any questions received after this date.

**2. REQUIREMENT AND SPECIFICATION**

This section provides Tenderers with the details regarding the ICO’s requirements and will help Tenderers compile their Tender submission.

**The service that ICO require breaks down into two constituent parts, the requirements of each are listed below:**

**2.1 Employee Assistance Programme**

The ICO seeks Tenders for an EAP for an indicative staffing cohort of 420 people. One of the primary benefits of the EAP is the provision of independent advice and support which can help support an employee’s health and welfare. The ICO benefits because it helps demonstrate our commitment to the health of our staff and their families. Additionally, the programme can help to reduce sickness absence, levels of stress and anxiety which do not result in sickness absence, and contribute to achieving a healthier workforce.

The provision of such a programme can also be one strand of a defence against possible stress claims against the ICO, though it does not stand as a complete defence in itself.

The ICO intends that staff who seek support from HR or Occupational Health will be regularly referred to the telephone helpline, or face to face counselling, for independent support and advice. It is then their choice whether or not to use the service.

Callers will not be obliged to name their employer. Currently it is not possible to determine the actual level of use of the current telephone helpline, though some management information is available where callers have been willing to disclose that they are employed by the ICO.

The ICO requires that the breadth of the EAP service includes:

Availability of a free telephone helpline for staff and their family members. A 24/7 service, 365 days a year is required.

A range of issues supported by the telephone helpline, which should include as a minimum, counselling; financial advice; legal advice; and medical advice.

Unrestricted access to the telephone helpline, and the ability to use the service anonymously.

Access to face to face counselling for members of ICO staff, including the number of sessions provided, and the availability of suitably qualified counsellors locally for staff in and around Cheshire and Greater Manchester and also Belfast, Cardiff, Edinburgh and London, to enable staff to obtain support more quickly than had they been on an NHS waiting list.

Up to six face to face counselling sessions available per member of staff per issue available each year.

The ability for self-referral to the service, which helps to further ensure anonymity; alternatively a referral can be made by ICO Human Resources.

The provision of indicative usage information and anonymised management information as appropriate to assess the effectiveness of the service. (because of the anonymity of referrals, accurate usage statistics are not possible).

Alternative mechanisms for the provision of information, advice and guidance eg through on-line tools.

Access to suitably qualified medical advice either over the telephone or through on-line mechanisms.

Information to be available in a range of accessible formats.

The capacity for additional counselling sessions to be arranged where necessary; the ICO also seeks details of indicative costs per session to the ICO for additional sessions.

Suitable administrative processes for arranging counselling ie direct by the employee or accessed via the ICO or its Occupational Health service.

**2.2 Health Cash Plan**

The ICO is committed to providing a HCP for its employees. Staff can choose to join the plan; if they join then the ICO pays the basic level of membership (£5 per month per scheme member). Staff can take out higher levels of membership if they wish for themselves and/or their families and pay the balance of the additional payments via a deduction from payroll.

Around 230 staff out of the current ICO staff cohort currently have health cash plans through the existing scheme, with around 80 of these having upgraded to higher levels.

The current (£5 per month) level of membership includes the following basic elements:

Dental

Dental trauma

Optical

Diagnostic consultation

Therapies (eg physio, osteopathy, chiropractic and acupuncture treatment)

Chiropody and homeopathy

Hearing aids

Health screening

Personal accident cover

24 hr phone helpline

GP helpline

Prescription service

The ICO requires Tenderers to submit a detailed breakdown of the benefits available to HCP scheme members on the basis of £5 per employee per month contribution.

In addition Tenderers will be assessed on:

* Whether benefits under the HCP are payable for staff with pre-existing medical conditions for staff who are members of the existing ICO health cash plan.
* Whether benefits under the HCP are payable for staff with pre-existing medical conditions for staff who are not members of the existing ICO health cash plan.
* The benefits available to staff who wish to upgrade their membership and the cost of upgrades.
* The administrative processes involved for the ICO and payroll provider to ensure that contributions to the scheme and membership records are kept up to date.
* The administrative processes involved for members to make a claim for benefits under the scheme and method of payment to members.
* Additional administrative costs or service charges from running the scheme.

**2.3 Other services and contract management**

The ICO is aware that providers of EAPs and HCPs often make other services available to staff members at no cost or low cost.

Tenderers are invited to submit details of any additional services and or benefits they are able to provide to all staff (not just those who are part of the HCP) as part of the Contract. **Please note these should be at low or no cost.**

# 2.4 Timings

Suppliers are required to give indicative timings/service levels for the provision of their services eg: average time from referral to appointment for face to face counselling; average time from submission of a HCP claim to payment.

**3. PROCUREMENT PROCESS**

**Overview**

All interested Tenderers are invited to submit a Tender. Please contact the ICO to register your interest as soon as possible.

All compliant Tenders received will be evaluated in accordance with the evaluation criteria as set out below. ICO will select a Tenderer based on the Tender which offers the most economically advantageous solution, taking into account quality and costs.

Tenders should be prepared and submitted (using Part B of this ITT document) in accordance with section 5 of this document. At the ICO’s discretion, Tenderers may be invited to clarify their Tender to help evaluators fully understand the offer made. All Tenderers should nonetheless take care to fully explain their offering in their Tender submission.

The value of the resulting Contract for the Services is expected to be below the relevant threshold for full EU advertisement under the Public Contracts Regulations 2015 and ICO does not believe there will be cross-border interest in this ITT.

This ITT and any subsequent Contract will be published on the Contracts Finder website under the UK government’s transparency regime and in accordance with Ministry of Justice procurement guidelines. Tenderers should note this as Tenders will be accepted and evaluated by ICO on the basis that the Tenderer agrees to such publication.

If there is any information a Tenderer believes should be exempt from publication as it falls within an exemption set out in the Freedom of Information Act the Tenderer should complete the schedule in section 4 of Part B to this ITT, setting out the relevant information, the exemption they believe applies, their reasons for it applying and the time period for the suggested exemption. The ICO’s decision is final on whether any exemption applies, how long it applies for and what is published ultimately. Tenderers should not submit a Tender unless they accept this.

Presentations and/or interviews may be held as part of the procurement process. Please see section 4, Evaluation of Tenders, for further information on how these will form part of the evaluation process.

**Indicative Procurement Timetable**

The following is an indicative timetable for this procurement exercise. Please be aware that these timescales (with the exception of the deadlines in bold) may be subject to change at the absolute discretion of ICO.

|  |  |
| --- | --- |
| **STAGE / ACTIVITY** | **INDICATIVE DATE** |
| **ITT issued** | **6 July 2015** |
| **Closing date for Tenderers to ask clarifications / questions** | **17.00 10 August 2015** |
| **Closing date for submission of Tenders** | **17.00**  **2 September 2015** |
| Preliminary evaluation of Tenders | w/c 7 September 2015 |
| Presentations and/or interviews | w/c 28 September 2015 |
| Contract award | w/c 5 October 2015 |
| Contract start date (service start date January 2016) | November 2015 |

**4. EVALUATION OF TENDERS**

**Overview**

All completed Tenders received will be evaluated by ICO in accordance with the evaluation process described below. Should any Tenderer not understand any element, they should make contact with ICO as per the contact details in section 1 of this ITT.

**Stage 1 - Compliance Check**

Before proceeding to evaluation a compliance check will be carried out to make sure all sections of Part B to this ITT have been completed and submitted and that there are no mandatory grounds for excluding the Tender.

Grounds for mandatory exclusion are contained in the Public Contracts Regulations 2015, paragraph 57(1)-(3). Each Tenderer must supply a declaration in the form of section 5 to Part B of this ITT, signed by an authorised signatory.

There are also discretionary grounds for extension which ICO will then consider. These grounds are contained in the Public Contracts Regulations 2015, paragraph 57(4)&(8). The Tenderer’s declaration must state whether any of these grounds apply and give further information for ICO’s consideration.

It is the Tenderers responsibility to check and declare whether any of these grounds apply to them.

**Stage 2 - Selection Criteria**

All Tenders passing the compliance check will then be assessed against the following criteria which Tenderers should evidence by answering the relevant questions in Part B to this ITT:

(a) Economic and financial standing - see questions 2.1 to 2.3 in Part B, assessed on a pass/fail basis;

**Stage 3 – Award Criteria**

All Tenders passing stage 2 will be assessed against the award criteria. The most economically advantageous Tender will be chosen based on quality and cost scores weighted as follows:

* Quality = 60%; and
* Cost = 40%.

The methodology for evaluating Tenders against these criteria is as follows:

**Evaluating & Scoring Costs 40%**

The overall Cost to ICO will be divided into 2 elements as follows:

* EAP:80% of the total Cost element=32%;
* HCP Service Cost :20% of the total Cost element =8%.

**Abnormally Low & Unacceptably High Tenders**

**Please note** that in accordance with Regulation 69 of the Public Contracts Regulations 2015 ICO is obliged to ask any Tenderer to explain the price or costs proposed in their Tender where it appear to be abnormally low. If ICO seeks such clarification and a Tenderer does not explain the proposed costs to our satisfaction then ICO may reject the Tender as abnormally low.

Furthermore, where ICO reasonably considers that a Tender is abnormally low due to a breach of the Tenderer’s environmental, social or labour obligations, including obligations deriving from relevant collective agreements, ICO is obliged to reject it.

Any Tender that is rejected as abnormally low will be excluded from further consideration regardless of how many points it has scored in all other aspects.

In addition, any Tender which is found to be too high to be acceptable to ICO may also be excluded from further consideration. In this instance, ICO will initially clarify with the Tenderer concerned whether the pricing is correct and has been interpreted correctly. No alternative pricing will be allowed.

If following the clarification the costs are too high to be acceptable, that Tender will be rejected regardless of how many points it scores in all other aspects.

**Evaluating Quality 60%**

Tenderers will be asked to provide full details of their company or organisation, and confirm any sub-contractors details, for information only in section 1 of Part B. This will not be scored.

Scores for quality will be allocated to Tenderer’s answers to the questions in section 2 of Part B. Individual weightings for each question are shown in the table alongside the questions.

Tenderers must make sure that they answer what is being asked. Anything not directly relevant to the particular question should not be included, but where possible please demonstrate how you will go further than what is being asked for to add value.

Tenders should state not just what they will do, but how they will do it, and what their proposed timescales are (as relevant). It is useful to give examples or provide evidence to support the responses. Include all relevant detail, so the evaluation panel gets the fullest possible picture.

Each question and answer will be evaluated individually, one by one in order. When scoring each statement, no consideration is given to information included in other answers so please do not cross reference to responses or information provided elsewhere in your Tender.

**Quality Scoring Scale**

Answers to the questions will be assessed on a scale of 0 to 10 points, as detailed in the table below:

|  |  |  |
| --- | --- | --- |
| **Scores** | **Classification** | **Definition** |
| 0 | **Unacceptable.** No response, response not complete or not relevant. | No response at all or insufficient information provided in the response such that it is totally un-assessable and/or incomprehensible. |
| 1-2 | **Poor.** Partially compliant response but with serious deficiencies and/or major weaknesses. | Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements. Little or no detail and no supporting evidence provided to demonstrate that the Tenderer is able to provide the services. Considerable reservations in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. |
| 3-4 | **Weak.** The response is almost compliant but one or more major weakness and/or several minor areas of weakness remain. | Weak submission which does not fully address and meet the requirements. Response is basic/minimal with minimal detail and insufficient supporting evidence to demonstrate that the Tenderer is able to provide the Services. Some reservations in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements. |
| 5-6 | **Good.** Satisfactory and acceptable response with no major concerns. | Submission sets out a solution that largely addresses and meets the requirements, with some detail and supporting evidence.  Relevant ability, understanding, expertise, skills and/or resources meet minimum requirements for delivery of the requirements. There may be one or two very minor weaknesses. |
| 7-8 | **Excellent.** Fully satisfactory /very good response. | Submission sets out a robust solution that fully addresses and meets the requirements, with full details and full and relevant supporting evidence provided to support the solution.  Answer gives full confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  No weaknesses in any area identified. |
| 9-10 | **Outstanding**. Fully satisfactory / very good response with some areas exceeding requirements. | Submission sets out a robust solution (as for a 7-8 score) and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes.  Answer gives full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described. |

**Moderation**

Following the evaluation of the written Tenders, the three highest scoring Tenderers may be invited to attend an interview with the evaluation panel, which may include making a short presentation. The purpose of this, should it take place, is to moderate the scores awarded to the written Tender and to clarify any outstanding issues.

If this takes place, only those Tenderers with a good chance of being awarded the Contract will be invited. It may not take place if there is a clear leader following evaluation. No additional points have been reserved for this stage. Details of the interview arrangements and format will be provided to the invited Tenderers should the interviews take place.

**Award of Contract**

Upon conclusion of the evaluation, the scores for cost and quality will be combined to give a total score and the Tenderer considered by ICO to be offering the most economically advantageous Tender based on the evaluation criteria will be the preferred bidder. This Tenderer will be offered the Contract via email and if they accept on the terms offered an award will be made to them.

Tenderers who have not been chosen as preferred bidder will also be advised of this via email.

They will be entitled to receive feedback on the characteristics and relative advantages of the successful Tender in relation to their own and the name of the successful Tenderer in accordance with paragraphs 55 and 86 of the Public Contracts Regulations 2015.

The award of the Contract will be subject to a standstill period of 10 days between the notification of the award decision by email and Contract conclusion.Although this is not mandatory for frameworks or sub-OJEU procurements it is best practice in the interests of openness and transparency, and to ensure feedback has been provided promptly and any issues have been dealt with prior to the commencement of the contract.

All Tenderers are advised that no action should be taken, for example commencing the delivery of or implementation of the Services or commencement of any works, until the Contract has been finalised. Any Tenderer doing so does so at its own risk.

Tenderers must not undertake any publicity, marketing or promotional activity based on award of the Contract without prior approval of the ICO.

The ICO is not bound to accept any Tender, and unless a Tenderer expressly states that a partial award will not be acceptable, then the right is reserved to accept a Tender in part.

Upon conclusion of all the above stages, the Contract will be entered into between the ICO and the successful Tenderer. Contracts will be in the name of the Information Commissioner. The terms and conditions governing the Contract will be those set out in the draft terms and conditions accompanying this ITT (see Appendix 1 to section 7). Only minor amendments will be acceptable to ICO. Tenderers should only submit a Tender if they are willing to accept this.

**5. INSTRUCTIONS FOR COMPLETING AND SUBMITTING A TENDER**

You have received one copy of this ITT document. We require you to submit one ELECTRONIC copy of your Tender and all supporting documents to:

[**procurement2@ico.org.uk**](mailto:procurement2@ico.org.uk)

Please ensure your email is entitled **“Tender** **for the provision of Health cash plan (HCP) and an employee assistance programme (EAP).**”

***Please note: The largest email size (including attachment) we can receive is 8MB.***

**Completed tender submissions must be received by 2 September 2015, 17.00.**

We also recommend you keep a copy for your own records.

ICO will take reasonable measures to safeguard all Tenders received and open them only when the submission deadline has expired.

The date and time the email was received into the ICO’s inbox as stated above will be decisive of the date and time received. Late submissions will be rejected. It is the responsibility of the Tenderer to ensure that submissions are received by ICO on time.

**Completing the Tender**

So that ICO can assess fully the Tenderer’s suitability, all information requested in this ITT must be provided. Failure to complete the Tender submission in full or failure to follow submission requirements may result in your Tender being rejected.

Please note the following:

* Supply all requested information.
* Answer every question with information relevant to the question being asked.
* If the question does not apply to you please write N/A; if you don’t know the answer please write N/K.
* Questions must be answered in English.
* Any Yes / No questions should clearly show which answer you intend to give by deleting the alternative.
* Answers should be clear, complete and as concise as possible.
* Unclear, ambiguous or irrelevant answers will not achieve high marks.
* Any figures requested should be stated in full (i.e. £1,000,000 not £1m) and in GBP. Where information relates to foreign accounts, amounts in alternative currencies may be stated, but must also be converted to GBP.

ICO expects that information and/or documents submitted on or with any Tender will relate to the Tenderer only - the Tenderer being the organisation which it is proposed will enter into the Contract should their Tender be successful. If anything submitted relates to a sub-contractor this must be clearly marked as such.

ICO may, but is not obliged to, seek further clarification from the Tenderer following submission of completed forms where required.

**Format of Tender Submission**

Tenderers are required to complete all of the documentation listed below. Please complete the documentation electronically where possible, without making any changes to the structure and/or order of the document provided (except as necessary to accommodate your responses, i.e. enlarging response boxes etc.). **Please submit the Tender as a Word document.**

In particular, please do not undertake any substantive changes to formatting, or add appendices instead of completing the tables provided, and so on, except as may be expressly requested or are necessary to properly present your Tender.

You should complete and submit all sections of Part B, namely:

1. Company Details and General Information
2. Response to Requirements & Specification
3. Costs Schedule
4. Freedom of Information Exclusion Schedule
5. Tendering Declaration
6. Declaration of Interests or Connections with ICO
7. Qualification of Tender
8. Enclosures Checklist

The declarations must be signed by a director, partner or other senior authorised representative in her/his own name and on behalf of the Tenderer. The details contained in a Tenderer’s response may be specified in the Contract or may form an appendix thereof.  Tenderers should therefore make sure that their responses are authorised at an appropriate level which would enable them, should they be successful, to become the subject of a binding contract.

**6. CONDITIONS OF TENDER**

In submitting a response to this ITT Tenderers do so on the conditions set out below. In the event of any breach of the conditions the ICO shall be entitled to terminate any arrangement made as a result of such Tender, including terminating any Contract, and to claim damages accordingly.

**Warnings and disclaimers**

Save where expressly provided to the contrary, the laws of England shall apply to this procurement process and any resulting contract.

The ITT documents are intended as a preliminary explanation of ICO's activities and plans and are not intended to form the basis of any decision on whether to enter into any contractual relationship with the ICO. These documents do not purport to contain all information a prospective contractor may require, or to have been independently verified and should not be considered as an investment recommendation made by the ICO to Tenderers.

No Tender is deemed accepted until the Contract has been agreed and formally approved and signed by ICO, the Tenderer and any other relevant party and declared unconditional. The publication of the ITT does not commit the ICO to the award any contract.

No dialogue or communication with the ICO whether prior to, during or subsequent to the procurement (including any notification of preferred bidder status) imply acceptance of any Tender or an indication that the Tenderer will be awarded the Contract.

Only the express terms of the Contract which is finally agreed and signed on behalf of the relevant parties and which is unconditional shall have any contractual effect in connection with the matters to which it relates.

The ICO does not:

* make any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the procurement documentation provided. Any persons considering making a decision to enter into contractual relationships with the ICO following receipt of the ITT should make their own investigations and their own independent assessment of ICO and its requirements and should seek their own professional technical, financial and legal advice;
* accept any liability for the information contained in the ITT;
* accept any liability for loss or damage (other than in respect of fraud or fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication. Any and all liability is expressly disclaimed and excluded to the maximum extent permissible by law.

**Tenderer conduct and conflicts of interest**

* + Tenderers shall not, before the date and time specified for return of the Tender, communicate to any person the amount or approximate amount of the Tender or proposed Tender, except where the disclosure in confidence of the approximate amount of tender is necessary to obtain insurance cover or otherwise prepare the Tender.
  + The Tender shall be bona-fide and shall not be fixed or adjusted by or under or in accordance with any agreement or arrangement with any other person.
  + Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from tendering or agree as to the amount of any other Tender to be submitted.
  + Tenderers must not:
* offer any inducement, fee or reward to any member or officer of ICO;
* do anything which would constitute a breach of the Bribery Act 2010;
* canvass any officer or employee of ICO in connection with the Contract; or
* contact anyone at ICO or any person acting as an advisor to ICO (except as authorised by this ITT for the purpose of asking genuine questions about the process or the Contract) about any aspect of the proposed Contract or for soliciting information in connection therewith including (without limitation) to discuss a possible transfer of employment to ICO.
  + Tenderers are responsible for ensuring that no conflicts of interest exist between the Tenderer and its advisors and ICO and its advisors. ICO reserves the right to disqualify a Tenderer where there is an actual or potential conflict of interest. Tenderers are encouraged to seek to clarify ICO's view on actual or potential conflicts prior to submission of their Tender.

**Tenderer’s responsibility to submit a complete tender**

* + It is the Tenderer’s responsibility to ensure that their Tender is complete, prepared and submitted in accordance with the instructions contained herein, and signed and dated where required. ICO is not obliged to consider any Tender which is incomplete or non-compliant but, at its sole discretion, may offer a Tenderer who submits such a Tender an opportunity to remedy the omission before evaluation of the Tender takes place provided that, in ICO’s judgement, this does not adversely affect the integrity and fairness of the procurement exercise.
  + Unless specifically withdrawn in writing, Tenders shall remain open for acceptance for a period of 90 days from the return date.

**Bid costs**

* ICO will not be liable for any Tenderer’s costs, expenditure, work, or effort incurred in proceeding with or participating in this procurement process, including if the procurement process is terminated or amended by ICO for any reason.

**ICO’s rights**

The ICO reserves the right to:

* + seek additional information or clarification from Tenderers at any time during the tender process;
  + disqualify any Tenderer that does not submit a compliant Tender;
  + disqualify any Tenderer that is guilty of serious misrepresentation in relation to its Tender, its declarations or the procurement process;
  + withdraw this ITT at any time, and to re-invite Tenders on the same or any alternative basis;
  + choose not to award the Contract as a result of the procurement process;
  + make whatever changes it sees fit to the timetable, structure or content of the procurement process;
  + retain copies of all Tenders to satisfy its audit obligations and for other purposes.

**Confidentiality and Freedom of Information Act**

* As a public body, ICO is subject to the provisions of the Freedom of Information Act 2000 in respect of information it holds (including third-party information). Any member of the public or other interested party may make a request for such information.
* ICO shall treat all Tenderers' responses as confidential during the procurement process but not afterwards. Requests for information received following the procurement process shall be considered on a case-by-case basis, applying the principles of the FOIA. If an exemption cannot be justifiably applied the information must be disclosed.
* Whilst ICO aims to consult with third-party providers of information before it is disclosed, it cannot guarantee that this will be done. Therefore, tenderers are responsible for ensuring that any confidential or commercially sensitive information has been clearly identified to ICO in the form provided in the Tender Submission Document (schedule 4 of Part B). However, the ICO’s decision on whether or not to disclose requested information will be final.
* Tenderers should be aware that, in compliance with its transparency obligations, ICO must publish details of its contracts, including the contract values and the identities of its suppliers. Publication may be made on Contracts Finder and/or on ICO’s own website.
* Neither the Commissioner or the ICO will be liable for any loss, damage or harm or other detriment, however caused, arising from disclosure of any information relating to this ITT, the procurement process, any Tender submitted or the resulting Contract.

**Publicity**

* + No publicity regarding the Contract or its award will be permitted unless and until ICO has given express written consent. For example, no statements may be made to the media (including the internet and email) regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of ICO.

**Information Sharing**

All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement - including ensuring value for money and related aspects of good procurement practice.

For these purposes, the ICO may disclose within Government any of the Tenderer’s documentation/information (including any that the Tenderer considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Tenderer to the ICO during this Procurement. The information will not be disclosed outside Government. Tenderers taking part in this procurement consent to these terms as part of the ITT process.

**7. TERMS AND CONDITIONS OF CONTRACT\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The Contract terms for the Services will be in the form of an ICO agreement, a copy of which is attached to this ITT as Appendix 1.

By submitting a bid, Tenderers are agreeing to be bound by the terms and conditions without further negotiation or amendment, and must sign the Tendering Declaration accordingly.

Whilst ICO may be prepared to give consideration to any changes of a minor nature, including changes and additions indicated in the document, it is not prepared to accept material changes to the terms and conditions.

For the avoidance of doubt therefore, if Tenderers submit a Tender that is subject to a qualification in respect of the terms and conditions which ICO deem ‘material’ and unacceptable, the Tenderer will be invited to withdraw the qualification and the Tender submission will be evaluated without it. Should the Tenderer not wish to withdraw the qualification grounds will exist to exclude their Tender from further consideration.

**APPENDIX 1 to Section 7:**

**This CONTRACT is made on 2015**

**BETWEEN:**

**(1) THE INFORMATION COMMISSIONER** (a corporation sole appointed by Her Majesty the Queen) (Commissioner) whose head office is at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF **("ICO").**

**(2) [                    ] [**a company registered in [England and Wales] with company number [           ] whose registered office is at [                  ]] OR [of [                    ] **("Supplier").**

**Whereby it is agreed as follows:**

1**.** ICO is a corporation sole appointed by Her Majesty the Queen and reports directly to Parliament. The Commissioner’s duties are to regulate and promote compliance with the Data Protection Act 1998 (the “DPA”) and the Freedom of Information Act 2000 (the “FOIA”).

2. The Supplier will deliver an effective and modern Employee Assistance Plan (EAP) and Health Cash Plan (HCP) (together the Services) to the ICO and its employees on the terms set out in this contract (“Contract”). The Services are set out in Schedule One and the price for the Services is set out in schedule.

3. The EAP service will be made available to all ICO employees including those who do not enter into a HCP.

4. The Supplier and ICO have agreed a detailed implementation plan (Transition Plan) to describe how the Services will be set up and delivered. The Transition Plan is set out in Schedule Three.

1. **Interpretation**

In these terms and conditions:

|  |  |
| --- | --- |
| “Award Letter” | means the letter from the ICO to the Supplier printed above these terms and conditions; |
| “Charges” | means the charges for the Services as specified in Schedule Two; |
| “Commencement Date” | means [xxx] OR the date set out in the Award Letter; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “DPA” | means the Data Protection Act 1998; |
| “Expiry Date” | means the date for expiry of this Contract as set out in clause 4; |
| “FOIA” | means the Freedom of Information Act 2000; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Party” | means the Supplier or the ICO (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the ICO pursuant to or in connection with this Contract; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the ICO under the Contract as set out in Schedule One; |
| “Staff” | means all directors, officers, employees, agents, sub-contractors, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Contract; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the ICO, the ICO’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Term” | means the period from the start date of the Contract to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Contract; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

2. **Due Diligence and Interpretation**

2.1 The Supplier acknowledges that it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the ICO, has raised all relevant due diligence questions with the ICO before the Commencement Date and has entered into this Contract in reliance on its own due diligence alone.

2.2 In these terms and conditions, unless the context otherwise requires

2.1. references to numbered clauses are references to the relevant clause in these terms and conditions;

2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Contract;

2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

and the word ‘including’ shall be understood as meaning ‘including without limitation’.

**3. Supply of Services**

3.1 In consideration of the ICO’s Contract to pay the Charges, the Supplier shall supply the Services to the ICO and to its employees for the Term subject to and in accordance with the terms and conditions of the Contract.

3.2 In supplying the Services, the Supplier shall (and shall procure that all Staff shall):

3.2.1 co-operate with the ICO in all matters relating to the Services and comply with all the ICO’s instructions;

3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;

3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Contract;

3.2.4 ensure that the Services shall conform with all descriptions and specifications set out in this Contract;

3.2.5 comply with all applicable laws; and

3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.

**4. Term**

4.1 This Contract shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2or terminated in accordance with the terms and conditions of this Contract.

4.2 The ICO may extend the Contract for two successive periods of up to 12 months each by giving not less than 30 Working Days’ notice in writing to the Supplier prior to the relevant Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

**5. Charges, Payment and Recovery of Sums Due**

5.1 The Charges for the Services shall be as set out in Schedule Two of this Contract and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services.

5.2 Unless otherwise agreed in writing by the ICO, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.3 The Supplier shall invoice the ICO as specified in Schedule Two of this Contract. Each invoice shall include such supporting information required by the ICO to verify the accuracy of the invoice, including a relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

5.4 In consideration of the supply of the Services by the Supplier, the ICO shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The ICO may, without prejudice to any other rights and remedies under this Contract, withhold or reduce payments in the event of unsatisfactory performance.

5.5 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The ICO shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

5.6 If there is a dispute between the Parties as to the amount invoiced, the ICO shall pay the undisputed amount and the Supplier shall not suspend the supply of the Services.

5.7 Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 18.

5.8 If a payment of an undisputed amount is not made by the ICO by the due date, then the ICO shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

5.9 If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay to the ICO in respect of any breach of the Contract), that sum may be deducted unilaterally by the ICO from any sum then due, or which may come due, to the Supplier under the Contract or under any other Contract or contract with the ICO.

5.10 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the ICO in order to justify withholding payment of any such amount in whole or in part.

**6. Staff and Key Personnel**

6.1 If the ICO reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Contract, it may, by giving written notice to the Supplier:

6.1.1 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or

6.1.2 require that the Supplier replace any Staff or person removed under this clause with another suitably qualified member of Staff / person and procure that any security pass issued by the ICO to the person removed is surrendered

and the Supplier shall comply with any such notice.

6.2 The Supplier shall:

6.2.1 if requested, provide the ICO with a list of the names and addresses (and any other relevant information) of all Staff who may require admission to the ICO’s premises in connection with the Contract; and

6.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the ICO.

7. **Assignment and sub-contracting**

7.1 The Supplier shall not without the written consent of the ICO assign, sub-contract, novate or in any way dispose of the benefit and / or the burden of the Contract or any part of the Contract.

7.2 The ICO may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors/Staff as though those acts and omissions were its own.

7.3 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

7.4 Where the ICO has consented to the placing of sub-contracts, the Supplier shall, at the request of the ICO, send copies of each sub-contract, to the ICO as soon as is reasonably practicable.

7.5 The ICO may assign, novate, or otherwise dispose of its rights and obligations under this Contract without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier’s obligations under this Contract.

**8. Intellectual Property Rights**

The Supplier shall indemnify, and keep indemnified, the ICO in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the ICO as a result of or in connection with any claim made against the ICO for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Services or associated benefits literature , to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

**9. Governance and Records**

9.1 The Supplier shall:

9.1.1 appoint a main contact for communication of the programme to all ICO employees and shall attend progress meetings with the ICO at the frequency and times specified by the ICO and shall ensure that its representatives are suitably qualified to attend such meetings; and

9.1.2 submit progress reports to the ICO at the times and in the format specified by the ICO by notice in writing to the Supplier.

9.2 The Supplier shall keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it and all payments made by the ICO.

9.3 The Supplier shall on request afford the ICO or the ICO’s representatives such access to those records as may be reasonably requested by the ICO in connection with this Contract.

**10. Confidentiality, Transparency and Publicity**

10. 1 Subject to clause 10.2, each Party shall:

10.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

10.1.2 not use or exploit the disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Contract.

10.2 Notwithstanding clause 10.1, a Party may disclose Confidential Information which it receives from the other Party:

10.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

10.2.2 to its auditors or for the purposes of regulatory requirements;

10.2.3 on a confidential basis, to its professional advisers;

10.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

10.2.5 where the receiving Party is the Supplier, to its Staff or sub-contractors on a strict need to know and Confidential Basis to enable performance of the Supplier’s obligations under the Contract provided that the Supplier shall procure that any Staff or sub-contractors to whom it discloses Confidential Information pursuant to this clause 10.2.5 shall observe the Supplier’s confidentiality obligations under the Contract;

10.2.6 where the receiving Party is the ICO:

10.2.6.1 to the employees, agents, consultants and contractors of the ICO;

10.2.6.2 to any other Central Government Body, any successor body to a Central Government Body or any company to which the ICO transfers or proposes to transfer all or any part of its business;

10.2.6.3 to the extent that the ICO (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

10.2.6.4 in accordance with clause 10.2.

and for the purposes of the foregoing, references to disclosure on a Confidential Basis shall mean disclosure subject to a confidentiality Contract or arrangement containing terms no less stringent than those placed on the Supplier under this clause 10.

10.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information and the Supplier hereby gives its consent for the ICO to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Contract agreed from time to time.

10.4 The ICO may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.

10.5 The Supplier shall not, and shall take reasonable steps to ensure that its Staff and sub-contractors shall not, make any press announcement or publicise this Contract or any part of this Contract in any way, except with the prior written consent of the ICO.

**11. Freedom of Information**

11.1 The Supplier acknowledges that the ICO is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

11.1.1 provide all necessary assistance and cooperation as reasonably requested by the ICO to enable the ICO to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

11.1.2 transfer to the ICO all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;

11.1.3 provide the ICO with a copy of all Information belonging to the ICO requested in the Request for Information which is in its possession or control in the form that the ICO requires within 5 Working Days (or such other period as the ICO may reasonably specify) of the ICO's request for such Information; and

11.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the ICO.

11.2 The Supplier acknowledges that the ICO may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier, its Staff or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the ICO shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

11.3 Notwithstanding any other provision in this Contract, the ICO shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

**12. Protection of Personal Data and Security of Data**

12.1 The Supplier shall, and shall procure that all Supplier Staff shall comply with any notification requirements under the DPA and both Parties and Staff shall duly observe all their obligations under the DPA which arise in connection with the Contract.

12.2 Notwithstanding the general obligation in clause 12.1, where the Supplier or Staff is processing Personal Data for the ICO as a data processor (as defined by the DPA) the Supplier shall (and shall procure that its Staff shall):

12.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

12.2.2 provide the ICO with such information as the ICO may reasonably request to satisfy itself that the Supplier or any Staff is complying with its obligations under the DPA and promptly notify the ICO of:

12.2.2.1 any breach of the security requirements of the ICO as referred to in this clause 12; and

12.2.2.2 any request for personal data; and

12.2.2.3 ensure that it does not knowingly or negligently do or omit to do anything which places the ICO in breach of the ICO’s obligations under the DPA.

12.2.3 When handling ICO data (whether or not Personal Data), the Supplier shall (and shall ensure that its Staff shall) ensure the security of the data is maintained in line with the security requirements of the ICO as notified to the Supplier from time to time.

12.3 The Supplier will treat all the information and data gathered under the Contract as strictly confidential. The information shall only be disclosed to those Staff of the Supplier on a Confidential Basis who need to know the same and shall only be used by them for the purposes of operating this Contract (subject always to the observance of any restrictions and obligations which may be imposed upon Supplier by the DPA).

12.4 The Supplier will ensure that they and their Staff have robust data storage, management and security systems which comply with all applicable security, data protection and confidentially requirements and undertakes at all times to comply with the DPA and all other applicable domestic or European Union legislation relating to data protection.

**13. Liability**

13.1 Subject always to clauses 13.2 and 13.3 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Contract shall in no event exceed a sum equal to **200%** of the Charges payable to the Supplier.

13. 2 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

13.2.1 death or personal injury caused by its negligence or that of its Staff;

13.2.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

13.2.3 any other matter which, by law, may not be excluded or limited.

13.3 The Supplier’s liability under the indemnities in clause 8 and 17 shall be unlimited.

**14. Force Majeure**

14.1 Neither Party shall have any liability under or be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of the Party affected.

14.2 Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate this Contract by written notice to the other Party.

**15. Termination**

15.1 The ICO may terminate this Contract at any time by notice in writing to the Supplier to take effect on any date falling at least 30 (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

15.2 Without prejudice to any other right or remedy it might have, the ICO may terminate this Contract by written notice to the Supplier with immediate effect if the Supplier:

15.2.1 (without prejudice to clause 15.2.5), is in material breach of any obligation under this Contract which is not capable of remedy;

5.2.2 repeatedly breaches any of the terms and conditions of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Contract;

15.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

15.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

15.2.5 breaches any of the provisions of clauses 7.3, 11, 12, 14, 16 or 17; or

15.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier’s assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.2.6) in consequence of debt in any jurisdiction.

15.3 The Supplier shall notify the ICO as soon as practicable of any change of control as referred to in clause 15.2.4 or any potential such change of control.

15.4 The Supplier may terminate this Contract by written notice to the ICO if the ICO has not paid any undisputed amounts within 90 days of them falling due.

15.5 Termination or expiry of this Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the ICO under this clause or any other provision of this Contract that either expressly or by implication has effect after termination.

15.6 Upon termination or expiry of this Contract, the Supplier shall:

give all reasonable assistance to the ICO and any incoming supplier of the Services; and return all requested documents, information and data to the ICO as soon as reasonably practicable.[exit /transition measures to be agreed]

**16. Compliance**

16.1 The Supplier shall and shall procure its Staff shall:

16.1.1 comply with all the ICO’s health and safety measures while on the ICO’s premises; and

16.1.2 notify the ICO immediately in the event of any incident occurring in the performance of its obligations under this Contract on the ICO’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

16.2 The Supplier shall perform its obligations under this Contract in accordance with all applicable equality Law and the ICO’s equality and diversity policy as provided to the Supplier from time to time and take all reasonable steps to secure the observance of clause 16 by all Staff.

16.3 The Supplier shall supply the Services in accordance with the ICO’s environmental policy as provided to the Supplier from time to time.

16.4 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989.

**17. Prevention of Fraud and Corruption**

17.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or for showing or refraining from showing favour or disfavour to any person in relation to this Contract.

17.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with this Contract and shall notify the ICO immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

17.3 If the Supplier or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to the Contract or any other contract with the Crown (including the ICO) the ICO may:

17.3.1 terminate this Contract and recover from the Supplier the amount of any loss suffered by the ICO resulting from the termination, including the cost reasonably incurred by the ICO of making other arrangements for the supply of the Services and any additional expenditure incurred by the ICO throughout the remainder of the Contract; or

17.3.2 recover in full from the Supplier any other loss sustained by the ICO in consequence of any breach of this clause.

**18.Dispute Resolution**

[To be agreed]

**19. General**

19.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.

19.2 A person who is not a party to this 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 Contract of the Parties. This Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.

19.3 This Contract contains the whole Contract between the Parties and supersedes and replaces any prior written or oral Contracts, representations or understandings between them.

19.4 The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

19.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.

19.6 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.

19.7 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract (whether under this Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

19.8 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

**20. Notices**

20.1 Any notice to be given under this Contract shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 20.1.2, e-mail to the address of the relevant Party, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

20.1.1 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

20.1.2 Notices under clauses 14 (Force Majeure) and 15 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 20.1.

**21. Governing Law and Jurisdiction**

The validity, construction and performance of this Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**Signed for and on behalf of XXXXX Limited**

**Signed: ……………………………**

**Dated: ……………………………..**

**Position: ………………………….**

**Signed for and on behalf of Information Commissioner**

**Signed: …………………………………**

**Dated: ………………………………….**

**Position: ………………………………...**

**Schedule One**

**The Services**

The Services comprise the EAP Service and the HCP Service as defined below:

**A. The EAP Service**:

**[to be added]**

**B The HCP Service**

**[to be added**]

In consideration of the Supplier covering certain of the ICO’s employees under the Supplier’s health cash plan policies [HCP Scheme], a corporate HCP scheme (the HCP Scheme) shall be put in place.

**Schedule Two**

**Pricing and Invoicing**

The ICO shall pay the Charges to the Supplier in accordance with the payment profile and invoicing procedure specified in this Schedule 2

**[details TBC]**

**Schedule Three**

**Transition Plan**

[tbc]

To include:

**EAP/HCP**

Setting up of the EAP Service and the HCP Service should begin immediately upon award of the Contract.

Any process for transferring and holding employee records electronically and hard copy, where required, in accordance with data protection requirements.

[further details TBA]