

Protect

**DATED: [Insert in manuscript the date of the last signature to this contract, 2011]**

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

**(The Authority)**

**- and -**

**[COMPANY NAME]**

**[OR]**

**[NAME OF PARTNERSHIP OF [TRADING AS]]**

**(The Prime Contractor)**

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**INVEST TO SAVE CONTRACT**

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**(..... Contract Package Area)**



Investor in People

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**THIS CONTRACT** is made on **2011** [Insert in manuscript the date of the last signature to this Contract]

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** (hereinafter referred to as the 'Department for Work and Pensions' or 'DWP') whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA ( the 'Authority'); and
- (2) **[COMPANY NAME]** (No. [ ]) whose registered office address is at [address] (the 'Prime Contractor');

**OR**

- (2) [insert name of Partnership and 'trading as' if relevant] a partnership whose principal place of business is at [address] (the 'Prime Contractor')

(and hereinafter called the 'Parties')

**RECITALS**

The Prime Contractor has agreed to provide the Provision on the terms and conditions set out in this Contract. The Authority's reference number for this Contract is "[ Ref. No.]".

**PART 1 – PRELIMINARY**

**IT IS AGREED** as follows:

**1 INTERPRETATION**

- 1.1 The definitions of contract terms and provisions relating to the interpretation of this Contract and the precedence of the Clauses, Schedules and Annexes are set out in Schedule 1 to this Contract. The definitions and interpretations as set out in Schedule 1 shall be deemed to be set out in this Clause 1 for the purposes of construing and interpreting this Contract.

**PART 2 – DURATION**

**2 COMMENCEMENT AND CONTINUATION**

- 2.1 The Prime Contractor shall carry out the Provision with effect from the relevant Commencement Date set out in Schedule 2 for a period of 4 years after the relevant Commencement Date, subject to earlier termination of this Contract. For the avoidance of doubt this Contract shall expire on the expiry or termination of the last Provision.
- 2.2 The Authority may extend the term of the Contract following the expiry of the initial 4 year period upon giving the Prime Contractor not less than 6 months' written notice prior to the end of the initial 4 year period.
- 2.3 The references to Provision in this Contract shall be construed at any point in time according to whether the Prime Contractor is providing one or more Provisions (as the case may be).

**PART 3 – THE SERVICES**

**3 PRIME CONTRACTOR OBLIGATIONS**

- 3.1 The Prime Contractor shall promptly and efficiently provide each Provision in accordance with:
- 3.1.1 the Specification;
  - 3.1.2 Good Industry Practice;
  - 3.1.3 the Supplier Guidance;
  - 3.1.4 all applicable Laws;
  - 3.1.5 the Tender; and
  - 3.1.6 the DWP Code of Conduct.
- 3.2 The Prime Contractor shall comply with Schedule 12 in relation to those Provisions which it delivers in Wales under this Contract.
- 3.3 The Prime Contractor shall in the performance of this Contract:
- 3.3.1 not unlawfully discriminate either directly or indirectly, or by way of victimisation or harassment, on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender re-assignment, marital or civil partnership status, religion or belief, or age and without prejudice to the generality of the foregoing the Prime Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof; and
  - 3.3.2 take all reasonable steps to secure the observance of Clause 3.3.1 by all Staff.
- Any breach by the Prime Contractor of Clauses 3.3.1 and 3.3.2 above shall be a Serious Breach for the purposes of Clause 20 (Prime Contractor Default).
- 3.4 The Prime Contractor shall provide each Provision in accordance with the Diversity and Equality requirements under Schedule 8. Any breach by the Prime Contractor of Paragraphs 3 to 7 (inclusive) of Schedule 8 shall be a Serious Breach for the purposes of Clause 20 (Prime Contractor Default).
- 3.5 The Prime Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations under this Contract. The Prime Contractor shall not rely and shall be deemed not to have relied on information provided by the Authority on matters covered by this Contract and, save in the case of fraudulent misrepresentation or wilful neglect, the Authority shall not be liable to the Prime Contractor (whether in contract, tort, statute or otherwise) in respect of any inaccuracy, error, omission, defect or inadequacy of any kind whatsoever arising from, or contained in, any such information provided by the Authority.
- 3.6 The Prime Contractor shall comply with the information, accounting and other provisions set out or referred to in the Schedules. In particular the Prime Contractor acknowledges that the keeping of such records is necessary for the Authority to verify the Prime Contractor's entitlement to payment under this Contract.
- 3.7 The Prime Contractor acknowledges that it is of paramount importance to ensure that funds paid under this Contract are used effectively to assist Participants into long term

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employment. The Prime Contractor understands that the effectiveness of the Prime Contractor's delivery of the Provision will be measured against general and specific performance targets agreed in writing between the Authority and the Prime Contractor from time to time in accordance with the provisions of Clause 5. In delivering the Provision the Prime Contractor shall be under an obligation to meet such general and specific performance targets.

- 3.8 The Prime Contractor acknowledges that the continuity of the Provision for Participants is of paramount importance. The Prime Contractor undertakes during the Term to use all reasonable endeavours to facilitate such continuity for Participants so far as it is able to do so.
- 3.9 The Prime Contractor shall, and shall procure that the Staff, comply with the "Authority Accuracy of Information Standards" (as notified to the Prime Contractor by the Authority from time to time) concerning the provision of information, general and specific advice. Under no circumstances should the Prime Contractor recommend a particular course of action to Participants, and Participants must be presented with all the available options.

## **4 THE AUTHORITY'S OBLIGATIONS**

- 4.1 The Authority shall, and shall procure that each Authority Party shall, perform its responsibilities in relation to each Provision delivered under this Contract as set out in the Schedules.
- 4.2 The Authority shall comply with the provisions set out in Schedule 5 (Accounting Requirements).
- 4.3 The Authority shall use all reasonable endeavours (and shall procure that each Authority Party shall use all reasonable endeavours) to provide to the Prime Contractor all such information as the Prime Contractor reasonably requires in order to provide properly the Provision and comply with its obligations under the terms of this Contract.

## **5 CHANGE CONTROL**

- 5.1 The Authority has the right to propose variations to this Contract (including a request by the Authority for the Prime Contractor to cease any part of the Provision) in accordance with this Clause 5. Where the Authority proposes to vary any part of the Provision the Authority shall serve a Change Control Notice on the Prime Contractor, and the Prime Contractor shall promptly comply with such Change Control procedure as detailed in this Clause 5.
- 5.2 The Prime Contractor shall comply with any changes to the needs and requirements of the Authority provided that (subject to the agreement of the Authority which shall not be unreasonably withheld) it shall be entitled to amend its delivery plans, performance targets and key performance indicators as necessary as a result of any such changes on the basis set out in this Clause 5.
- 5.3 Without prejudice to the generality of the Authority's right to vary this Contract, such variations include, but are not limited to the following:
- 5.3.1 cessation of any part of the Provision, subject to Clause 21.4;
  - 5.3.2 additions to any part of the Provision;
  - 5.3.3 change of the Authority's business or policies imposed by Her Majesty's Government;
  - 5.3.4 change of a Business Asset;
  - 5.3.5 quality of Provision; and/or

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- 5.3.6 change or additions to the Supplier Guidance, the DWP Code of Conduct or the Staff Vetting Procedures.
- 5.4 The Change Control Notice shall:
  - 5.4.1 set out the change to the Provision required by (or served upon) the Authority in sufficient detail to enable the Prime Contractor to provide an estimate in accordance with Clause 5.5 below; and
  - 5.4.2 require the Prime Contractor to provide the Authority with an estimate ("the Estimate") in accordance with Clause 5.5 below including the effect on the Fees.
- 5.5 The Prime Contractor shall provide the Authority with the Estimate within ten (10) Working Days of the receipt of the Change Control Notice or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of opinion of the Prime Contractor on:
  - 5.5.1 the impact of the proposed change on the delivery of the Provision;
  - 5.5.2 any amendment required to this Contract or the Schedules to accommodate the proposed change including, without limitation, any changes to the labour requirements, delivery plans, performance targets and key performance indicators;
  - 5.5.3 (having regard to the Prime Contractor's general duty of cost efficiency under this Contract) the overall part year and/or full year cost of, savings from, implementing the proposed variation as the case may be;
  - 5.5.4 any other information reasonably requested by the Authority or appearing to the Prime Contractor to be relevant; and
  - 5.5.5 any capital or other one off expenditure requirements.
- 5.6 As soon as practicable after the Prime Contractor provides the Authority with the Estimate, the Authority and the Prime Contractor shall meet to discuss any issues arising from the Change Control Notice or from the Estimate provided by the Prime Contractor.
- 5.7 Following that discussion the Authority may acting reasonably determine:
  - 5.7.1 to proceed with the Change Control Notice; or
  - 5.7.2 to withdraw the Change Control Notice.
- 5.8 As soon as practicable after any part of the contents of the Estimate have been discussed in accordance with Clause 5.6 above the Authority shall confirm in writing that it wishes:
  - 5.8.1 to proceed with the Change Control Notice (or that part of it which has been agreed or determined as above); or
  - 5.8.2 to withdraw the Change Control Notice (or the relevant part).
- 5.9 If the Authority confirms that it wishes to proceed with the Change Control Notice, the Provision shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from payments under the Contract, as appropriate.
- 5.10 If the Authority has not confirmed that it wishes to proceed with the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause 5.6 above or has not withdrawn the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause 5.6 above, and the Prime Contractor is content for the Change Control

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Notice (or the relevant part) to be withdrawn, then it shall be deemed to have been withdrawn.

- 5.11 The Authority shall not be liable for any costs incurred by the Prime Contractor in implementing the procedures pursuant to this Clause 5, save that the Authority shall be liable for any reasonable costs incurred by the Prime Contractor in implementing the procedures pursuant to this Clause 5 where the Authority withdraws the Change Control Notice in accordance with Clause 5.8.2. The Authority reserves the right to access all records to validate a claim under this Clause.
- 5.12 Variations of a minor or temporary nature may be required to the Provision from time to time and such variations shall be agreed in writing between the Authority and the Prime Contractor. The Prime Contractor shall comply with such minor or temporary variations, which shall normally be accommodated at no extra cost to the Authority, provided they do not involve additional cost to the Prime Contractor.
- 5.13 Without prejudice to any of the other rights of the Prime Contractor, the Prime Contractor may propose variations to the Provision which shall be referred to the Authority for consideration. Such variations shall be detailed in a Change Control Notice between the Authority and the Prime Contractor and the Contract may be varied in accordance with the Change Control procedure as detailed in this Clause 5.

## **6 CITY STRATEGY**

- 6.1 The Prime Contractor acknowledges that the Provision set out in this Contract is delivered on behalf of the Authority as elements of the Government's Invest to Save Provision.
- 6.2 The Prime Contractor further acknowledges that if the City Strategy Pathfinders and Multi-Area Agreement areas and any other local initiatives are implemented in the Contract Package Area, this may impact on the delivery of the Provision. The Prime Contractor shall deliver the Provision in a spirit of collaboration and cooperation with, and liaise accordingly with, the relevant City Strategy Pathfinders and Multi-Area Agreements and other local initiatives and vice versa.
- 6.3 The Authority undertakes to consult with the Prime Contractor regarding the potential impact on Invest to Save Provisions (including this Contract). The format and timing for such consultation and any changes required as a result of such implementations as described in Clause 6.2 above shall be made in accordance with Clause 5.

## **7 VOLUMES**

- 7.1 The Prime Contractor acknowledges and has submitted its Tender and price on the understanding that no guarantee is given by the Authority in respect of the number or volume of Participants participating in the Provision during the Term. Any levels or values of goods and/or services referred to in the Schedules are indicative only and shall not be binding on the Authority.
- 7.2 For the avoidance of doubt the Prime Contractor acknowledges that the volume of Participants may fluctuate.

## **8 PRIME CONTRACTOR'S EMPLOYEES AND SUB-CONTRACTORS**

- 8.1 The Prime Contractor shall include in its contracts with suppliers or Sub-contractors engaged for the purposes of providing the Provision a written condition undertaking to make payment for the supply of their goods and/or services within thirty (30) calendar days of receipt of the supplier's or Sub-contractor's valid invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 8.2 The Prime Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the delivery of the Provision. The Prime Contractor confirms that

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all persons employed or engaged in the Provision of the Contract shall have complied with the Staff Vetting Procedures prior to commencing delivery of the Provision and accessing the Authority Premises.

- 8.3 The Prime Contractor shall provide training on a continuing basis for all Staff employed or engaged in delivery of the Provision in compliance with the Security Policy and Security Plan.
- 8.4 The Prime Contractor shall use reasonable endeavours to ensure that none of the Staff are claiming any state benefit, where payment of that benefit is precluded due to earnings. The Prime Contractor shall further use all reasonable endeavours to ensure that Staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Prime Contractor shall at all times take reasonable steps to ensure compliance with this Clause 8.4.
- 8.5 The Prime Contractor shall satisfy itself that all of the Staff are suitable in all respects to provide the Provision.
- 8.6 The Prime Contractor shall be responsible for ensuring that all of the Staff comply with Clause 3 in the performance of this Contract.
- 8.7 The Prime Contractor shall upon becoming aware forthwith notify the Authority of any claim brought against the Prime Contractor arising out of or relating to the Prime Contractor's delivery of the Provision including any claim made against any Sub-contractor of the Prime Contractor.

## **PART 4 – CONTRACT MANAGEMENT**

### **9 CONTRACT MANAGEMENT**

- 9.1 The Prime Contractor shall appoint a named Prime Contractor Manager and the Authority shall appoint a named Authority Contract Manager. The Authority and the Prime Contractor shall procure that their respective contract managers co-operate with each other to ensure that the Provision is delivered as specified in this Contract, that the quality of service is at least maintained, that required standards and performance levels are at least met and that management and other information is provided to the Authority as specified in this Contract.
- 9.2 Each Party shall promptly notify the other of the name of the Prime Contractor Manager or Authority Contract Manager (as appropriate) and of any subsequent replacement.
- 9.3 The Prime Contractor Manager shall address any enquiries or notify any difficulties about procedural or contractual matters to the Authority Contract Manager (to be confirmed by the Prime Contractor in writing if requested), or such other person as the Authority may nominate in his/her place. The Authority will then provide (or shall procure that any relevant Authority Party shall provide) such advice and/or assistance as it reasonably can to help the Prime Contractor Manager to resolve the difficulty which has arisen. In the event that the Prime Contractor Manager and the Authority Contract Manager cannot resolve any difficulties, the Parties shall comply with the formal dispute resolution procedures set out in the Dispute Resolution Procedure.

### **10 MONITORING OF PRIME CONTRACTOR PERFORMANCE**

- 10.1 The Authority shall monitor the Prime Contractor's performance of the Provision in accordance with the provisions of Schedule 4 (Managing Performance). The Authority will organise regular monitoring and spot checks of the Prime Contractor Sites at any time to ensure that the Prime Contractor is complying with its obligations under this Contract and the Prime Contractor shall co-operate fully, at its own cost, with the Authority. The Authority shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the delivery of the Provision by the Prime Contractor.

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- 10.2 The Authority may also appoint an external assessor, subject to them not being a competitor of the Prime Contractor and entering into a non disclosure arrangement and having the relevant expertise and competence, to participate in the monitoring of the Prime Contractor's performance of the Provision and the Prime Contractor will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any Provision made as a result of a recommendation of any such persons shall be made in writing and in accordance with Clause 5.
- 10.3 The Prime Contractor shall ensure that the Authority (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Prime Contractor Sites, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 10 including putting in place arrangements to permit legal access to information as may be required (for example under the Data Protection Act 1998).
- 10.4 With effect from the date of this Contract the Authority and the Prime Contractor shall meet at the times and with such frequency as specified in Schedule 4 (Managing Performance). Such meetings shall be convened by the Authority upon the Authority giving reasonable notice to the Prime Contractor.

## **PART 5 – INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**

### **11 INTELLECTUAL PROPERTY RIGHTS**

#### 11.1 The Prime Contractor acknowledges that:

- 11.1.1 all Intellectual Property Rights owned at the date of this Contract by the Authority shall remain so owned;
- 11.1.2 any Intellectual Property Rights arising from the modification, adaptation or enhancement to any Materials in which the Authority's Intellectual Property Rights subsist, shall belong to the Authority notwithstanding the identity of its creator and shall thereafter fall within the definition "Authority Intellectual Property Rights";
- 11.1.3 the Authority hereby grants to the Prime Contractor a non-exclusive, non-transferable royalty-free licence, with the right to grant sublicenses to any Prime Contractor Party to use the Authority Intellectual Property Rights only to the extent that and for so long as such use is strictly necessary for the delivery of the Provision by the Prime Contractor or any Prime Contractor Party in accordance with this Contract;
- 11.1.4 the Prime Contractor shall comply in all respects with the terms of any third party licence provided prior to entering in the Contract relating to the Authority Intellectual Property Rights; and
- 11.1.5 the Authority shall be responsible for paying all third party licence fees and/or support fees for the Authority Intellectual Property Rights for the period of the Contract.

#### 11.2 The Authority acknowledges that:

- 11.2.1 all Intellectual Property Rights owned at the date of this Contract by the Prime Contractor shall remain so owned;
- 11.2.2 the Prime Contractor hereby grants to the Authority a non-exclusive, non-transferable, royalty-free licence to use the Prime Contractor Intellectual Property Rights in the UK with the right to grant sub-licences only to the extent that and for so long as such use is strictly necessary for the receipt of the Provision in accordance with this Contract; and

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11.2.3 the Prime Contractor shall be responsible for paying all third party licence fees and/or support fees for the Prime Contractor Intellectual Property Rights for the period of this Contract.

- 11.3 The Prime Contractor agrees that the Authority shall be legally and beneficially entitled to any and all Generated Intellectual Property Rights which shall include any Materials forming Participant Records licensed in the UK for use with the Provision only. The Prime Contractor hereby assigns all such Generated Intellectual Property Rights to the Authority with full title guarantee. To the extent that it is not possible in law to assign any Generated Intellectual Property Rights created on or after the Commencement Date, the Prime Contractor shall assign to the Authority such Generated Intellectual Property Rights immediately on their creation.
- 11.4 The Prime Contractor warrants that it will obtain from each and every owner of Third Party Intellectual Property Rights in Materials it provides under this Contract a non-exclusive licence with the right to grant sub-licences for the Authority to use all such Third Party Intellectual Property Rights to the extent necessary for the receipt of the Provision.
- 11.5 The Prime Contractor shall upon the request of the Authority and at the Authority's expense, do all such things and execute (or procure the execution of) all such documents necessary to perfect and complete the Authority's title to any Intellectual Property Rights to which it is entitled under this Clause 11.

## **12 INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 12.1 Each Party shall indemnify the other against all Losses arising from or incurred by the other Party by reason of any infringement or alleged infringement of any Intellectual Property Right provided by that Party to the other in connection with delivery or receipt of the Provision.
- 12.2 Each Party shall promptly notify the other if any claim or demand is made or action brought against them for infringement or alleged infringement of any Third Party Intellectual Property Rights which may affect the delivery of the Provision.
- 12.3 Each Party shall promptly notify the other if any claim or demand is made or action brought against them to which Clause 12.1 may apply. The Indemnifying Party shall at its own expense conduct all negotiations and any litigation arising in connection with any such claim for breach of Intellectual Property Rights. The Indemnifying Party shall:
- 12.3.1 provide detailed reports to the other Party concerning the status of any dispute(s) within fourteen (14) calendar days of any such request by the other Party;
  - 12.3.2 consult the other Party on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 12.3.3 take due and proper account of the interests of the other Party; and
  - 12.3.4 not settle or compromise any claim without the other Party's prior written consent (which will not be unreasonably withheld or delayed).
- 12.4 The other Party shall at the request of the Indemnifying Party afford to the Indemnifying Party all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the other Party to which Clause 12.1 may apply or any claim or demand made or action brought against the other Party to which Clause 12.2 may apply. The Indemnifying Party shall reimburse the other Party for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 12.5 The other Party shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any

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Intellectual Property Right to which Clause 12.1 may apply or any claim or demand made or action brought against the Indemnifying Party to which Clause 12.2 may apply.

- 12.6 If a claim or demand is made or action brought to which Clause 12.1 may apply or in the reasonable opinion of the Indemnifying Party is likely to be made or brought, the Indemnifying Party may at the Indemnifying Party's option and at the Indemnifying Party's own expense, either:
- 12.6.1 modify any or all of the Provision without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Provision, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the other Party, such acceptance not to be unreasonably withheld or delayed; or
  - 12.6.2 procure a licence from a third party to continue to deliver the Provision on terms which are acceptable to the other Party.
- 12.7 The foregoing provisions of this Clause 12 shall not apply insofar as any such claim or demand or action is in respect of:
- 12.7.1 any modification carried out by or on behalf of the other Party to any item supplied by the Indemnifying Party under this Contract if such modification is not authorised by the Indemnifying Party in writing;
  - 12.7.2 any use by or on behalf of the other Party of the Provision in a manner not reasonably to be inferred from the Specification or requirements of the other Party; or
  - 12.7.3 any materials provided to the Prime Contractor by the Authority.
- 12.8 If a modification or substitution in accordance with Clause 12.6.1 above is not possible so as to avoid the infringement or the Indemnifying Party has been unable to procure a licence in accordance with Clause 12.6.2, the Indemnifying Party shall be liable for the value of the replacement Provision or part thereof together with additional costs incurred in implementing and maintaining such replacements.

## 13 AUTHORITY DATA

- 13.1 The Prime Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 13.2 The Prime Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Prime Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 13.3 To the extent that Authority Data is held and/or processed by the Prime Contractor, the Prime Contractor shall supply that Authority Data to the Authority as requested by the Authority and in the format specified by the Authority from time to time.
- 13.4 The Prime Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 13.5 The Prime Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Prime Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 13.6 The Prime Contractor shall ensure that any system or media on which the Prime Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

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- 13.7 If the Authority Data or Personal Data is corrupted, lost or sufficiently degraded as a result of any Default by the Prime Contractor so as to be unusable, the Authority may:
- 13.7.1 require the Prime Contractor (at the Prime Contractor's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Prime Contractor shall do so as soon as practicable but not later than 24 hours; and/or
  - 13.7.2 itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Prime Contractor any reasonable expenses incurred in doing so.
- 13.8 If at any time the Prime Contractor suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Prime Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Prime Contractor proposes to take.

## 14 PROTECTION OF PERSONAL DATA

- 14.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Authority is the Data Controller and that the Prime Contractor is the Data Processor.
- 14.2 The Prime Contractor shall:
- 14.2.1 process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Prime Contractor during the Term);
  - 14.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the delivery of the Provision or as is required by Law or any Regulatory Body;
  - 14.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 14.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
  - 14.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the delivery of the Provision;
  - 14.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 14;
  - 14.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
  - 14.2.8 notify the Authority (within five Working Days) if it receives:
    - a) a request from a Data Subject to have access to that person's Personal Data; or
    - b) a complaint or request relating to the Authority's obligations under the DPA;

## Protect

- 14.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
- a) providing the Authority with full details of the complaint or request;
  - b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
  - c) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - d) providing the Authority with any information requested by the Authority;
- 14.2.10 permit the Authority or the Authority's representative (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Prime Contractor's Data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Prime Contractor is in full compliance with its obligations under this Contract;
- 14.2.11 provide a written description of the technical and organisational methods employed by the Prime Contractor for Processing Personal Data (within the timescales required by the Authority); and
- 14.2.12 not Process Personal Data outside the European Economic Area, without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
- a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - b) any reasonable instructions notified to it by the Authority.
- 14.3 The Prime Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

## **PART 6 – CONFIDENTIALITY AND FREEDOM OF INFORMATION**

### **15 FREEDOM OF INFORMATION**

- 15.1 The Prime Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 15.2 The Prime Contractor shall and shall procure that its Sub-contractors shall:
- 15.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
  - 15.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and

## Protect

15.2.3 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.

15.3 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.

15.4 In no event shall the Prime Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

15.5 The Prime Contractor acknowledges that (notwithstanding the provisions of Clause 15) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations, to disclose information concerning the Prime Contractor or the Provision:

15.5.1 in certain circumstances without consulting the Prime Contractor; or

15.5.2 following consultation with the Prime Contractor and having taken their views into account;

provided always that where Clause 15.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Prime Contractor advance notice, or failing that, to draw the disclosure to the Prime Contractor's attention after any such disclosure.

15.6 The Prime Contractor shall ensure that all Information is retained for disclosure in accordance with Clause 28 (Records) and shall permit the Authority to inspect such records as requested from time to time.

15.7 The Prime Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 10 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with Clause 15.5.

## 16. CONFIDENTIALITY AND OFFICIAL SECRETS ACTS

16.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

16.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

16.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

16.2 Clause 16.1 shall not apply to the extent that:

16.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 15 (Freedom of Information);

16.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

16.2.3 such information was obtained from a third party without obligation of confidentiality;

Protect

- 16.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 16.2.5 such information is independently developed without access to the other Party's Confidential Information.
- 16.3 The Prime Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the delivery of the Provision and who need to know the information, and shall ensure that all such Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Prime 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.
- 16.5 At the written request of the Authority, the Prime Contractor shall procure that the Staff or such professional advisors or consultants identified by the Authority sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 16.6 Nothing in this Contract shall prevent the Authority from disclosing the Prime Contractor's Confidential Information:
- 16.6.1 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
- 16.6.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
- 16.6.3 for the purpose of the examination and certification of the Authority's accounts; or
- 16.6.4 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.
- 16.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or other person to whom the Prime Contractor's Confidential Information is disclosed pursuant to Clause 16 is made aware of the Authority's obligations of confidentiality and shall be subject to and comply with equivalent or no less stringent obligations in respect of such Confidential Information.
- 16.8 Nothing in this Clause 16 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.
- 16.9 The Prime Contractor shall comply with (and shall ensure that all the Staff comply with) the provisions of:
- 16.9.1 the Official Secrets Acts 1911 to 1989; and
- 16.9.2 Section 182 of the Finance Act 1989.
- 16.10 In the event that the Prime Contractor fails to comply with its obligations under this Clause 16, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

**PART 7 – WARRANTIES AND LIABILITY**

**17 WARRANTIES**

17.1 The Prime Contractor warrants that:

- 17.1.1 it has full capacity and authority and all necessary consents and licences (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 Prime Contractor;
- 17.1.2 in entering the Contract it has not committed any Fraud;
- 17.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading in all respects, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 17.1.4 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;
- 17.1.5 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;
- 17.1.6 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 Prime 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 Prime Contractor's assets or revenue;
- 17.1.7 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;
- 17.1.8 in performing its obligations under this Contract, all Prime Contractor Software and Third Party Software will:
  - a) be currently supported versions of that software; and
  - b) perform in all material respects in accordance with its specification,
- 17.1.9 in the three 3 years prior to the date of the Contract:
  - a) 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; and
  - b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 17.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

## Protect

- 17.1.11 it will not do anything (and shall ensure that none of its employees or other personnel do anything) which constitutes an offence under the Computer Misuse Act 1990, and that it has appropriate security measures in place to prevent/detect unlawful use of its IT systems;
- 17.1.12 it is not, and has not been, in default of any obligations to which it is subject to by reason of membership of any association or body;
- 17.1.13 any goods supplied by the Prime Contractor pursuant to the delivery of any part of the Provision shall be of satisfactory quality and fit for their purpose and shall be free from defects in design, material and workmanship and that any Prime Contractor Software and Third Party Software will be Euro Compliant; and
- 17.1.14 the delivery of the Provision and the Authority's and each Participant's permitted use thereof, shall not infringe any Third Party Intellectual Property Rights.

## 18 INDEMNITY AND LIABILITY

- 18.1 Neither Party excludes or limits its liability to the other:
  - 18.1.1 for death or personal injury caused by its negligence;
  - 18.1.2 for fraud or fraudulent misrepresentation;
  - 18.1.3 for breach of any obligations implied by Section 12 of the Sales of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982; or
  - 18.1.4 for breach of any obligations under Clauses 11, 14, 15 and 16.
- 18.2 All property of the Prime Contractor whilst on the Authority Premises shall be there at the risk of the Prime Contractor and the Authority shall accept no liability for any loss or damage howsoever occurring to it, except to the extent (if any) that it was caused or contributed to by the negligent act or omission or default of some other person acting as a servant or agent of the Authority or any Authority Party.
- 18.3 Responsibility for the control, management and supervision of all Participants whilst participating in the Provision at Prime Contractor Sites shall rest with the relevant Prime Contractor Party subject to the Participant complying with all reasonable instructions and directions which the Prime Contractor may issue to the Participant from time to time. The Authority shall not be liable for any personal injury, disease or death, or loss or damage whatsoever caused, by any act or omission of a Participant as a result of their participation in the Provision at Prime Contractor Sites, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or default of some other person acting as a servant or agent of the Authority or any Authority Party.
- 18.4 Subject always to Clause 18.1, the aggregate maximum liability of the Prime Contractor to the Authority, whether in contract, tort (including negligence), statutory duty, collaterally or otherwise arising out of or in connection with this Contract, including its execution and performance, termination and expiry, in respect of any one or more events or series of events (whether connected or unconnected), shall not exceed, in any given year, **(to be confirmed)**.
- 18.5 Subject always to Clause 18.1, in no event shall either Party be liable to the other for:
  - 18.5.1 loss of profits, business revenue or goodwill (whether direct or indirect); and
  - 18.5.2 consequential or indirect loss.]
- 18.6 The Parties expressly agree that should any limitation or provision contained in this Clause 18 be held to be invalid under any applicable statute or rules of law it shall to that extent be

deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded, such liability shall be subject to the other limitations and provisions as set out herein.

## **19 INSURANCE**

- 19.1 The Prime 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 such risks which may reasonably be incurred by the Prime Contractor arising out of the Prime Contractor's performance of its obligations under the Contract. It shall be the responsibility of the Prime Contractor to determine the amount of insurance cover that will be adequate to enable the Prime Contractor to satisfy all liabilities under the Contract, however such insurance shall cover all categories of claims which may be made on the Authority or losses incurred by the Authority in respect of breach of the Contract by the Prime Contractor and the amount of cover shall not be less than **(to be confirmed)**. The provision of insurance or the amount of cover shall not relieve the Prime Contractor of any liabilities under the Contract.
- 19.2 The Prime Contractor shall hold employer's liability insurance in accordance with any requirement under any law from time to time in force. Where the Prime Contractor (or its Sub-contractors) is a person or body exempted from the obligations of the Employers Liability (Compulsory Insurance) Act 1969, the Prime Contractor shall not be required to carry insurance for which it is exempted by the said Act if alternative arrangements for meeting such liabilities are made to the satisfaction of the Authority.
- 19.3 The Prime Contractor, when requested, shall produce to the Authority certificates of insurance issued by the Prime Contractor's insurance broker showing the actual coverage in force at the time of the request and shall give the Authority written notice before any such insurance is altered or cancelled. For the avoidance of doubt, the Prime Contractor shall not be entitled to receive any payment in respect of the cost of such insurances other than the payment of the Fees set out in Schedule 6.

## **PART 8 – REMEDIES**

### **20 PRIME CONTRACTOR DEFAULT**

- 20.1 The Prime Contractor and Authority shall (and respectively shall procure that the Prime Contractor Parties and Authority Parties shall) do all things reasonably necessary to co-operate, aid and assist the other in its performance of its obligations under this Contract.
- 20.2 For the purposes of this Clause 20 the following terms shall have the meanings set out below:
- 20.2.1 "Minor Breach" shall mean a delay or non-performance by the Prime Contractor of its obligations hereunder as a direct result of any Default by the Prime Contractor which does not materially, adversely and substantially affect the performance or delivery of the Provision;
- 20.2.2 "Serious Breach" shall mean
- a) any breach or a series of Minor Breaches by the Prime Contractor of its obligations hereunder which adversely, materially and substantially affects the performance or delivery of the Provision (or adversely affects the health and safety of Staff or Participants); or
  - b) a Minor Breach of a specific obligation in respect of which the Authority has served two consecutive notices under Clause 20.4.1 concerning the same or similar circumstances from where the Prime Contractor has failed to remedy that breach under Clause 20.4.2.

## Protect

- 20.3 Any one instance of failure by the Prime Contractor to meet any general or specific performance targets set pursuant to Clause 3.7 as a direct result of any Default by the Prime Contractor shall constitute Minor Breach whilst repeated or continual failure to meet such performance targets shall constitute Serious Breach.
- 20.4 In the event of a Minor Breach, the Parties shall adopt the following procedure:
- 20.4.1 the Authority shall serve notice on the Prime Contractor via the Prime Contractor Manager specifying that it is a formal warning notice and giving reasonable details of the breach sufficient for the Prime Contractor to identify the breach;
- 20.4.2 within five (5) Working Days of receipt of notification under Clause 20.4.1 above, the Prime Contractor Manager shall meet with the Authority Contract Manager to discuss why the breach has occurred and how it will be remedied. The Prime Contractor shall have a reasonable period (such period to be agreed, and in the absence of agreement to be no longer than twenty eight (28) calendar days) following such meeting to remedy the breach. Notwithstanding any other remedy under this Contract the Authority shall be entitled to require the Prime Contractor to promptly re-perform or replace the relevant part of the Provision without additional charge to the Authority.
- 20.5 In the event of a Serious Breach, the Parties shall adopt the following procedure:
- 20.5.1 the Authority shall serve written notice on the Prime Contractor via the Prime Contractor Manager giving reasonable details of the breach sufficient for the Prime Contractor to identify the breach and requiring the Prime Contractor Manager to meet with the Authority Contract Manager forthwith;
- 20.5.2 upon receiving notification under Clause 20.5.1 above, the Prime Contractor Manager shall meet with the Authority Contract Manager forthwith to determine and agree in good faith and acting reasonably whether a contingency plan is available to deal with the Serious Breach. In the event that a contingency plan is activated, the Prime Contractor shall reimburse the Authority in respect of any costs incurred by the Authority in activating the same (as set out in the contingency plan) provided that the Authority shall do all things to mitigate such costs including by using the resources of the Prime Contractor as appropriate. In the event that a contingency plan is not available the Prime Contractor shall within five (5) Working Days (i) provide to the Authority a plan that, to the Authority's reasonable satisfaction, will when implemented resolve the breach; or (ii) remedy the breach itself;
- 20.5.3 in the event that (i) the Prime Contractor fails to meet any required action in a contingency plan or (ii) in the event that a contingency plan is not available and the Prime Contractor does not present a satisfactory alternative plan, Clause 20.6 shall apply and/or at any time thereafter the Authority shall be entitled, at its discretion, to serve twenty eight (28) calendar days' notice on the Prime Contractor of its intention to terminate the relevant Provision in respect of which the aforesaid breach has occurred or to terminate the Contract as a whole.
- 20.6 In the event of a Serious Breach, the Authority shall notify the Prime Contractor in writing of the following:
- 20.6.1 the action it needs to take that is reasonably necessary to provide the Provision;
- 20.6.2 the reason for such action;
- 20.6.3 the date it wishes to commence such action; and
- 20.6.4 the time period which the Authority believes will be necessary for such action;
- provided that the Authority shall limit the scope of such action and its duration to the minimum it reasonably considers necessary taking into account all the circumstances.

## Protect

Upon service of such notice the Authority shall take such action as notified under this Clause 20.6, (the "Required Action") and the Prime Contractor shall give all reasonable assistance to the Authority while it is taking such Required Action.

20.7 For so long as and to the extent that the Required Action is taken which prevents the Prime Contractor from providing any part of one or more Provisions:

20.7.1 the Prime Contractor shall be relieved of its obligation to provide such part of the Provision carried out by the Authority under Clause 20.6 or otherwise prevented by the Required Action (subject to providing all reasonable assistance to the Authority under Clause 20.6 above); and

20.7.2 in respect of the period in which the Authority is taking the Required Action, the Authority shall be entitled to deduct from any sums due to the Prime Contractor under this Contract, an amount equal to the Authority's reasonable costs in taking the Required Action (including where relevant the costs of any sub-contractors), provided that the Authority shall do all things to mitigate such costs including by using the resources of the Prime Contractor (in each case as appropriate).

20.8 The Authority shall at its discretion be entitled to continue the Required Action until the failure has been remedied and the Prime Contractor has demonstrated to the Authority's reasonable satisfaction that it can deliver the Provision without a material probability of repeating the failure.

## 21 TERMINATION

21.1 The Authority may at any time by giving notice in writing terminate this Contract as from the date of service of such notice if:

21.1.1 there is a change of control of the Prime Contractor within the meaning of Section 840 of the Income and Corporation Taxes Act 1988;

21.1.2 the Prime Contractor, being an individual or where the Prime Contractor is a firm any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 840 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against it or shall make any composition or arrangement with or for the benefit of its creditors, or shall make any conveyance or assignment for the benefit of its creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or in Scotland it shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of its estate, or a trust deed shall be granted by it for behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or

21.1.3 the Prime Contractor being incorporated is the subject of any of the following events (or any event analogous to any of the following occurs in a jurisdiction other than England and Wales):

- 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 (which has a material adverse effect on the ability of the Prime Contractor to deliver the Provision);
- b) a shareholder's meeting is convened for the purpose of considering a resolution that it be wound up and 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);

## Protect

- c) a petition is presented for its winding up (which is not dismissed within thirty (30) calendar days of its service) or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 of 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 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 in each case which has not been withdrawn, dismissed or revoked within thirty (30) calendar days of such application, appointment or notice); or
- f) it is unable to pay its debts within the meaning of s.123 Insolvency Act 1986

The Prime Contractor shall, to the extent permitted by Law, notify the Authority Contract Manager if any of the above events under Clause 21.1.3 are executed.

- 21.2 The Authority may only exercise its rights under Clause 21.1.1 within 6 months after the change of control of the Prime Contractor (within the meaning of Section 840 of the Income and Corporation Taxes Act 1988) occurs and shall not be permitted to do so where it has agreed in advance to any particular change in control. The Prime Contractor shall notify the Authority immediately when any change of control occurs.
- 21.3 Notwithstanding the provisions of Clause 21.2, either Party may terminate the Contract in whole or in part at any time by giving the other at least 12 months' notice in writing, or other such period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any antecedent breach (and subject to the provisions of Clause 21.4), in the event of termination pursuant to this Clause 21.3 neither Party shall have any right or rights against the other arising out of or as a consequence of such termination, other than as provided for by Clause 21.6 and Clause 21.7.
- 21.4 Termination of the Contract or of any one or more of the Provisions shall not affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract including, in particular, Clauses 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 36, 37, 45, 50. Termination shall not affect any prior rights either Party may have under the Contract and shall be without prejudice to any additional rights to seek a remedy other than termination in respect of any breach of contract by the other Party.
- 21.5 The Prime Contractor may by notice in writing to the Authority terminate this Contract or, at its option, the Provision to which the Persistent Breach relates, if the Authority commits a Persistent Breach of its payments obligations under this Contract (except to the extent that there is a dispute as to the relevant payment) and fails to remedy such Persistent Breach within sixty (60) calendar days of written notification by the Prime Contractor of such Persistent Breach.
- 21.6 On the expiry or termination of this Contract or any one or more of the Provisions:
- 21.6.1 the Prime Contractor shall repay forthwith to the Authority any monies paid by way of Fees up to and including such date of termination other than monies in respect of any Provision or part thereof properly performed in accordance with this Contract;
  - 21.6.2 the Prime Contractor shall promptly return to the Authority all Issued Property in its possession supplied in relation to the Contract or any one or more of the Provisions being terminated, as directed by the Authority;
  - 21.6.3 the Prime Contractor shall, if requested, transfer to the Authority (or to such other person as the Authority may direct) all Participant Records or specific Participant Records as identified by the Authority. Where ownership of the Participant Records

## Protect

is not vested in the Authority the Prime Contractor shall transfer, or procure the transfer of all rights, title and interest in and to the Participant Records to the Authority (or to the third party the Authority has directed as above) at no cost to the Authority (or the third party as the case may be). For the avoidance of doubt if the Prime Contractor, in compliance with a request by the Authority under this Clause 21.6.3 transfers Participant Records then upon receipt by the Authority (or a relevant third party if applicable) of the Participant Records the Prime Contractor shall be relieved of its obligations under Clause 28 in respect of the transferred records. Unless transferred under this Clause the Participant Records must be retained in accordance with Clause 28;

21.6.4 the Prime Contractor shall take all reasonable steps to reduce the costs and/or liabilities that may occur at the end of the Contract. Where the Authority disputes that the Prime Contractor has taken all reasonable and necessary steps to reduce such costs and/or liabilities the matter shall be referred to the Dispute Resolution Procedure for determination;

21.6.5 if requested by the Authority the Prime Contractor shall use all reasonable endeavours to ensure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Authority or a replacement prime contractor of any Third Party Intellectual Property Rights that are necessary for the continued performance of the Provision following termination or expiry of this Contract. Where the owner of Third Party Intellectual Property Rights requires payment in consideration for transferring or granting such licences or sub-licences, as the case may be (a "Transfer Fee") the Prime Contractor shall first notify the Authority. If the Authority informs the Prime Contractor that the transfer/granting of a licence should proceed the Authority shall (unless this Contract has been terminated due to the Prime Contractor's breach) be responsible for paying the Transfer Fee. For the avoidance of doubt the Authority shall have no liability for any Transfer Fee that the Prime Contractor has incurred without obtaining the Authority's prior approval; and

21.6.6 the Prime Contractor shall cease all use of all the Authority Intellectual Property Rights and any trade marks and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.

21.7 Subject always to Clause 21.8, where the Authority terminates the Contract under Clause 21.3, the Authority shall indemnify the Prime Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Prime Contractor by reason of the termination of the Contract, provided that the Prime Contractor takes all reasonable steps to mitigate such loss. Where the Prime Contractor holds insurance, the Prime Contractor shall reduce its unavoidable costs by any insurance sums available. The Prime Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Prime Contractor as a result of termination under Clause 21.3.

21.8 The Authority shall not be liable under Clause 21.7 to pay any sum which:

21.8.1 was claimable under insurance held by the Prime Contractor, and the Prime Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

21.8.2 when added to any sums paid or due to the Prime Contractor under the Contract, exceeds the total sum that would have been payable to the Prime Contractor if the Contract had not been terminated prior to the expiry of the Term.

21.9 On termination of this Contract by the Authority as a result of any Default of the Prime Contractor the Authority may recover from the Prime Contractor a sum plus Value Added Tax, if applicable, representing the Losses suffered by the Authority as a result of early

termination, including the costs of re-procurement (as applicable) of the Provision and a sum representing the excess of the cost to the Authority of obtaining an equivalent Provision from a third party over the remainder of the Term determined by reference to and as a result of the re-tendering exercise conforming to the EU Public Procurement and other public sector procurement regulations and standards. The Authority shall take all practicable measures to avoid, reduce, abate or mitigate such commitments, liabilities and expenditure to the greatest extent possible.

## **PART 9 – CONSEQUENCES OF EXPIRY OR TERMINATION**

### **22 TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION AND ARRANGEMENTS LEADING UP TO IT**

- 22.1 The Prime Contractor acknowledges that on termination or expiry of this Contract or of any one or more of the Provisions for any reason, the continuity of the Provision or remaining Provisions is of paramount importance. Accordingly the Prime Contractor acknowledges that the Authority may, amongst other reasonable actions, suspend referral of Participants to a Provision within the final 13 weeks of the notice period given to terminate this Contract or any one or more of the Provisions by the Authority. In relation to any Participants referred to the Prime Contractor prior to the final 13 weeks of the notice period whose participation in the relevant part of the Provision has not completed on or prior to the date of termination, the Prime Contractor will comply with its obligations pursuant to Clause 22.2.
- 22.2 Both before and for a reasonable time after termination or expiry of this Contract the Prime Contractor shall promptly provide assistance at no extra cost to the Authority. The Prime Contractor shall do its utmost to minimise disruption caused to Participants and assist with the implementation of any contingency plan proposed by the Authority to deal with the effects of such termination or expiry in so far as it is practicable to do so. At the option of the Authority the Prime Contractor may be required:
- 22.2.1 to continue to deliver or procure the delivery of the Provision until Participants have completed their participation on the Provision in accordance with Schedule 2 and where relevant the Authority shall continue to pay the Fees in accordance with the provisions of Schedule 5 and Schedule 6; or
- 22.2.2 to transfer the Prime Contractor's obligations in respect of Participants whose participation on the Provision has not been or will not be completed in accordance with Schedule 2 to an alternative prime contractor designated by the Authority.
- 22.3 The Prime Contractor shall comply with such timetable as the Authority may reasonably require, for the purpose of ensuring an orderly transfer of responsibility for delivery of the Provision (or its equivalent) or remaining Provisions (or their equivalent) upon the expiry or other termination of this Contract or of any one or more of the Provisions. The Prime Contractor shall use all reasonable endeavours to ensure that its employees and its Sub-contractors are under a similar obligation.
- 22.4 In order to facilitate a smooth and orderly transfer of responsibility on the expiry or termination of this Contract:
- 22.4.1 the Prime Contractor undertakes to:
- a) act fairly and in good faith at all times in connection with any re-tender process for delivery of the Provision (or its equivalent) conducted by the Authority;
  - b) comply with the Authority's reasonable requests in connection with any re-tender process so as to enable the Authority to facilitate a fair and open competitive re-tender of the delivery of the Provision (or its equivalent);

## Protect

- c) comply with the Authority's reasonable requests in preparing, agreeing and implementing an exit plan setting out the duties and responsibilities of the Prime Contractor, the Authority and any Incoming Prime Contractor, leading up to and covering the expiry or termination of this Contract and the transition process for the transfer of the delivery of the Provision (or its equivalent);
- d) co-operate and liaise with any Incoming Prime Contractor appointed by the Authority to provide the Provision (or its equivalent);
- e) do or perform such other acts and things as may reasonably be required in order to facilitate the re-tender or transition process;
- f) save for any Commercially Sensitive Information deliver any documents, information, manuals and data (in any form whatsoever but for the avoidance of doubt, any machine readable or electronic data shall be provided in a readily readable form) in the possession or control of the Prime Contractor which relate to:
  - i) the performance, monitoring, management and reporting of the Provision;
  - ii) the terms and conditions of employment and the employment records of those of the Prime Contractor's employees who may be affected by the TUPE Regulations upon any transfer of responsibility for the delivery of the Provision (or its equivalent); and
  - iii) not knowingly do or omit to be done anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility of the Provision (or its equivalent).

22.4.2 the Prime Contractor agrees to provide such information and data as is reasonably required by the Authority for the purpose of any re-tender or transition process, such information and data to be provided to such timetable or deadlines as the Authority reasonably requires; and

22.4.3 the Prime Contractor shall ensure that all information and data provided to the Authority in connection with any re-tender or transition process is accurate and complete in all material respects, to the best of the Prime Contractor's knowledge (having made due enquiry). This requirement shall apply to all the information that may be requested by the Authority and supplied by the Prime Contractor in connection with the re-tender or transition process.

22.5 The Prime Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Authority to ensure an orderly transfer of responsibility for delivery of the Provision or remaining Provisions.

22.6 The Prime Contractor is referred to the ESF reporting obligations under Clause 42 which may arise on expiry or termination of this Contract.

## **23 EMPLOYEE PROVISIONS ON EXPIRY OR TERMINATION**

23.1 Without prejudice to the provisions of Clause 21, prior to, and for a reasonable period after, the expiry or termination of this Contract, the Prime Contractor shall upon request by the Authority and to the extent permitted by law, supply to the Authority all information reasonably required by the Authority as to the identity, date of commencement of employment, date of birth, job title, accrued holiday entitlement, pension details and terms and conditions of employment of any Relevant Employees and as to any disputes or potential disputes arising in connection with the employment of the Relevant Employees of which the Prime Contractor or the relevant Sub-contractor is aware, and the Prime

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Contractor shall warrant that such information is true, complete and accurate in all material respects.

23.2 The Prime Contractor shall permit the Authority to disclose the information disclosed in accordance with Clause 23.1 to, and to use it for informing, any tenderer for the Provision (or its equivalent) and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet the employees referred to in Clause 23.1 and their trade union or employee representatives as the Authority may reasonably request.

23.3 During the period of six (6) months preceding the expiry of this Contract, or at any time after the Authority or the Prime Contractor has given notice to terminate this Contract for whatever reason, the Prime Contractor shall not (and shall procure that any Sub-contractor shall not):

23.3.1 materially amend the rates of remuneration or hours to be worked or any other terms and conditions of employment of any employee engaged in providing the Provision or any part of the Provision; or

23.3.2 replace any of the employees engaged in providing the Provision or any part of the Provision or deploy any person other than those already providing the Provision to perform the Provision or materially increase the number of employees performing the Provision or terminate or give notice to terminate the employment of any such person

without the written agreement of the Authority, such agreement not to be unreasonably withheld or delayed.

23.4 The Prime Contractor shall indemnify and keep indemnified the Authority for itself and as trustee for the Incoming Prime Contractor (or any other person to whom information is disclosed pursuant to Clause 23.2) from and against all Losses arising in connection with the provision of information under Clause 23.1 or any breach by the Prime Contractor of its obligations under Clause 23.3.

23.5 The Prime Contractor shall be responsible for all emoluments and outgoings in respect of the Relevant Employees (including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise) arising prior to the Relevant Date and shall indemnify and keep indemnified the Authority on behalf of itself and the Incoming Prime Contractor against all Losses arising in connection with emoluments or outgoings arising prior to the Relevant Date or a failure by the Prime Contractor to discharge them. To the extent that the employment of such Relevant Employees does transfer to the Authority or the Incoming Prime Contractor, the Authority shall be responsible for all such emoluments and outgoings arising on or after the Relevant Date. The Authority shall indemnify and keep indemnified the Prime Contractor against all Losses arising in connection with emoluments or outgoings arising on or after the Relevant Date or a failure by the Authority or the Incoming Prime Contractor to discharge them.

23.6 Where the Prime Contractor shall cease (for whatever reason) whether directly or indirectly to provide the Provision or any part of the Provision, and the Provision (or part) is thereafter provided by the Authority or an Incoming Prime Contractor, then should the transfer of the Provision (or part) to the Authority or Incoming Prime Contractor constitute a Relevant Transfer:

23.6.1 the Prime Contractor shall indemnify the Authority, for and on behalf of itself and the Incoming Prime Contractor, from and against:

- a) all Losses arising in connection with any claim against the Authority or the Incoming Prime Contractor by any Relevant Employee arising from any act, fault or omission of the Prime Contractor or any of the Staff (as the case may be) prior to the Relevant Date including any claim for breach of contract,

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redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common law, in tort or otherwise (in all cases whether arising under English or European law); and

- b) all Losses incurred by the Authority or Incoming Prime Contractor arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the Prime Contractor or its Sub-contractor to comply with their legal obligations in relation thereto under Regulation 10 and 15 of the TUPE Regulations or the Directive.

23.6.2 where the Relevant Transfer is to the Authority, the Authority shall indemnify the Prime Contractor in respect of:

- a) all Losses arising in connection with any claim against the Prime Contractor by any Relevant Employee arising from any act, fault or omission of the Authority on or after the Relevant Date including any claim for breach of contract, redundancy, unfair dismissal, sex, race or disability discrimination, or any other claim within the jurisdiction of an employment tribunal or arising at common law, in tort or otherwise (in all cases whether arising under English or European law); and
- b) all Losses arising in connection with or from any claim or proceedings by any trade union, elected employee representative or staff association in respect of any Relevant Employee and which arises from or is connected with any failure by the Authority to comply with their legal obligations in relation thereto under Regulation 10 of the TUPE Regulations or the Directive.

23.6.3 where the Relevant Transfer is to an Incoming Prime Contractor then the Authority shall indemnify the Prime Contractor in respect of the Losses referred to in Clauses 23.6.2a and 23.6.2b (with references to the Authority being replaced with references to the Incoming Prime Contractor).

## **PART 10 – GENERAL PROVISIONS**

### **24 ASSIGNMENT AND SUB-CONTRACTING**

24.1 Elements of any Provision may be sub-contracted with the prior written consent of the Authority. The Authority reserves the right to withdraw its consent to any Sub-contractor where it has reasonable grounds to no longer to approve of the Sub-contractor or the sub-contracting arrangement. In respect of any such sub-contracting:

24.1.1 the Prime Contractor shall ensure that so far as is possible the terms of this Contract are properly and reasonably reflected in the terms of any contract with a Sub-contractor and that so far as is possible each one of them shall at all times be bound by the obligations of the Prime Contractor under this Contract; and

24.1.2 the Prime Contractor shall include and maintain provisions in sub-contracts, in terms suggested by or acceptable to the Authority, which provide that:

- a) the Sub-contractor cannot terminate the sub-contract without first informing the Authority and giving the Authority at least thirty (30) calendar days to discuss with the Prime Contractor any issues raised by the Sub-contractor;
- b) the Prime Contractor shall have the right to be able to assign the sub-contract to a third party such assignment to be subject to the Sub-contractor's consent which shall not be unreasonably withheld; and

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- c) the Sub-contractor cannot assign the sub-contract to a third party without the Prime Contractor's consent.

24.1.3 the Authority reserves the right to see and approve copies of sub-contracts (such approval not to be unreasonably withheld, delayed or conditioned); and

24.1.4 no sub-contracting by the Prime Contractor under this Clause 24.1 or otherwise, and no approval or consent by the Authority in relation thereto, shall relieve the Prime Contractor of any liability or obligation under this Contract. The Prime Contractor shall not be entitled to any additional fees solely by reason of the appointment of any Sub-contractor.

24.2 For the avoidance of doubt, the Prime Contractor cannot substitute or permit the substitution of a Sub-contractor without the Authority's consent and as a condition of giving such consent the Authority can require the incoming Sub-contractor to execute a sub-contract on the same basis.

24.3 Without prejudice to Clause 24.1 above, the benefit and/or burden of this Contract may not be sub-contracted, assigned or novated or otherwise disposed of in whole or in part by the Prime Contractor without the prior written consent of the Authority. Such consent may be given subject to any conditions which the Authority considers reasonably necessary, but shall not be unreasonably withheld or delayed.

24.4 The Prime Contractor agrees that all or any part of the benefit and/or burden of this Contract may be assigned, transferred or sub-contracted in whole or in part by the Authority without the need for the consent of the Prime Contractor, provided that the Authority shall give such notice of such assignment, transfer or sub-contract as is practicable in the circumstances.

24.5 Any transfer, assignment or sub-contract in accordance with Clause 24.4 shall maintain the obligations and terms and conditions of the Contract prior to the date of transfer, assignment or sub-contract, and the Prime Contractor's liability, obligations and benefits shall remain unaltered. For the avoidance of doubt the Prime Contractor shall be in no worse position following such transfer, assignment or sub-contract.

24.6 The Authority shall be entitled to disclose to any transferee any Confidential Information from the Prime Contractor which relates to the performance of the Provision. Any such disclosure shall be subject to similar obligations of confidentiality as set out in Clause 16 and such disclosure shall not be a breach of Clause 16 by the Authority.

## **25 REPUTATION AND PUBLIC SERVICE CONSIDERATIONS**

25.1 In providing the Provision the Prime Contractor shall pay the utmost regard to the standing and reputation of the Authority and the Secretary of State for Work and Pensions and shall not do (by act or omission) anything that may bring the standing or reputation of the Authority or the Secretary of State into disrepute or attract adverse publicity to the Authority or the Secretary of State or which may harm the confidence of any of the public in the Authority or the Secretary of State.

25.2 The Prime Contractor shall at all times provide the Provision with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

## **26 VISITS AND PUBLICITY**

26.1 Each Party shall give the other advance notice of proposed visits to the Prime Contractor's premises or any premises of its Sub-contractors (including Members of Parliament, representatives of unemployment centres, members of the press and media) to observe the delivery of the Provision by the Prime Contractor or its Sub-contractors.

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- 26.2 The Prime Contractor shall undertake the marketing and communications activities as set out in Schedule 2 (The Provision). The Prime Contractor's marketing and communications activities shall support the Authority's objectives in contracting for the Provision.
- 26.3 If so requested by the Authority the notepaper and other written material of the Prime Contractor and its Sub-contractors relating to the delivery of the Provision shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to such banner or logo as the Authority shall use to identify the Provision from time to time. All publicity and marketing material produced by the Prime Contractor (or its Sub-contractors) in relation this Contract and or the Provision shall be submitted to the Authority Contract Manager (or person nominated in his/her place) for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.
- 26.4 The Prime Contractor shall not make any public statement with regard to the Provision or this Contract without the prior approval of the Authority. For the avoidance of doubt, this is not intended to prevent the Prime Contractor from making internal announcements to Staff about the Provision or the Contract; nor is it intended to prevent the Prime Contractor from making discreet reference to the existence of this Contract in the context of bids for work to other potential clients.

## **27 AUDIT ACCESS**

- 27.1 The Prime Contractor shall at all times:
- 27.1.1 maintain a full record of the costs of performing each Provision;
  - 27.1.2 when requested by the Authority, provide a summary of any of the costs of performing each Provision in such form and detail as the Authority may reasonably require; and
  - 27.1.3 provide such facilities as the Authority may reasonably require for its representatives (such representatives shall not be a competitor of the Prime Contractor and shall enter into a non disclosure arrangement and have the relevant expertise and competence) to visit any place where the records maintained under this Clause 27 are held and to examine the records for the purposes of carrying out an examination into the economy, efficiency and quality of the Provision and effectiveness with which the Prime Contractor has used the Authority's resources in the performance of this Contract.
- 27.2 The Prime Contractor shall keep books of accounts in accordance with best accountancy practice with respect to this Contract and such items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract.
- 27.3 The Prime Contractor shall provide (or procure provision of) access at all reasonable times to the Authority's internal auditors or other duly authorised staff or agents to inspect such documents (including those of Sub-contractors) as the Authority considers necessary in connection with this Contract. The Authority shall be entitled to interview the Staff in order to obtain appropriate oral explanations of documents and the Prime Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Authority to do so.
- 27.4 Duly authorised staff or agents of the Authority shall have the right to visit the Prime Contractor Sites and to be given free access to the Staff and to Participants during the hours when the Prime Contractor is providing the Provision with a view to verifying that the Prime Contractor is providing the Provision in accordance with this Contract.
- 27.5 The Prime Contractor shall provide the rights set out in Clause 27.1 and Clause 27.2 to any duly authorised staff or agents of the National Audit Office, the European Court of Auditors

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or the European Commission, the Department for Work & Pensions, Ofsted, the Estyn and any third parties as notified by the Authority from time to time.

- 27.6 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Prime Contractor or any third party in relation to the Provision, the Authority reserves for itself, any statutory auditors of the Authority and their respective authorised agents or any government department the right of immediate access to all records referred to in Clause 27.1 and Clause 27.2 and the Prime Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Contract or at any time thereafter. For the avoidance of doubt, the Prime Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Clause 27.6 in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the Prime Contractor, its servants, agents or Sub-contractors.

## 28 RECORDS

- 28.1 The Prime Contractor and any Sub-contractors appointed by it shall maintain the records referred to in Clause 27 (Audit Access) and such other documents as the Authority may reasonably require throughout the period of this Contract and for a period of six (6) years from the end of the financial year in which the last payment is made by the Authority under the terms of this Contract. Without prejudice to the foregoing, where the Authority funds the delivery of this Contract using ESF funds or in its role as a Co-financing Organisation uses this Contract as a match for ESF provision, the Prime Contractor and any Sub-contractors appointed by it shall maintain records until at least 31 December 2022.
- 28.2 During the period(s) referred to above, the Prime Contractor and any Sub-contractors shall make the records and documents available for auditing purposes in accordance with Clause 27 (Audit Access) upon reasonable request by the Authority.
- 28.3 In accordance with Clause 24.1.1 the Prime Contractor shall ensure that any contracts with Sub-contractors include obligations reflecting the requirements of the Authority under this Clause 28.
- 28.4 The Prime Contractor shall indemnify and keep indemnified the Authority against all Losses howsoever incurred resulting from any breach by the Prime Contractor of the provisions of Clauses 27 and 28.

## 29 ISSUED PROPERTY

- 29.1 Issued Property shall remain the property of the Authority (or such third party owner, as appropriate). The Issued Property shall be used for the delivery of the relevant Provision in accordance with this Contract and for no other purpose whatsoever, except with the prior written approval of the Authority.
- 29.2 The Prime Contractor shall keep an up-to-date inventory of all Issued Property. The inventory shall be available for inspection during normal working hours upon request from time to time by the Authority Contract Manager or other nominated person.
- 29.3 The Prime Contractor shall be responsible for the safe custody of Issued Property and its prompt return upon expiry or termination of the relevant Provision for which the Issued Property was issued to the Prime Contractor or upon expiry or termination of this Contract (as the Authority deems appropriate).
- 29.4 The Prime Contractor shall maintain all Issued Property to a safe, serviceable and clean condition. At the Authority's written request, the Prime Contractor shall, at its own expense and as soon as reasonably practicable, repair or replace and re-issue any Issued Property which in the reasonable opinion of the Authority is either defective or requires replacement.
- 29.5 All Issued Property shall be at the Prime Contractor's own risk and the Authority shall have no liability for any loss of, or damage to, any Issued Property unless the Prime Contractor is

able to demonstrate that such loss or damage was caused, or contributed to, by the Authority's Default.

- 29.6 Neither the Prime Contractor nor any Sub-contractor (or any other person) shall have a lien on any Issued Property for any sum due to the Prime Contractor, Sub-contractor or other person, and the Prime Contractor shall take all reasonable steps to ensure that the title of the Authority and the exclusion of any such lien are brought to the notice of all Sub-contractors and other persons dealing with any Issued Property.

### **30 CHANGES IN LAW**

- 30.1 Subject to Clause 5, the Prime Contractor shall throughout the Term make all necessary changes to the Provision to take account of, and remain compliant with, all applicable changes in Law.

### **31 DISCLOSURE OF INFORMATION**

- 31.1 The Prime Contractor agrees, in relation to each Provision delivered under this Contract, to promptly make full disclosure to the Authority of any and all information as may be specified in the Schedules (including without limitation Schedule 2 (The Provision), Schedule 3 (Information Requirements), Schedule 4 (Managing Performance), Schedule 5 (Accounting Requirements) and any other information which may come into its possession or otherwise come to its attention during the period of this Contract which may be beneficial to and/or assist the Authority.

### **32 PREVENTION OF CORRUPTION**

- 32.1 The Prime Contractor shall not (and it is a condition of this Contract that in entering into this Contract it did not) offer or give, or agree to give, to any member, employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract.

- 32.2 The attention of the Prime Contractor is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence committed by the Prime Contractor, its employees, Sub-contractors or by anyone acting on its behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this Contract or any other contract with the Crown shall entitle the Authority to:

32.2.1 terminate the Contract and recover from the Prime Contractor the amount of any loss resulting from such termination, including the cost reasonably incurred by the Authority of making other arrangements for the delivery of the Provision and any additional expenditure incurred by the Authority throughout the remainder of the Term;

32.2.2 recover in full from the Prime Contractor any other loss sustained by the Authority in consequence of any breach of Clause 32.1; and/or

32.2.3 recover from the Prime Contractor the amount or value of any gift, consideration or commission.

### **33 HEALTH AND SAFETY**

- 33.1 The Prime Contractor shall take all necessary steps to ensure the health, safety and welfare of all Participants to the same extent and in the same manner as an employer is required to do in relation to employees by or under the relevant legislation for the time being in force in that part of the UK where the Prime Contractor is providing the Provision.

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- 33.2 The Prime Contractor shall inform the Authority immediately, in the case of a death, and as soon as is reasonably practicable in any case of major injury occurring to a Participant that arises as a result of the delivery of the Provision.
- 33.3 The Prime Contractor shall promptly inform the Authority of any health and safety hazards which may materially affect the performance of this Contract.
- 33.4 The Prime Contractor shall inform the Authority immediately of any material changes to the circumstances reflected in the health and safety information submitted by the Prime Contractor to the Authority.
- 33.5 Either Party whilst on the premises of the other Party shall comply with any health and safety measures implemented by the other Party in respect of those premises.
- 33.6 The Prime Contractor shall ensure that where relevant its Sub-contractors comply with all obligations of the Prime Contractor under this Clause 33.

## **34 SET OFF AND WITHHOLDING**

- 34.1 If any sum of money shall be due or is believed to be due from the Prime Contractor to the Authority, the same may be deducted or withheld (as the case may be) from any sum then due or which at any time thereafter may be due to the Prime Contractor under this Contract or any other contract between the Authority and the Prime Contractor. The Authority shall notify the Prime Contractor by issue of a written notice before making any deductions or withholding.

## **35 DWP CUSTOMER SERVICE STANDARDS**

- 35.1 The Authority is committed to the principles of the Authority's Customer Service Standards. The Prime Contractor shall and shall procure that its Sub-contractors shall, comply with the principles of the Authority's Customer Service Standards in relation to the delivery of the Provision.

## **36 FRAUD**

- 36.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of the Provision. The Prime Contractor (and its Sub-contractors, if any) is required to:
- 36.1.1 have an established system that enables Staff to report inappropriate behaviour by colleagues in respect of Provision performance claims;
  - 36.1.2 ensure that Prime Contractor's (or any Sub-contractor's) performance management systems do not encourage individual staff to make false claims regarding Provision performance achievement;
  - 36.1.3 ensure a segregation of duties within the Prime Contractor's or any Sub-contractors' operation between those employees directly involved in delivering Provision performance and those reporting Provision performance achievements to the Authority; and
  - 36.1.4 establish an audit system to provide periodic checks, at a minimum of six monthly intervals, to ensure effective and accurate recording and reporting of Provision performance.
- 36.2 The Prime Contractor shall use its best endeavours to safeguard the Authority's funding of the Provision against fraud generally and, in particular, fraud on the part of the Prime Contractor's directors, employees or Sub-contractors. The Prime 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.

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- 36.3 The Prime Contractor shall co-operate fully with the Authority and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Authority may from time to time brief the Prime Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding fraud by Participants. On receipt of the information, further evidence may be collected by the Authority or other department, office or agency of Her Majesty's Government with a view to prosecution.
- 36.4 Any act of fraud committed by the Prime Contractor or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Authority) shall entitle the Authority to terminate this Contract, and any other contract the Authority has with the Prime Contractor, by serving written notice on the Prime Contractor. If the Authority finds that the Prime Contractor has deliberately submitted false claims for Provision payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Prime Contractor, with immediate effect.
- 36.5 In the event of an act of fraud or irregularity committed by the Prime Contractor or its Sub-contractors, whether or not the Authority decides to terminate the Contract as provided in Clause 36.4, the Authority requires that all Provision payments made by the Authority in respect of the invalid claims will be repaid in full to the Authority by the Prime Contractor. The Authority will be entitled to use the provisions set out in Clause 34 to recover any sums due under this Clause 36.5.
- 36.6 In addition to the requirement set out in Clause 36.5 for the Prime Contractor to repay the direct losses in respect of invalid Provision payments, the Prime Contractor shall also pay the Authority a sum of £5,000 in the event of a minor fraud or irregularity, or £15,000 in the event of a serious fraud or irregularity, by way of liquidated damages. The Parties confirm that these sums represent an agreed genuine pre-estimate of the loss that the Authority would suffer in respect of the cost of senior management time in dealing with the act of fraud or irregularity and damages for loss of reputation to the Authority. In respect of this Clause 36.6 a minor fraud or irregularity shall be where the total amount of invalid Provision payments in respect of the act of fraud or irregularity, or a series of related frauds or irregularities, is less than £25,000. A serious fraud will be any act of fraud or irregularity, or any series of related acts of fraud or irregularity, where the total amount of invalid Provision payments is equal to or exceeds £25,000. The Authority will be entitled to use the provisions set out in Clause 34 to recover any sums due under this Clause 36.6.
- 36.7 The provisions set out above in Clauses 36.5 and 36.6 are in addition to the Authority's rights of termination as set out in Clause 21 of this Contract.

## **37 STATUS OF PRIME CONTRACTOR**

- 37.1 In carrying out its obligations under this Contract the Prime Contractor agrees that it shall be acting as principal and not as an agent of the Authority. The Prime Contractor shall not say or do anything that may lead any other person to believe that the Prime Contractor is acting as an agent of the Authority.
- 37.2 Nothing in this Contract shall be deemed to constitute or create a partnership (as defined in the Partnership Act 1890) between the Parties.

## **38 FORCE MAJEURE**

- 38.1 For the purposes of this Contract the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) fire, flood, pandemic or any disaster or war, civil war (whether hostilities have been declared or not), riot, civil commotion, terrorism or any nuclear or explosion or radioactive contamination from any nuclear installation or nuclear weapon or any biological contamination. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act,

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neglect or failure to take reasonable precautions of the affected Party, its servants, agents or employees.

38.2 Neither Party shall be deemed to be in breach of this Contract where it is unable to perform its obligations under this Contract due to a Force Majeure provided that the Party claiming to be so affected shall:

38.2.1 notify the other Party as soon as possible of the matter giving rise to Force Majeure;

38.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure; and

38.2.3 provide such details regarding the Force Majeure as may be reasonably requested from time to time, including details of the likely duration of the Force Majeure and the steps being taken to mitigate its effects.

38.3 The Party affected by the Force Majeure shall only be released from its obligations under this Contract to the extent of, and for the duration of, the Force Majeure.

38.4 If any event of Force Majeure continues for a period of 6 months or more, the Party unaffected by the event may terminate this Contract immediately by notice in writing to the other.

38.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## 39 AMENDMENT AND VARIATION

39.1 Any variation to the terms of this Contract must be recorded in writing and before it takes effect it must:

39.1.1 be signed by the Prime Contractor Manager and an authorised representative of the Authority on behalf of each of the Parties; and

39.1.2 address all consequential amendments required to be made to the Contract as a result of such variation.

39.2 Variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect unless expressly provided for in such record.

39.3 Each record of variation must be dated and sequentially numbered. Each Party will be entitled to an original executed counterpart of the record of variation.

39.4 In all respects other than as provided in such record of variation, this Contract will continue in full force and effect.

## 40 SEVERABILITY

40.1 If any provision of this Contract shall be 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 hereof shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract the Authority and the Prime Contractor shall immediately commence good faith negotiations to remedy such invalidity.

## 41 WAIVER

41.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not be considered to be relaxation of the obligations established by this Contract.

- 41.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 41.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 44.

## **42 EUROPEAN SOCIAL FUND AND OTHER FUNDING**

- 42.1 DWP is a Co-Financing Organisation (CFO) for the 2007-2013 European Social Fund programme in England only. This means that Jobcentre Plus applies to Government Offices (GOs) and London Development Agency, using its own match funding, to support ESF measure level bids.
- 42.2 The Prime Contractor shall observe the European Commission's and the Secretary of State for Work and Pensions' publicity requirements and regulations regarding ESF projects, as provided to the Prime Contractor in writing prior to the Commencement Date and as amended from time to time in accordance with the provisions of Clause 5. The Prime Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF and to provision used as a match for ESF purposes. Upon request by the Authority, the Prime Contractor shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Prime Contractor and its Sub-contractors (if any). Whether or not a copy of the foregoing policy is requested by the Authority, the Prime Contractor shall retain copies of its policy (as revised from time to time) as part of the Prime Contractor's record keeping obligations under Clause 28.
- 42.3 The Prime Contractor shall indemnify and keep indemnified the Authority in respect of any and all Losses howsoever incurred resulting from any breach by the Prime Contractor of this Clause 42.

## **43 ENTIRE CONTRACT**

- 43.1 This Contract shall together with the documents referred to herein and any additional contract terms formally agreed between the Authority and the Prime Contractor constitute the entire understanding between the Parties relating to the subject matter of this Contract and, except as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.
- 43.2 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect the 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 or any Minister or emanation of the Crown.
- 43.2 The Parties do not intend any third parties to have any right to enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights or remedy of a third party which exist or are available apart from that Act.

## **44 NOTICES / COMMUNICATIONS**

- 44.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 44.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 44.3. Provided the

## Protect

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 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letter, facsimile transmission or item of electronic mail.

44.3 For the purposes of Clause 44.2, the address of each Party shall be:

a) For the Authority:

Address: [To be inserted]  
For the attention of: [ " ]  
Tel: [ " ]  
Fax: [ " ]  
Email: [ " ]

b) For the Prime Contractor:

Address: [To be inserted]  
For the attention of: [ " ]  
Tel: [ " ]  
Fax: [ " ]  
Email: [ " ]

44.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

## 45 DISPUTE RESOLUTION PROCEDURE

45.1 In the event of any dispute arising between the Authority and the Prime Contractor in relation to the Provision which cannot be resolved directly by the Parties, employing the most pragmatic but mutually convenient means, the issue in dispute will be referred for dispute resolution in accordance with the "Dispute Resolution Procedure" as set out at Schedule 7 to this Contract and both the Authority and the Prime Contractor shall comply with the procedure contained therein.

## 46 COSTS

46.1 Except as otherwise provided herein, the Parties shall bear and be responsible for their own costs in connection with the negotiation, execution, completion and implementation of this Contract.

## 47 EURO

47.1 During the Term, any legislative requirement to account for the payment of services in the Euro, instead of and/or in addition to Sterling, shall be implemented by the Prime Contractor at nil charge to the Authority.

47.2 The Authority shall provide all reasonable assistance to facilitate such changes.

## 48 SECURITY REQUIREMENTS

48.1 The Prime Contractor shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan and the Prime Contractor shall ensure that the Security Plan produced by the Prime Contractor fully complies with the Security Policy.

48.2 The Authority shall notify the Prime Contractor of any changes or proposed changes to the Security Policy.

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- 48.3 If the Prime Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to delivery of the Provision it may submit a Change Control Notice. In doing so, the Prime Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Fees shall then be agreed in accordance with the Change Control procedure as detailed in Clause 5.
- 48.4 Until and/or unless a change to the Fees is agreed by the Authority pursuant to Clause 48.3 the Prime Contractor shall continue to deliver the Provision in accordance with its existing obligations.

## 49 MALICIOUS SOFTWARE

- 49.1 The Prime Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 49.2 Notwithstanding Clause 49.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Provision to its desired operating efficiency.
- 49.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 49.2 shall be borne by the Parties as follows:
- 49.3.1 by the Prime Contractor where the Malicious Software originates from the Prime Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Prime Contractor); and
- 49.3.2 by the Authority where the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

## 50 THE AUTHORITY PREMISES

- 50.1 If any of the Authority Premises are made available to the Prime Contractor this will be under the terms and conditions of a "Licence to Occupy" to be entered into in respect of each such premises and shall be used by the Prime Contractor solely for the purpose of performing its obligations under this Contract. The Prime Contractor shall have the use of the Authority Premises as licensee and shall have no right to exclusive possession and shall vacate all of the Authority Premises on termination of this Contract, or in the case of termination of a specific Provision, the Authority Premises being used for the provision of that Provision, at the request of the Authority, and in either case shall hand over all keys and security passes to the Authority.
- 50.2 The Prime Contractor shall ensure that the Staff carry out their duties and behave while on the Authority Premises in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Authority, its employees, visitors or other prime contractors.
- 50.3 The Prime Contractor shall ensure that the Staff comply with all reasonable rules and regulations issued from time to time by the Authority relating to the use and/or security of the Authority Premises (including the use of photo passes or other passes).
- 50.4 The Prime Contractor shall take the steps reasonably required by the Authority to prevent unauthorised persons entering onto the Authority Premises. If the Authority gives the Prime Contractor reasons why any person should not be admitted to its premises, then the Prime Contractor shall immediately take all reasonable steps to prevent that person being admitted.

## 51 CLAIMS AND PAYMENT

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- 51.1 The Authority shall make payment to the Prime Contractor monthly in arrears within thirty (30) calendar days of receipt of a correctly completed invoice accompanied by the supporting invoicing information.
- 51.2 The Prime Contractor shall submit claims for payment in the format specified by the Authority, as amended from time to time. All claims shall be submitted within ten (10) Working Days of the end of the appropriate claim period. The Prime Contractor shall be entitled, without prejudice to any other right or remedy, to receive interest after 30 days on any payment not made when properly due pursuant to the terms of this Contract calculated from day to day (after the 30th day after the payment was due) at a rate per annum equal to 2% over the base rate from the 30th day after the date on which payment was due up to and including the date of payment.
- 51.3 The Prime Contractor should endeavour to make claims within two months of the date when the qualifying criteria for a Sustained Job Outcome have been met. Payment will be made at the rate applicable when the Participant first met the qualifying criteria and in line with Schedule 6.
- 51.4 The amount to be claimed shall be in accordance with Schedule 6 (Payment Schedule).
- 51.5 The percentage and amount of VAT should, if chargeable, be shown separately on claims in accordance with Customs and Excise regulations.
- 51.6 If the Prime Contractor fails to submit a claim within the period referred to under Clause 51.3 above, or fails to submit the claim in the prescribed form or accompanied by the appropriate supporting information, the Authority shall not be in breach of this Contract if it fails to make payment within thirty (30) calendar days of receipt of the claim provided that the Authority has not unnecessarily delayed payment of the relevant claim.
- 51.7 Details of the Prime Contractor's bank account must be notified to the Authority on the standard form supplied by the Authority for this purpose. The Authority shall send notifications of payments to the Prime Contractor.

## **52 DISPUTED CLAIMS**

- 52.1 Payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Prime Contractor shall not be construed as approval of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.
- 52.2 If any part of a claim rendered by the Prime Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Prime Contractor to provide such further documentary and oral evidence as it may reasonably require, in accordance with the timescales set out in the Supplier Guidance, for the purpose of verifying its liability to pay the amount which is disputed or subject to question. The Prime Contractor shall promptly provide such evidence in a form satisfactory to the Authority.
- 52.3 Without prejudice to Clause 52.2 above, if any part of a claim rendered by the Prime Contractor is disputed or subject to question by the Authority, the Authority shall not unreasonably withhold payment of the remainder.
- 52.4 If any invoice rendered by the Prime 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 Prime Contractor shall forthwith repay such part to the Authority.

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- 52.5 The Authority shall be entitled to deduct from any claim submitted by the Prime 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 invoice for which payment is being made or any previous invoice.

### **53 GROSSING UP**

- 53.1 The Authority shall check a reasonably representative (statistically valid) sample of claims for payment made by the Prime Contractor. If it discovers proof of any error or over-claim by the Prime Contractor the Authority shall be entitled to “gross up” the results of the sample checked by assuming that the same type and percentage of errors and over-claims have been made in respect of the Prime Contractor’s claim form from which the sample was taken.
- 53.2 Upon prior notice by the Authority to the Prime Contractor of any error or over-claim, that reduces the amounts claimed, unless the Prime Contractor provides sufficient evidence to satisfy the Authority that the error or over-claim has not been the result of grossing-up the results of the representative sample, within thirty (30) calendar days of being notified by the Authority, or such other period as the Parties may agree, the amount due under the claim form shall be reduced accordingly.

### **54 ENVIRONMENTAL REQUIREMENTS**

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

### **55 GUARANTEE (ONLY TO BE USED IF A PARENT COMPANY GUARANTEE IS REQUIRED)**

- 55.1 On or about the Effective Date (and in any event no later than the first Commencement Date), the Prime Contractor shall procure that the Guarantor shall:
- 55.1.1 execute and deliver to the Authority the Guarantee; and
  - 55.1.2 deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.
- 55.2 In the event that the Prime Contractor fails to comply with its obligations under this Clause 55, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.]

### **56 LAW AND JURISDICTION**

- 56.1 The Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties agree to submit to the jurisdiction of the courts of England and Wales. Each Party irrevocably waives any objection which it might at any time have to the courts of England and Wales 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 and Wales are not a convenient or appropriate forum.

**SCHEDULE 1 – INTERPRETATIONS**

**“Affiliate”** means any subsidiary, subsidiary undertaking or holding company of the Prime Contractor, and any subsidiary or subsidiary undertaking of any such holding company for the time being as defined in Section 1159 of the Companies Act 2006;

**“Allotted Time”**

THIS SECTION TO BE CONFIRMED

- means the period of time the Participant is required to attend provision. This is
- 104 weeks ; or
- 78 weeks for those joining the provision in months 24-30.

The Tracking Period will commence following one of these events. Only one Short Job Outcome and only one Sustained Job Outcome can be applied per client per stay on the programme. (to be confirmed at Final Tender stage)

**“Authority Contract Manager”** means the person appointed by the Authority as described in Clause 9.1;

**“Authority Data”** means

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

**“Authority Intellectual Property Rights”** means any and all Intellectual Property Rights owned by the Authority in Materials which the Prime Contractor requires to use in connection with this Contract for the purpose of delivering the Provision;

**“Authority Party”** means the Authority Contract Manager and the Authority’s officers, employees, agents, Jobcentre Plus personnel, Co-commissioners, and suppliers and sub suppliers and “Authority Party” shall mean any one of them;

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<b>“Authority Premises”</b>	means any of the premises that are owned, leased, occupied or controlled by the Authority;
<b>“Authority Software”</b>	means any software which is used by, or licensed to, the Authority other than pursuant to this Contract, and which may be used by the Prime Contractor for the sole purpose of delivering the Provision;
<b>“Breach of Security”</b>	means the occurrence of unauthorised access to or unauthorised use of the Authority Premises, the Prime Contractor Sites, the Provision, the Prime Contractor System or any ICT or data (including the Authority Data) used by the Authority or the Prime Contractor in connection with this Contract;
<b>“Business Asset”</b>	means rights or access to other future economic benefit controlled by the Parties as a result of past transactions or events;
<b>“Change Control”</b>	means the mechanism for changing the Contract proposed by the Authority or by the Prime Contractor;
<b>“Change Control Notice”</b>	means the notice referred to in Clauses 5;
<b>“Change in Law”</b>	means the coming into effect after the date of Contract of: <ul style="list-style-type: none"><li>(a) Law, other than any Law which on the date of this Contract has been published:<ul style="list-style-type: none"><li>(i) in a draft Bill or as part of a Government Departmental Consultation Paper;</li><li>(ii) in a Bill;</li><li>(iii) in a draft statutory instrument; or</li><li>(iv) as a proposal in the Official Journal of the European Communities;</li></ul></li><li>(b) any Guidance; or</li><li>(c) any applicable judgement of a relevant court of law which changes binding precedent;</li></ul>
<b>“City Strategy Pathfinder”</b>	means a partnership between the Authority and non-governmental bodies with a view to reducing unemployment in the area designated as a City Strategy Pathfinder area;
<b>“Commencement Date”</b>	means the date from which the Prime Contractor is to provide each of the Provisions as specified in the relevant annexes to Schedule 2;
<b>“Commercially Sensitive Information”</b>	means the subset of Confidential Information listed in Schedule 10 comprised of information: <ul style="list-style-type: none"><li>a) which is provided by the Prime Contractor to the</li></ul>

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Authority in confidence for the period set out in that Schedule; and/or

b) that constitutes a trade secret

**“Confidential Information”**

means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, the Provision, goods and services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information;

**“Contract”**

means this contract including the clauses and schedules and any document referred to herein, including, for the avoidance of doubt, the Supplier Guidance;

**“Contract Package Area”**

means the geographical area in which the Prime Contractor must provide the Provision to Participants, the boundaries of which are set out in the Annexes of Schedule 2 (The Provision) although Participants may come from outside this area;

**“Contracting Authority”**

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority;

**“Crown”**

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies;

**“Data Controller”**

shall have the meaning given to it under the DPA;

**“Data Processor”**

shall have the meaning given to it under the DPA;

**“Default”**

means any breach by a Party of its obligations under this Contract (including fundamental breach or breach of a fundamental term) save to the extent such default is caused by any breach, default, act, omission, negligence or misstatement of any other party or by reason of Force Majeure;

**“Directive”**

means the Acquired Rights Directive 77/187 (as amended, re-enacted or extended from time to time);

**“Dispute Resolution Procedure”**

means the procedure detailed in Schedule 7 for resolving disputes that may arise between the Parties in connection with this Contract;

**“DPA”**

means the Data Protection Act 1998 (as amended);

**“DWP Code of Conduct”**

means the DWP Code of Conduct published in the DWP Commissioning Strategy in February 2008;

**“Effective Date”**

means the date of this Contract;

**“Environmental**

means the Environmental Information Regulations 2004;

**Information Regulations”**

**“Euro Compliant”** means that the relevant software and firmware is capable of performing all functions in Sterling and Euros; of complying with all legal requirements now or hereafter (at the time of such requirements becoming law) applicable to the Euro including the rules on conversion and rounding set out in EC Regulation number 1103/97 (as amended); and of displaying and printing and will (at the time of the enactment of law requiring it to be the case) incorporate in all relevant screen layouts all symbols and codes adopted by any government or any other European Union body or other regulatory authority in relation to the Euro;

**“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 in relation to such legislation;

**“Fees”** means each Sustained Job Outcome Payment.

THIS SECTION TO BE CONFIRMED

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

**“GDP”** Gross Domestic Product is a measure of economic activity taking place in the UK as published by the Office of National Statistics or any such entity as shall carry out the same or similar function to the Office of National Statistics in the future should the Office of national Statistics be replaced and or abolished;

**“Generated Intellectual Property Rights”** means any and all Intellectual Property Rights (excluding any processes and/or methods of best practice) generated, developed, created or produced by or on behalf of the Prime Contractor exclusively for or in connection with the delivery of the Provision or any part thereof. For the avoidance of doubt, Generated Intellectual Property Rights shall include but not be limited to any Intellectual Property Rights arising as a result of any enhancement, modification or adaptation to Materials in which Prime Contractor Intellectual Property Rights subsist (which were or are carried out by or on behalf of the Prime Contractor for or in connection with the delivery of the Provision);

**“Good Industry Practice”** means the exercise of that degree of competence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Prime Contractor and under the same or similar circumstances;

**“Guarantee”** the deed of guarantee between the Authority and the Guarantor to be entered into on or around the Effective Date in the form

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set out in Schedule 14;

**“Guarantor”**

To be completed if required

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

**“Guidance”**

means any Government guidance with which the Authority requires the Prime Contractor to comply or any such guidance with which the Prime Contractor is obliged to comply in order to be compliant with or take the benefit of the provisions of this Contract;

**“ICT Environment”**

means the information, communication and technological network of the Authority and the Prime Contractor;

**“Incoming Prime Contractor”**

means any prime contractor appointed (or to be appointed) by the Authority to provide the Provision (or its equivalent) on expiry or termination of this Contract;

**“Indemnifying Party”**

means the party responsible for indemnifying the other party to this Contract in respect of losses caused to the other party by the indemnifying party;

**“Information”**

has the meaning given under section 84 of the Freedom of Information Act 2000;

**“Intellectual Property Rights”**

means patents, trade marks, service marks, design rights, domain names, applications for any of the foregoing, copyright (including rights in computer software and in websites), database rights, inventions, know-how, trade or business names including rights in any get-up or trade dress, rights under licences, consents, orders, statutes or otherwise in respect of any of the foregoing, and any other similar rights whether registerable or not, in any country (including but not limited to the UK);

**“Issued Property”**

means all items of property belonging to, lent to, leased by or rented by the Authority and issued to the Prime Contractor for the purposes of the delivery of the Provision including any item purchased by the Prime Contractor and subsequently paid for as an identified item by the Authority;

**“Job Outcome”**

THIS SECTION TO BE CONFIRMED

means a job comprising at least 16 hours work per week and where the customer remains in work for at least 4 consecutive weeks;

**“Law”**

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

**“Loss”**

means direct losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of

## Protect

every description, provided in each case that such losses are reasonable, direct, proper and mitigated, and “Losses” shall be construed accordingly;

<b>“Malicious Software”</b>	means any software introduced to the ICT Environment of the Authority or the Prime Contractor from any external source without the consent of the Authority or the Prime Contractor capable of destroying, erasing or otherwise interfering with the Party’s ICT Environment;
<b>“Management Information”</b>	means the information required from the Prime Contractor in connection with each Provision as set out in Schedule 3;
<b>“Materials”</b>	means any and all documents, information, materials, data, text, drawings, diagrams, images or sound recorded or embodied in any tangible or electronic medium whatsoever (including) paper based materials, computer programs, software, CDs , audio and/or visual tapes which are created, developed, generated and/or used in connection with the Provision and for the avoidance of doubt, Participant Records (in whatever form) shall be Materials;
<b>“Multi-Area Agreements”</b>	means an agreement between the Authority and local government to achieve a growth in economic activity in a designated area;
<b>“Participants”</b>	means the persons on the Provision run by the Prime Contractor and directly receiving the services specified in this Contract;
<b>“Participant Records”</b>	means the records prepared and maintained by the Prime Contractor (in whatever form or storage media) concerning an individual Participant;
<b>“Persistent Breach”</b>	means a breach which has continued for more than fourteen (14) days or has recurred within three (3) months;
<b>“Personal Data”</b>	shall have the meaning given to it under the DPA;
<b>“PRaP System”</b>	means the Jobcentre Plus electronic provider referral and payment system;
<b>“Prime Contractor Group”</b>	means the Prime Contractor’s holding company and any subsidiaries thereof;
<b>“Prime Contractor Intellectual Property Rights”</b>	means any and all Intellectual Property Rights in Materials which as at the date of this Contract were already in existence and which were owned by the Prime Contractor or licensed to the Prime Contractor by a third party;
<b>“Prime Contractor Manager”</b>	means the person appointed by the Prime Contractor as described in Clause 9.1;
<b>“Prime Contractor Parties”</b>	means the Prime Contractor Manager and the Prime Contractor’s directors, employees, agents, and suppliers and sub suppliers of the Provision, and “Prime Contractor Party” shall mean any one of them;
<b>“Prime Contractor Site”</b>	means any of the sites owned, leased, occupied or controlled by the Prime Contractor from where the Provision is provided or from where the Prime Contractor manages, organises or

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otherwise directs the Provision or the use of the Provision, including for the avoidance of doubt any such premises used by the Prime Contractor's agents or Sub-contractors from time to time;

### **“Prime Contractor Software”**

means the software which is owned by the Prime Contractor and which is to be used by the Prime Contractor and/or the Authority in the context of the delivery or receipt of the Provision;

### **“Prime Contractor System”**

means the ICT Environment of the Prime Contractor;

### **"Processing"**

shall have the meaning given to it under the DPA;

### **“Provision”**

means any provision for the delivery of goods and services by the Prime Contractor to the Authority, the details of which are more fully described in Schedule 2 (The Provision) to this Contract and the relevant Annex(es) to that Schedule. For the avoidance of doubt, the Prime Contractor may be delivering one or more Provisions under the terms of this Contract;

### **“Qualification”**

means a qualification as defined in Schedule 2, where appropriate;

### **“Regulatory Bodies”**

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

### **"Relevant Date"**

means in respect of any Relevant Employees the date of a Relevant Transfer from the Prime Contractor to the Authority or an Incoming Prime Contractor;

### **"Relevant Employee"**

means any of those employees of the Prime Contractor or of any Sub-contractors who are wholly or substantially engaged in the delivery of the Provision (in whole or in part) that revert to the Authority or transfer to an Incoming Prime Contractor (as the case may be) as at the Relevant Date;

### **"Relevant Transfer"**

means a relevant transfer for the purposes of the TUPE Regulations or the Directive;

### **"Requests for Information"**

shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;

### **"Security Plan"**

means the Prime Contractor's security plan prepared pursuant to Paragraph 3 of Schedule 11 (Security Requirements and Plan) an outline of which is set out in Annex 1 of Schedule 11 (Security Requirements and Plan);

### **“Security Policy”**

means the Authority's Security Policy annexed to Schedule 11 (Security Requirements and Plan) as updated from time to time;

### **“Security Tests”**

shall have the meaning set out in Paragraph 4.1 of Schedule 11 (Security Requirements and Plan);

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<b>“Self Employment”</b>	means the Prime Contractor cannot claim a Job Outcome until the customer is off benefit and trading independently. Once the customer has traded independently for 13 weeks the Prime Contractor will be entitled to claim for 13 weeks Job Outcome, and if they are still trading at 26 weeks the Prime Contractor can claim the 26 weeks Sustained Job Outcome;
THIS SECTION TO BE CONFIRMED	
<b>"Sensitive Personal Data"</b>	shall have the meaning given to it under the DPA;
<b>“Service Fee”</b>	N/A to Invest to Save
<b>“Job Outcome”</b>	means a job that has lasted 4 weeks:
THIS SECTION TO BE CONFIRMED	<ul style="list-style-type: none"><li>• minimum of 16 hours per week;</li><li>• continuous employment lasting 4 weeks; no breaks in employment;</li><li>• started prior to completing Allotted Time with the Prime Contractor or within the Tracking Period;</li><li>• no specified number of jobs;</li><li>• includes Self Employment;</li><li>• includes Subsidised Employment;</li><li>• single claim per client on a programme.</li></ul>
<b>“Job Outcome Payment”</b>	means the outcome based fee payable to the Prime Contractor by the Authority on achievement of each Job Outcome at the rates set out in Schedule 6;
THIS SECTION TO BE CONFIRMED	
<b>"Specification"</b>	means the Authority's specification for the Provision as set out in Schedule 2;
<b>“Staff”</b>	means all persons employed by the Prime Contractor to perform its obligations under the Contract together with the Prime Contractor’s servants, agents, suppliers and any Sub-contractor (together with the employees, servants, agents and suppliers of any Sub-contractor) used in the performance of the Prime Contractor’s obligations under the Contract;
<b>“Staff Vetting Procedure”</b>	means the Authority’s procedures for the vetting of personnel, copies of which have been provided to the Prime Contractor by the Authority [3 months] prior to the Commencement Date;
<b>“Sub-contractor”</b>	means any sub-contractor appointed by the Prime Contractor under Clause 24 which through its employees or agents directly delivers the Provision to the Participants;
<b>"Subsidised Employment "</b>	the Prime Contractor can make a claim for a client entering subsidised employment, including Participants employed by the Prime Contractor provided all the outcome conditions are met;
THIS SECTION TO BE CONFIRMED	
<b>“Supplier Guidance”</b>	means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to

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Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Authority to the Prime Contractor prior to the Commencement Date, and any other instructions and recommended practices notified by the Authority to the Prime Contractor from time to time;

### **“Sustained Job Outcome”**

THIS SECTION TO BE CONFIRMED

means continuous employment;

- Minimum of 16 hours per week
- In employment for at least (to be confirmed) weeks out of (to be confirmed)
- Breaks in employment totalling no more than 4 weeks
- Started prior to completing Allotted Time with the Prime Contractor or within the Tracking Period
- No specified number of jobs
- Includes Self Employment
- Includes Subsidised Employment
- Single claim per client on a programme

### **“Sustained Job Outcome Payment”**

THIS SECTION TO BE CONFIRMED

means, the outcome based fee payable to the Prime Contractor by the Authority on achievement of each Sustained Job Outcome, at the rates set out in Schedule 6;

### **“Tender”**

means the Prime Contractor’s statement as to how it will deliver each of the Provisions to be delivered under this Contract (including any revisions thereto) and as set out in Schedule 2 Annex 2;

### **“Term”**

means the period commencing on the [Effective Date] and ending on the [NUMBER] anniversary of the [Effective Date] unless varied by:

- a) any extensions to this Contract pursuant to Clause 2.2; or
- b) the earlier termination of this Contract either by operation of Law or in accordance with with the terms of the Contract

### **“Third Party Intellectual Property Rights”**

means those Intellectual Property Rights that are not owned and/or controlled by either Party;

### **“Third Party Software”**

means software which is proprietary to any third party and that is used by the Prime Contractor in the delivery of the Provision, excluding any of the Authority Software;

### **“Total Contract Value”**

means the total expected contract value at the Effective Date, as detailed in Schedule 6;

### **“Tracking Period”**

THIS SECTION TO BE CONFIRMED

means the six week period (or such other longer period as the Authority shall agree with the Prime Contractor from time to time) during which the Prime Contractor is required (as detailed in Schedule 5) to track the destination to which the Participant leaves the Provision. This period starts on the date the relevant

## Protect

Participant completes the Allotted Time or leaves the Provision, or in relation to the final claim provisions of Schedule 5 Paragraph [INSERT NUMBER], the date on which the Contract expires or terminates;

<b>"Trade Mark"</b>	means any trading name, brand name, style, logo or mark which is directly related to or is created in respect of the Provision whether created by the Authority or the Prime Contractor and whether registered or not;
<b>"Transition Fee"</b>	n/a
<b>"TUPE Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended;
<b>"Voluntary and Community Sector"</b>	means registered charities, voluntary and community organisations as well as non-charitable, non-profit organisations and associations, self-help groups and community groups;
<b>"Working Day"</b>	means any day which is not a Saturday, a Sunday or a bank or public holiday in England and excluding any other specified date on which the Prime Contractor has been notified the Authority will be closed.

- 1 References in this Contract to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 2 Headings included in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 3 If there is any conflict between the terms of this Contract and any of the Schedules or Annexes referred to in this Contract and it is unclear which is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:
  - 3.1 the Clauses of this Contract;
  - 3.2 the Schedules to this Contract;
  - 3.3 the Annexes to this Contract;
  - 3.4 the Tender; and
  - 3.5 the Supplier Guidance.
- 4 References to the singular include the plural and vice versa and references to any gender include all genders. References to a person include any individual, firm, unincorporated association or body corporate. References to "including" or "includes" shall be construed without limitation.

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**SCHEDULE 2 - THE PROVISION**

**TO BE DEVELOPED DURING POST TENDER CLARIFICATION**

**SCHEDULE 3 – INFORMATION REQUIREMENTS**

**TO BE DEVELOPED DURING POST TENDER CLARIFICATION**

## **SCHEDULE 4 – MANAGING PERFORMANCE**

This Schedule sets out the contract management requirements which are applicable to the delivery of the Provision.

### **1 REVIEWING CONTRACT PERFORMANCE**

- 1.1 The Prime Contractor shall work with the Authority to establish and maintain an effective and beneficial working relationship and to ensure the Contract is delivered to at least the minimum required standard as specified in Schedule 2 (The Provision).
- 1.2 The Prime Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract. The Prime Contractor will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, feedback to and from employers and Participants, change control procedures and the prompt resolution of any problems. The Authority will agree with the Prime Contractor day-to-day relationship management, contact points, communication flows and escalation procedures. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.3 The Authority will regularly monitor Prime Contractor performance at least monthly. Every three to six months (or any other period to be notified as appropriate) the Authority will undertake a contractual review and award a formal risk rating to the Prime Contractor. The initial contract review will be informed by the award of contract process and reviewed thereafter. The risk rating will be based on a number of criteria including: performance against contractual targets; annual contract value; and quality (including external inspection grades where appropriate) and continuous improvement activity. The risk rating will be used to inform the frequency of subsequent Prime Contractor Performance Reviews and supporting monitoring activity.
- 1.4 Prime Contractor reviews may be undertaken formally or informally depending on risk and any identified issues. Risk ratings will be communicated to the Prime Contractor. The Prime Contractor will be expected to provide any additional management information required by the Authority to facilitate this process and arrange where necessary access to any of its delivery locations, including those operated by Sub-contractors.
- 1.5 The purpose of the Prime Contractor Performance Reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Provision, including the standards and outputs specified, is being delivered appropriately and to drive up the performance and quality of the Provision. They will encourage the Parties to review performance, discuss opportunities for continuous improvement and raise and address any complaints or persistent problems encountered with the Contract. Where issues cannot be immediately addressed, the Authority and the Prime Contractor will follow the Dispute Resolution Process detailed in Schedule 7.
- 1.6 The regular meetings between the Authority and the Prime Contractor shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.
- 1.7 Any improvements or actions agreed between the Parties will form part of the continuous improvement activity recorded in the Provider Development Plan that will be used to inform the annual Self Assessment Report.
- 1.8 The Authority shall monitor and review the performance and quality of the Prime Contractor against the requirements set out in this Contract and within the overall contract management approach as detailed above. Additionally, the Prime Contractor will be subject to external inspection by Ofsted in England, Estyn in Wales and HMIE in Scotland. The Prime Contractor will be expected to make any additional Management Information

## Protect

available to these representatives and provide where necessary access to premises, including sub contracted locations, as appropriate.

- 1.9 The Prime Contractor will be expected to continuously improve the quality of the Provision including that delivered by Sub-contractors. Where quality falls below acceptable levels the Prime Contractor will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the sub-contract.

## **2 DWP QUALITY FRAMEWORK**

- 2.1 The DWP Quality Framework provides the basis of the required approach to maintaining and improving quality in provision funded by the Authority. The DWP Quality Framework is supported by the Common Inspection Framework and Supplier Guidance. It reflects the key principles outlined in the Government's White Paper "Learning to Succeed". The purpose of the DWP Quality Framework is twofold:

- 2.1.1 prime contractors will use it as part of their continuous improvement to raise the standard of the service they provide; and

- 2.1.2 it assists the Authority inform the management of provision taking into account quality of delivery, contract performance, impact on Participants, equal opportunities, non-discrimination and the local labour market.

- 2.2 Key principles of the DWP Quality Framework are:

- 2.2.1 continuous self-assessment and action planning;

- 2.2.2 monitoring and review

- 2.2.3 external inspection; and

- 2.2.4 sharing good practice.

- 2.3 The Prime Contractor will continuously self assess against the Common Inspection Framework, recording actions in the Prime Contractor Action Plan. The Action Plan will feed in to the annual Self Assessment Report. This in turn feeds back in to the Action Plan. The Authority will assess the rigour and effectiveness of the Report and agree the Action Plan to improve the quality of the service delivered. Progress against that Action Plan will form part of the monitoring activities carried out by the Authority supported by a review process described above. The Authority's monitoring staff shall be conversant with the principles of the DWP Quality Framework and shall be prepared to offer appropriate support to Prime Contractors on its delivery. The Action Plan and Self Assessment will be a key part of the performance and contract review process.

- 2.4 The monitoring activities shall be determined by the Authority and complied with by the Prime Contractor and might include:

- 2.4.1 observation of the delivery of training;

- 2.4.2 examination of Participants' Individual Training Plans;

- 2.4.3 examination of how assessments and reviews are carried out;

- 2.4.4 managing the training cycle;

- 2.4.5 promoting continuous improvement; and

- 2.4.6 monitoring impact of advice.

## **3 OFSTED IN ENGLAND, ESTYN IN WALES AND HMIE IN SCOTLAND**

- 3.1 The Common Inspection Framework sets out the principles applicable to the external inspections of post-16 non-higher education and training. The Common Inspection

## Protect

Framework also includes the more specific evaluation requirements that apply to the inspection of individual providers of education and training.

- 3.2 The main purposes of inspections are to:
- 3.2.1 give an independent public account of the quality of education and training, the standards achieved and the efficiency with which resources are managed;
  - 3.2.2 help bring about improvement by identifying strengths and weaknesses and highlighting good and poor practice; and
  - 3.2.3 keep the Secretary of State and the Authority informed about the quality of education and training.
- 3.3 Inspections shall focus primarily on the experiences and expectations of individual Participants through the evaluation, as applicable, of:
- 3.3.1 what is achieved - the standards reached and Participants' achievements, taking account of their prior attainment;
  - 3.3.2 the quality of teaching, training and learning;
  - 3.3.3 other aspects of provision that contribute to the standards achieved, such as the range, planning and content of courses or provisions, resources and the support for individual Participants;
  - 3.3.4 the effectiveness with which provision is managed, its quality assured and improved, and how efficiently resources are used to ensure that the provision gives value for money;
  - 3.3.5 the extent to which provision is educationally and socially inclusive, and promotes equality of access to education and training, including provision for customers with learning difficulties; and
  - 3.3.6 observance of the non-discriminatory practices under the Law, including for the avoidance of doubt the Race Relations (Amendment) Act 2000.

As a prime contractor of services to Participants, the Prime Contractor shall provide all reasonable co-operation with representatives of Ofsted, Estyn or HMIE (as the case may be).

## **4 HEALTH AND SAFETY RESPONSIBILITIES OF THE AUTHORITY VISITING OFFICERS**

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

## **5 ASSURING PROVIDERS' SYSTEMS**

- 5.1 The primary purpose of the Provider Assurance Team is to provide the Authority with an assurance that payments to Prime Contractors are in accordance with the Authority requirements, that public funds are protected and that value for money has been obtained.

## Protect

- 5.2 Planning of visits by the Provider Assurance Team to Prime Contractors shall take account of the Provision and the assessment of the risk attached to the delivery of the Provision. The assessment of risk shall follow an evaluation of the key, relevant systems adopted by the Prime Contractor, supported by the results of testing undertaken.
- 5.3 The Prime Contractor shall have systems in place (depending on the Provision type) to:
- 5.3.1 detect and prevent duplicate claims;
  - 5.3.2 prepare and submit accurate, valid, supported, timely claims;
  - 5.3.3 monitor, record and manage lateness and all absences;
  - 5.3.4 support claims for payments through an effective Participant attendance recording procedure;
  - 5.3.5 ensure that all the required evidence is collected (and submitted, where appropriate) to support the claim;
  - 5.3.6 identify Participants who have left the Provision ("Leavers") early to prevent over claiming;
  - 5.3.7 carry out effective monitoring of Sub-contractors; and
  - 5.3.8 respond to financial appraisal and monitoring reports with an appropriate action plan.

## 6 SECURITY REQUIREMENTS

- 6.1 The Authority will review the Prime Contractor's Security Plan when submitted by the Prime Contractor in accordance with Schedule 6, and at least annually thereafter.

## 7 ACCESS

- 7.1 In all instances, the Prime Contractor shall co-operate and provide such reasonable assistance as may be necessary to facilitate monitoring pursuant to this Schedule 4. Failure to provide such reasonable assistance shall be deemed a "Serious Breach" for the purposes of Clause 20 (Prime Contractor Default).

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**SCHEDULE 5 – Accounting Requirements**

**TO BE DEVELOPED DURING POST TENDER CLARIFICATION**

**SCHEDULE 6 - PAYMENT SCHEDULE**

**TO BE DEVELOPED DURING POST TENDER CLARIFICATION**

## **SCHEDULE 7 – DISPUTE RESOLUTION PROCEDURE**

This Schedule sets out the process to be followed by the Parties in the event of a dispute other than a payment dispute. For the avoidance of doubt, a payment dispute is a dispute concerning how much money is due from one Party to the other; it does not include a dispute concerning the amount of the various rates applicable in delivering the Provision. Within the Authority, the point of contact will be the Commercial Directorate Sourcing Team.

### **STAGE 1 – INFORMATION EXCHANGE**

- 1 In the event of any dispute arising between the Parties in connection with this Contract the Party who is bringing the complaint will write to the other Party setting out the full details of the dispute including the background to it and any proposals for resolving the dispute (the "Letter of Dispute"). The Letter of Dispute should provide all the necessary details and any supporting documentation to enable the other Party to fully consider the dispute.
- 2 The Party who receives the Letter of Dispute should acknowledge the Letter of Dispute within seven (7) calendar days of its receipt (the "Letter of Acknowledgment").
- 3 If further information as to the matters detailed in the Letter of Dispute is required so as to deal with it then full particulars of the further information which is required should be given by letter within seven (7) calendar days of the Letter of Acknowledgment (the "Further Information"). If Further Information is required, such Further Information should be provided within fourteen (14) calendar days from the date of the Letter of Acknowledgment. The time for responding to the Letter of Dispute does not commence until the Further Information has been provided or an explanation as to why it cannot be provided.
- 4 Within fourteen (14) calendar days of the "Letter of Acknowledgment" or within fourteen (14) calendar days from the provision of the Further Information the other Party shall provide a full response to the Letter of Dispute (the "Letter of Response"). The Letter of Response shall, if appropriate, provide terms on which the dispute can be resolved.
- 5 If the Letter of Response cannot deal with all of the issues raised within the Letter of Dispute within fourteen (14) calendar days the responding Party shall provide a date within which the full Response will be provided. Such full response must be given within twenty eight (28) calendar days of the latest of the Letter of Acknowledgment or the provision of any Further Information.
- 6 When the Letter of Response has been sent stage 1 is concluded. If the dispute has not been resolved by the end of stage 1 the Parties shall move to stage 2.

### **STAGE 2 - MEETING**

- 1 Following on from the Letter of Response either Party can request that a meeting takes place between the Contract Managers (Deputy Head of Commercial Employment Provision, together with the Commercial Directorate Sourcing Team) and the Prime Contractor Manager. The Contract Managers and the Prime Contractor Manager shall within seven (7) calendar days of such a written request meet in a good faith effort to resolve the dispute (the "First Meeting").
- 2 If the dispute cannot be resolved in the First Meeting the dispute shall be referred to the Managing Director of the Prime Contractor and the Head of Commercial Employment Provision to seek to resolve the dispute (the "Final Meeting"). If appropriate the Parties can invite key personnel to this meeting.
- 3 If the dispute cannot be resolved within twenty one (21) calendar days of the Final Meeting the dispute shall be referred to a Mediator in accordance with stage 3 below.

### **STAGE 3 - MEDIATION**

- 1 The Parties shall seek to agree on the appointment of a Mediator to act in relation to the dispute or an organisation who shall be approached to nominate a mediator. If the Parties cannot agree on the appointment of a Mediator the matter shall be referred to CEDR to appoint a Mediator.
- 2 If agreeable to the Mediator, the Parties shall within seven (7) calendar days of the appointment of any such Mediator meet with him/her to agree a Provision for the exchange of any relevant information, the structure to be adopted for the mediation and agree upon a date for the mediation to be held (the "Agreed Procedure"). If the Mediator is not agreeable to a meeting or the Parties deem it unnecessary for the Mediator to be involved they will reach agreement on the agreed procedure between themselves. The Parties will then act in accordance with the Agreed Procedure and seek to resolve the dispute through mediation.
- 3 If the Parties fail to reach agreement within twenty eight (28) calendar days of the mediation then any dispute or difference between them may be referred to the Courts.

### **STAGE 4 - LITIGATION**

- 1 All disputes not resolved pursuant to the procedures set out above may be referred by either Party to the Courts.

### **GENERAL**

- 1 For the avoidance of doubt this Schedule 7 shall in no way prejudice any rights or remedies of either Party under this Contract including without limitation the right of termination. However this Schedule 7 will survive termination of the Contract and will govern any post termination dispute.
- 2 Each Party shall bear its own costs in relation to any procedure adopted pursuant to this Schedule 7.
- 3 Unless this Contract has already been repudiated or terminated the Prime Contractor shall, notwithstanding this Schedule 7, continue to carry out its obligations in accordance with this Contract.

## **SCHEDULE 8 – DIVERSITY AND EQUALITY REQUIREMENTS**

This Schedule sets out the Diversity and Equality requirements which are applicable to the delivery of the Provision.

### **1 GENERAL**

- 1.1 The Prime Contractor acknowledges that the Authority has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for and good relations between all persons irrespective of their race, gender, disability, age, sexual orientation or religion/belief.
- 1.2 In the performance of the Contract, the Prime Contractor shall and shall use reasonable endeavours to procure that its Sub-contractors assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule 8.

### **2 COMPLIANCE**

- 2.1 The Prime Contractor acknowledges the provisions of Clauses 3.3 and 3.4 of this Contract.

### **3 HARASSMENT POLICY**

- 3.1 In the performance of the Contract and for the duration of this Contract, the Prime Contractor shall:
  - 3.1.1 comply with the Agreed Harassment Policy; and
  - 3.1.2 procure that each of its Sub-contractors employed in the performance of the Contract, adopt and implement a harassment policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Harassment Policy.
- 3.2 For the purposes of this Contract the expression "Agreed Harassment Policy" means the harassment policy to be submitted to Momenta under the Accreditation process in Schedule 9 of this Contract.

### **4 EQUALITY POLICY**

- 4.1 In the performance of the Contract and for the duration of this Contract, the Prime Contractor shall:
  - 4.1.1 comply with the Agreed Equality Policy; and
  - 4.1.2 procure that each of its Sub-contractors employed in the performance of the Contract, adopt and implement an equality and diversity policy in respect of its employees engaged in the performance of the Contract which is at least as extensive in scope as the Agreed Equality Policy.
- 4.2 For the purposes of this Contract the expression "Agreed Equality Policy" means the equality policy to be submitted to Momenta under the Accreditation process in Schedule 9 of this Contract.

### **5 DIVERSITY TRAINING**

- 5.1 For the duration of this Contract the Prime Contractor shall comply with the Agreed Training Plan in relation to all of its employees engaged in the performance of the Contract. For the purposes of this Contract the expression "Agreed Training Plan" means the diversity training plan to be submitted to Momenta under the Accreditation process in Schedule 9 of this Contract.

## Protect

- 5.2 The Prime Contractor shall procure that each of its Sub-contractors employed in the performance of the Contract, adopt a similar diversity training plan in respect of the Subcontractor's employees engaged in the performance of the Contract.

## 6 SUPPLIER DIVERSITY

- 6.1 In the performance of the Contract the Prime Contractor shall at all times comply with the Agreed Supplier Diversity Plan. For the purposes of this Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan to be submitted to Momenta under the Accreditation process in Schedule 9 of this Contract.
- 6.2 The Prime Contractor shall procure that each of its Sub-contractors employed in the performance of the Contract, adopt a similar supplier diversity plan in respect of Subcontractor's employees engaged in the performance of the Contract.

## 7 MONITORING AND REPORTING

- 7.1 Subject to Paragraph 7.3 of this Schedule 8 the Prime Contractor shall use reasonable endeavours to provide the Authority on the date of this Contract and subsequently every 12 months from the date of this Contract with the following information:

7.1.1 the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who are:

- a) female; and/or
- b) disabled.

7.1.2 the proportion of its employees and to the extent reasonably possible, the employees of its Sub-contractors who in terms of ethnicity are:

*white*

- a) white British;
- b) white Irish;
- c) of any other white background;

*mixed*

- d) white and black Caribbean;
- e) white and black African;
- f) white and Asian
- g) of any other mixed background;

*Asian or Asian British*

- h) Indian;
- i) Pakistani;
- j) Bangladeshi;
- k) of any other Asian background;

*Black or Black British*

- l) Caribbean;
- m) African;
- n) of any other black background;

*Chinese or other ethnic group*

- o) Chinese;
- p) of any other ethnic group.

For the avoidance of doubt, the sixteen percentage figures submitted under categories (a) to (p) of this Paragraph 7.1.2 (in each case in respect of the Prime Contractor's employees and each Sub-contractor's employees) should total 100%.

7.1.3 the proportion of its Sub-contractors that are:

- a) small to medium sized enterprises, (meaning enterprises having less than 250 employees);
- b) ethnic minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of one or more ethnic minority groups, or, if there are few owners, where at least 50% of the owners are members of one or more ethnic minority groups. For this purpose, ethnic minority groups means ethnic groups other than white British as referred to at Paragraph 7.1.2 above);
- c) black minority enterprises (in each case meaning an enterprise 51% or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least 50% of the owners are members of the Black British ethnic group. For this purpose, the Black or Black British ethnic group has the meaning referred to at Paragraph 7.1.2 above).

For the avoidance of doubt, any given Sub-contractor may fall into one, two or all of the categories listed under this Paragraph 7.1.3, depending on its composition.

7.2 The Prime Contractor is referred to its additional reporting and compliance obligations under Schedule 9 (Accredited Prime Contractor Information), which include the requirement to report on Equality Issues as part of the overall Accredited Prime Contractor process operated on behalf of the Authority.

7.3 The Prime Contractor shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Authority pursuant to Paragraph 7.1 of this Schedule 8.

**SCHEDULE 9 – ACCREDITED PRIME CONTRACTOR INFORMATION**

This Schedule highlights documentation which is deemed appropriate to be part of the Contract.

- 1 The Authority will only award contracts over £50,000 to organisations that have been through the accreditation process delivered by Momenta TM (or any other future contracted supplier) on behalf of the Authority. If remedial actions are identified for the Prime Contractor following the accreditation process, then these must be cleared within the timescales indicated by the Authority and/or Momenta TM. Failure to complete remedial action within the stated timescales shall constitute a "Serious Breach" under Clause 20 (Prime Contractor Default) and shall be dealt with under the corresponding provisions of Clause 20.
- 2 This Schedule 9 (Accredited Prime Contractor Information) shall be deemed to include the documents and information provided by the Prime Contractor in support of the initial and subsequent accreditation processes (including any and all subsequent clarification thereof). If any information supplied as part of an accreditation process is found to be incorrect, and such error could have materially affected the accreditation process, then accreditation shall be withdrawn.
- 3 Momenta TM will complete an annual review of all accredited Prime Contractors. Prime Contractors must confirm during the course of such reviews whether information held in support of the last accreditation is correct, updating any relevant information as necessary. Prime Contractors must also supply any further information required by Momenta TM as part of the annual review, within the timescales indicated by Momenta TM. Failure to supply or update information will result in the withdrawal of accreditation.
- 4 If accreditation status is withdrawn by Momenta TM at any time this will constitute a "Serious Breach" to be dealt with under Clause 20 (Prime Contractor Default).
- 5 Prime Contractors must notify Momenta TM immediately of any relevant changes to the information held by Momenta TM. Failure to do so may lead to withdrawal of accreditation status.
- 6 Information supplied as part of the accreditation process may be shared with other Government Departments or Public Authorities, including the Learning and Skills Councils (LSC).
- 7 The names of all accredited organisations, including contact details and type of provision being delivered will be published on the Accreditation Website.
- 8 For the avoidance of doubt the provisions of the Paragraphs above shall apply on the same basis to any future supplier of the accreditation services or any modified version of the Prime Contractor Accreditation Service and Commercial Intelligence database notified to the Prime Contractor by the Authority from time to time.

**SCHEDULE 10 – COMMERCIALY SENSITIVE INFORMATION**

**[TO BE INSERTED]**

The information in this Schedule 10 may have to be disclosed in response to a request under the FOIA as set out at Clause 15 of this Contract.

## **SCHEDULE 11 – SECURITY REQUIREMENTS AND PLAN**

### **1 INTRODUCTION**

This Schedule covers:

- 1.1 principles of security for the Prime Contractor System, derived from the Security Policy, including without limitation principles of physical and information security;
  - 1.1.1 the creation of the Security Plan;
  - 1.1.2 audit and testing of the Security Plan;
  - 1.1.3 conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
  - 1.1.4 Breaches of Security.

### **2 PRINCIPLES OF SECURITY**

- 2.1 The Prime Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Authority Premises and the security of the Prime Contractor System. The Prime Contractor also acknowledges the confidentiality of the Authority Data.
- 2.2 The Prime Contractor shall be responsible for the security of the Prime Contractor System and shall at all times provide a level of security which:
  - 2.2.1 is in accordance with Good Industry Practice and Law;
  - 2.2.2 complies with the Security Policy; and
  - 2.2.3 meets any specific security threats to the Prime Contractor System.
- 2.3 Without limiting Paragraph 2.2, the Prime Contractor shall at all times ensure that the level of security employed in the delivery of the Provision is appropriate to maintain the following at acceptable risk levels:
  - 2.3.1 loss of integrity of Authority Data;
  - 2.3.2 loss of confidentiality of Authority Data;
  - 2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;
  - 2.3.4 unauthorised access to network elements, buildings, the Authority Premises, the Prime Contractor Sites, and tools used by the Prime Contractor in the delivery of the Provision;
  - 2.3.5 use of the Prime Contractor System or services by any third party in order to gain unauthorised access to any computer resource or Authority Data;
  - 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Provision; and
  - 2.3.7 the Prime Contractor shall ensure that the employees with access to data on the PRaP System shall only access that data from the Prime Contractor ICT environment at the Prime Contractor's premises or other Prime Contractor approved ICT environment.

### 3 SECURITY PLAN

#### Introduction

- 3.1 The Prime Contractor shall develop, implement and maintain a Security Plan to apply during the Term and after the end of the Term (as applicable) which will be approved by the Authority, tested, periodically updated and audited in accordance with this Schedule.
- 3.2 A draft Security Plan provided by the Prime Contractor as part of its bid is set out in Annex 1.

#### Development

- 3.3 Within 20 Working Days after the Effective Date and in accordance with Paragraphs 3.10 to 3.12 (Amendment and Revision), the Prime Contractor will prepare and deliver to the Authority for approval the full and final Security Plan which will be based on the draft Security Plan set out in Annex 1.
- 3.4 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Prime Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3.4 may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in Paragraphs 3.5.to 3.9 shall be deemed to be reasonable.

#### Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Prime Contractor in relation to all aspects of the Provision and all processes associated with the delivery of the Provision and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Provision complies with:
  - 3.5.1 the provisions of this Schedule (including the principles set out in Paragraph 2);
  - 3.5.2 the provisions of Schedule 2 (The Provision) relating to security;
  - 3.5.3 ISO/IEC27002 and ISO/IEC27001; and
  - 3.5.4 the data protection compliance guidance produced by the Authority;
- 3.6 The references to standards, guidance and policies set out in Paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Prime Contractor should notify the Authority's representative of such inconsistency immediately upon becoming aware of the same, and the Authority's representative shall, as soon as practicable, advise the Prime Contractor which provision the Prime Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.

## Protect

- 3.9 The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Prime Contractor and the Authority engaged in the Provision and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Schedule.

### Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Prime Contractor annually, or from time to time to reflect:
- 3.10.1 emerging changes in Good Industry Practice;
  - 3.10.2 any change or proposed change to the Prime Contractor System, the Provision and/or associated processes;
  - 3.10.3 any new perceived or changed threats to the Prime Contractor System; and
  - 3.10.4 any reasonable request by the Authority.
- 3.11 The Prime Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.
- 3.12 Any change or amendment which the Prime Contractor proposes to make to the Security Plan (as a result of an Authority request or change to the Schedule 2 (The Provision) or otherwise) shall be subject to the Change Control procedure as detailed in Clause 5 and shall not be implemented until approved in writing by the Authority.

## **4 AUDIT AND TESTING**

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

## Protect

means vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

### **5 COMPLIANCE WITH ISO/IEC 27001**

- 5.1 The Prime Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Provision in compliance with security aspects of ISO 27001 and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority of the results of such security audits.
- 5.2 If it is the Authority's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Prime Contractor, then the Authority shall notify the Prime Contractor of the same and give the Prime Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Prime Contractor does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 5.3 If the Prime Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Prime Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Authority in obtaining such audit.

### **6 BREACH OF SECURITY**

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

Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Prime Contractor under this Contract, then the Prime Contractor shall be entitled to refer the matter to the Change Control procedure as detailed in Clause 5.

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

**ANNEX 1: DRAFT SECURITY PLAN**

## **ANNEX 2: SECURITY POLICY FOR SUPPLIERS OF SERVICES**

- 1 The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.
- 2 In order to protect Departmental information appropriately, our suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All suppliers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.
- 3 The Chief Executive or other suitable senior official of each supplier must agree in writing to comply with these policies and standards. Each supplier must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the supplier and where relevant Sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.
- 4 All suppliers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.
- 5 The following are key requirements and all suppliers must comply with relevant DWP policies concerning:
  - 5.1 **Personnel Security**
    - 5.1.1 staff recruitment in accordance with government requirements for pre-employment checks;
    - 5.1.2 staff training and awareness of Departmental security and any specific contract requirements.
  - 5.2 **Secure Information Handling and Transfers**
    - 5.2.1 physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.
  - 5.3 **Portable Media**
    - 5.3.1 the use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.
  - 5.4 **Offshoring**
    - 5.4.1 the Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.
  - 5.5 **Premises Security**
    - 5.5.1 security of premises and control of access.
  - 5.6 **Security Incidents**
    - 5.6.1 includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

## Protect

- 6 All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.
- 7 It is the supplier's responsibility to monitor compliance of any Sub-contractors and provide assurance to DWP.
- 8 Failure to comply with any of these policies or standards could result in termination of the Contract.

## **SCHEDULE 12 – WELSH LANGUAGE SCHEME**

This Schedule sets out the Prime Contractor's obligations which are applicable to the delivery of the Provision in Wales.

### **1 GENERAL**

- 1.1 The Prime Contractor acknowledges that in relation to the operation of any Provision which is delivered in Wales, the Authority must at all times be seen to be actively promoting the equality of the English and Welsh languages, in accordance with the Welsh Language Act 1993.
- 1.2 In the performance of the Contract, the Prime Contractor shall ensure that it cooperates with the Authority wherever possible in satisfying this duty, by fully complying with the requirements of this Schedule 12.

### **2 THE JOBCENTRE PLUS WELSH LANGUAGE SCHEME**

- 2.1 The Jobcentre Plus Welsh Language Scheme is Annex E to the Department of Work and Pensions' Welsh Language Scheme and can be found at:

[http://www.dwp.gov.uk/publications/dwp/2004/wls/Annex\\_E.asp](http://www.dwp.gov.uk/publications/dwp/2004/wls/Annex_E.asp)

The Prime Contractor shall, in the delivery of the Provision, ensure that it complies with the Jobcentre Plus Welsh Language Scheme and such instructions as the Authority may issue from time to time in respect of promoting the equality of the English and Welsh languages.

### **3 DELIVERY OF PROVISIONS THROUGH THE MEDIUM OF WELSH**

- 3.1 The Prime Contractor undertakes that those who have dealings with them are able to do so in English or Welsh.
- 3.2 The Prime Contractor will ensure that:
  - 3.2.1 those who want, or are required, to correspond with the Prime Contractor will be able to do so in English or Welsh;
  - 3.2.2 those who are known to prefer corresponding through the medium of Welsh will have correspondence initiated in Welsh;
  - 3.2.3 any correspondence received in Welsh will be answered in Welsh within the same timescales and standards as those written in English;
  - 3.2.4 staff who are in Wales will greet any telephone callers in English and Welsh until the caller's preferred language can be ascertained;
  - 3.2.5 any answer phones in the Prime Contractor's offices in Wales will have a pre-recorded bilingual message;
  - 3.2.6 all people who partake in the Provision are able to contribute through the medium of English or Welsh;
  - 3.2.7 all material published and printed in Wales shall be available in English and Welsh. The standard of bilingual or Welsh material shall be of equal quality to those produced solely in English;
  - 3.2.8 all forms and explanatory material be available in both English and Welsh; and
  - 3.2.9 any complaints or grievance procedure should be provided in both English and Welsh.

### **4 MONITORING**

## Protect

- 4.1 The Authority Contract Manager may from time to time monitor the Prime Contractor, in accordance with Clause 10 and Schedule 4 of this Contract, to ensure that it is complying with the requirements of this Schedule 12.

**SCHEDULE 13 - SUSTAINABLE DEVELOPMENT REQUIREMENTS**

This Schedule sets out the Sustainable Development requirements which are applicable to the delivery of the Provision.

**1 GENERAL**

- 1.1 The Prime Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.
- 1.2 In the performance of the Contract, the Prime Contractor shall, and shall use reasonable endeavours to procure that its Sub-contractors shall, assist and cooperate with the Authority where possible in satisfying this duty, by fully complying with the requirements of this Schedule 13.

**2 COMPLIANCE**

- 2.1 The Prime Contractor shall produce a policy statement and Sustainable Development Plan in accordance with DWP guidance and Paragraphs 2.2 and 2.3 of this Schedule, within 6 (six) months of the Effective Date.
- 2.2 In the performance of the Contract the Prime Contractor shall prepare a policy statement giving:
  - 2.2.1 full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
  - 2.2.2 full assurance of the observation of WEEE regulations with regards to disposal of electrical equipment
- 2.3 In the performance of the Contract, the Prime Contractor shall prepare a Sustainable Development Plan, in accordance with DWP guidance which as a minimum includes:
  - 2.3.1 details of how it will minimise waste produced and how recycling will be promoted within its business;
  - 2.3.2 details of how it will minimise energy consumption within its business;
  - 2.3.3 details of consideration of how it will minimise transport use and details of how the use of public transport will be promoted within its business, both to staff and customers where appropriate;
  - 2.3.4 details of a baseline assessment of its current position in terms of waste minimisation, recycling and energy consumption (energy consumption only required if current energy usage is available);
  - 2.3.5 annual estimates of the progress of its sustainable development actions in accordance with DWP guidance; and
  - 2.3.6 details of how staff awareness of sustainability will be increased in line with its Sustainable Development Plan.

Protect

**SCHEDULE 14 – PARENT COMPANY GUARANTEE**

**[InfoNote TO BE INSERTED IF NECESSARY]**

**WITNESS TO THE PARTIES**

**Signed by** .....

Name .....

Date .....

Position in Organisation .....

for and on behalf of .....

(the “**Prime Contractor**”)

in the presence of .....

Name .....

Date .....

**Signed by** .....

Name .....

Date .....

Position in Organisation .....

for and on behalf of The Secretary of State for Work and Pensions (the “**Authority**”)

in the presence of .....

Name .....

Date .....