

FOR GUIDANCE ONLY

Standard Model Terms & Conditions for DWP Goods Contracts

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This Agreement is made on [TextReq insert date of the last signature to this the Contract]

between the Parties

The Secretary of State for Work and Pensions

("the Authority")

[TextReq insert address of Authority's Representative or as a default use;]

of

Caxton House,
Tothill Street
London
SW1H 9DA

and

[TextReq Contractor]

with registered number

[TextReq insert registered number (if applicable)]

having the main or registered office at

[TextReq insert address of contractor]

("the Contractor")

and hereinafter called "the Parties"

Whereas:

The Contractor has agreed to provide [TextReq briefly state the nature of the goods to be provided] ("the Goods") on the Terms and Conditions set out in this Contract.

A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

[**ClauseOpt** Clause/text optional and should be removed if not applicable] “**Activity Date**” means the date from when activities start on the contract if this date is later than the Commencement Date.

“**Approval**” means the prior written consent of the Authority.

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

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

“**Commencement Date**” means the date from when this Contract becomes legally binding. [Also see definition of Activity Date].

“**Commercially Sensitive Information**” means the Information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

- a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or
- b) which constitutes a trade secret.

“**Confidential Information**” means:

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential; and
- b) the Commercially Sensitive Information and does not include any information:
 - i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E3 (Confidential Information));
 - ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

iv) is independently developed without access to the Confidential Information.

“Contract” means this written agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

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

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

- a) the date of expiry set out in clause A3 (Initial Contract Period) or,
- b) following an extension pursuant to clause F7 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause E4 (Price adjustment on extension of the Initial Contract Period).

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies.

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

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to the National Insurance Contributions by the National Insurance Contribution (Application of Part 7 of the Finance Act 2004)

Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992. [For procurements valued at £5million and over only]

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

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

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

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire, flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- b) the failure by any sub-contractor to perform its obligations under any sub-contract.

“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.

“General Anti-Abuse Rule” means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions. [For procurements valued at £5million and over only]

“Guarantee” means the deed of guarantee in favour of the Contracting Body entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Schedule 8 (Parent Company Guarantee) or such similar or analogous form acceptable to the Contracting Body from time to time).

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

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and

experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means any such goods as are to be supplied by the Contractor (or by the Contractor’s sub-contractor) under the Contract as specified in the Specification.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others. [For procurements valued at £5million and over only]

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

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause A3 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Installation Works” means, as the context so requires,

- a) collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or
- b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works

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

“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 of any Regulatory Body of which the Contractor is bound to comply.

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

“Month” means calendar month.

“Occasion of Tax Non-Compliance” (also occasion of non compliance) means

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

- an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
- (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or and equivalent or similar regime; and or

(b) the Contractor's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the contract start date or to a penalty for civil fraud or evasion. [For procurements valued at £5million and over only]

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

"Party" means a party to the Contract.

"Premises" means the location where the Goods are to be delivered and/or, where relevant, installed as set out in the Specification.

"Pricing Schedule" means the Schedule containing details of the Contract Price.

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

"Receipt" means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause A6.3 or at any other address given by the Authority to the Contractor for the submission of invoices.

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

"Relevant Tax Authority" means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Contractor is established. [For procurements valued at £5million and over only]

"Replacement Contractor" means any third party supplier appointed by the Authority to supply any goods which are substantially similar to any of the Goods and which the Authority receives in substitution for any of the Goods following the expiry, termination or partial termination of the Contract.

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

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

“Specification” means the description of the Goods to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the quantity of the Goods and any applicable Quality Standards; the location to which the Goods are to be delivered and, where relevant, installed; a description of any installation works to be carried out by the Contractor or any Staff; any equipment with which the Goods must be compatible; the date(s) and time(s) of delivery of the Goods and any necessary training or instruction to be given to the Authority by the Contractor in connection with the use or maintenance of the Goods.

“Specification Schedule” means the Schedule containing details of the Specification.

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

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

“Tender” means the document(s) submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply it with the Goods.

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

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

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

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and neuter;
- c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- d) references 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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

- e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Authority’s Obligations

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

A3 Initial Contract Period

The Contract shall take effect on the Commencement Date [TextReq insert Date], [TextOpt, only complete the Activity Date if it is later than the Commencement Date [and the Activity Date shall be [TextReq insert Date],

The Contract shall expire automatically on [TextReq insert Date], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A4 Contractor’s Status

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

A5 Notices

A5.1 Except as otherwise expressly provided within the 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.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), 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 A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 (two) 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 letters, facsimile transmission or item of electronic mail.

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

a) For the Authority:
Address: [TextReq]
For the attention of: [TextReq]
Tel: [TextReq]
Fax: [TextReq]
Email: [TextReq]

b) For the Contractor:
Address: [TextReq]
For the attention of: [TextReq]
Tel: [TextReq]
Fax: [TextReq]
Email: [TextReq]

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

A6 Inspection of Premises

Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

A7 Mistakes in Information

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

A8 Conflicts of Interest

A8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

A8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B. THE GOODS

B1 The Specification

The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification.

B2 The Goods

B2.1 If requested by the Authority, the Contractor shall provide the Authority with samples of Goods for evaluation and approval, at the Contractor's cost and expense.

B2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

B3 Delivery

B3.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification.

B3.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

B3.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

B3.4 **[ClauseOpt** Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.]

B3.5 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 (five) Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

B3.6 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

B3.7 **[ClauseOpt** Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or

remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.]

[InfoNote B3.8 Where service credits / KPIs are considered appropriate, insert relevant text here]

B4 Risk and Ownership

B4.1 Subject to clause B3.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B6 (Inspection, Rejection and Guarantee)), pass to the Authority at the time of delivery.

B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B6 (Inspection, Rejection and Guarantee)), pass to the Authority at the time of delivery (or payment, if earlier).

B5 Non-Delivery

On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within 10 (ten) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Authority (TextOpt or terminate the Contract in accordance with clause B3.4 (Delivery)).

B6 Inspection, Rejection and Guarantee

B6.1 The Authority or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and the Authority reserves the right to reject the Goods in accordance with clause B6.2.

B6.2 The Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to other rights and remedies) either:

a) have such Goods promptly, and in any event within 5 (five) Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause B6.2.

B6.3 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.

B6.4 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date [ValSug 18] Months thereafter against faulty materials or workmanship. If the Authority shall within such guarantee period or within 25 (twenty-five) Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall see fit) free of charge.

B6.5 Any Goods rejected or returned by the Authority as described in clause B6.2 shall be returned to the Contractor at the Contractor's risk and expense.

B7 Labelling and Packaging

The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B8 Training

Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

B9 Contract Performance

B9.1 The Contractor shall perform its obligations under the Contract:

- a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- b) in accordance with Good Industry Practice; and
- c) in compliance with all applicable Laws.

B9.2 The Contractor shall ensure that:

- a) the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
- b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
- c) the Goods conform in all respects with all applicable Laws; and
- d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

B10 Manner of Carrying out Installation Work

B10.1 The Contractor shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Authority's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Authority are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

B10.2 Any access to, or occupation of, the Premises which the Authority may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on the Premises as the Authority may reasonably request.

B10.3 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Contractor:

- a) accept the Installation Works, or
- b) reject the Installation Works and provide reasons to the Contractor if, in the Authority's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

B10.4 If the Authority rejects the Installation Works in accordance with clause B10.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the Installation Works do not, within **[ValSug 5]** Working Days, meet the requirements set out in the Specification, the Authority may terminate the Contract with immediate effect by notice in writing.

B10.5 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Authority in accordance with clause B10.3(a).

Notwithstanding acceptance of any Installation Works in accordance with that clause, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.

B10.6 Throughout the Contract Period, the Contractor shall:

- a) have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
- b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;
- c) not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

B10.7 On completion of any Installation Works the Contractor shall remove its plant, equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

B11 Property

B11.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B11.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 (five) Working Days of receipt.

B11.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B11.4 The Contractor shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods, in accordance with the Authority's reasonable security requirements as required from time to time.

B11.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within [ValSug 2]

Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

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

C1.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with the Contract.

C2 Payment and VAT

C2.1 The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt of a valid invoice, submitted monthly in arrears.

C2.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.

[InfoNote

C2.3 assumes an RM purchase order will be issued. If this is not the case, please amend ensuring the process developed is compliant with the Channel Strategy – Seek advice from Commercial Solutions.]

C2.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the work completed and Goods supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

C2.4 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.

C2.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.

C2.6 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.7 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in

accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (amended 2013).

C3 Recovery of Sums Due

[InfoNote – Consider the use of terminology to ensure that it is appropriate to the tender round].

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

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

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

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

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F7 (Extension of Initial Contract Period) the Authority shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

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

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

C5 Euro

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

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

[ClauseOpt C6 Change of Law

C6.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the provisions of the Contract nor be entitled to an increase in the Contract price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date.

C6.2 If a Specific Change in Law occurs during the Contract Period (other than those referred to in clause C.6.1), the Contractor shall notify the Authority of the likely effects of that change, including:

- (a) whether any modification is required to the Goods, the Contract Price or the Contract; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligations to achieve any milestones or to meet any service level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with clause C6.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause C6 shall be implemented in accordance with clause F3 (Variation).]

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

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

- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) commits any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority

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

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

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

D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Contractor must notify the Authority immediately.

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

D1.7 If the Contractor, its Staff or anyone acting on the Contractors behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may;

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

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

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

shall be determined by the Authority and its decision shall be final and conclusive.

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

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall:

- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;
- b) give all due consideration, where appropriate, to action other than termination of the contract.

D2 Prevention of Fraud

D2.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Contractors and sub-contractors are required to:

- a) Have an established system that enables Contractor and sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
- b) Ensure that Contractor or sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
- c) Ensure a segregation of duties within the Contractor's or sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Authority;

- d) Ensure that an audit system is implemented to provide periodic checks, as a minimum at [ValSug six] monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

D2.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or sub-contractors. The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

D2.3 If the Contractor, its Staff or its sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

D2.4 Any act of fraud committed by the 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 Contractor, by serving written notice on the Contractor.

D2.5 If the Authority finds that the Contractor has deliberately submitted false claims for Contract 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 Contractor, with immediate effect.

D3 Discrimination

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition D3.1.

D3.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D4 The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Right of Third Parties) Act 1999 and does not apply to the Crown.

D5 Environmental Requirements

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

D6 Health and Safety

D6.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

D6.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

D7 Requirements for Timber Derived Products

[InfoNote Clause D7 should only be used where timber and wood-derived products are specified in support of the services]

Government Departments are required to procure timber and wood-derived products originating from either legal and sustainable or FLEGT-licensed or equivalent sources, together with certain social criteria. Contact Commercial Policy & Process Team for more information.]

D8 Tax Compliance

[Info note D8 should only to be used for procurements which have or likely to have a value of £5million or over

D8.1 The Contractor represents and warrants that as at the contract start date, it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance

D8.2 If at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

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

Termination Rights due to any Occasion of Tax Non-Compliance

D8.3 In the event that:

- (a) the warranty given by the Contractor pursuant to Clause D8.1 is materially untrue; or
- (b) the Contractor commits a material breach of its obligations to notify the Authority of any Occasion of Tax Non-Compliance as required by Clause D8.2; or
- (c) the Contractor fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable

the Authority shall be entitled to terminate this agreement by giving a Termination Notice to the Contractor].

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E1.2 Notwithstanding the general obligation in clause E1.1, where the Contractor is processing personal data (as defined by the DPA) as a Data Processor for the Authority (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the

Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- i) provide the Authority with such information as the Authority may reasonably request to satisfy itself that the Contractor is complying with its obligations under the DPA;
- ii) promptly notify the Authority of any breach of the security measures to be put in place pursuant to this clause; and
- iii) ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

E2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

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

E2.2 In the event that the Contractor or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E3 Confidential Information

E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
- b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

E3.2 **[ConsReq select one of the following]** [Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants give a confidentiality undertaking before beginning work in connection with the Contract.] [The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.]

E3.3 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

E3.4 Nothing in clauses E3.1 to E3.3 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- a) for the purpose of the examination and certification of the Authority's accounts; or
- b) for the purpose of 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; or
- c) to any government department or any other Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may 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; or
- d) to any consultant, contractor or other person engaged by the Authority,

provided that in disclosing information under sub-paragraphs (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.5 Nothing in clauses E3.1 to E3.3 shall prevent either Party from:

- a) using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or
- b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

E3.6 In the event that the Contractor fails to comply with clauses E3.1 to E3.3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.

E3.7 Clauses E3.1 to E3.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E3.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E3.9 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods

under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses E3.1 to E3.3. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E3.10 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E3.8.

E3.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E3.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which the Authority considers is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.

E4 Freedom of Information

E4.1 The 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.

E4.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within [ValSug two] Working Days of receiving a Request for Information;

- a) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within [ValSug five] Working Days (or such other period as the Authority may specify) of the Authority's request; and
- b) 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.

E4.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 42) the Authority may, acting in accordance with the Ministry of Justice 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 Contractor or the Goods in certain circumstances:

- a) without consulting the Contractor; or
- b) following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause E4.

E5 Publicity, Media and Official Enquiries

E5.1 The Contractor shall not:

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

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

E5.2 Both parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E5.1.

E6 Security

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

E7 Contractor's Staff

E7.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- a) any member of the Staff; or

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

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

E7.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

E7.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

E7.4 [ConsReq. The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Goods. The Contractor confirms that all persons employed or engaged by Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures prior to commencing the installation of the Goods and accessing the Premises.]

E7.5 If the Contractor fails to comply with clause E7.2 within [ValSug 2] Months of the date of the request and in the reasonable opinion of the Authority such failure may be prejudicial to the interests of the Crown then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

E7.6 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause E7.2 shall be final and conclusive.

E8 Intellectual Property Rights

E8.1 Subject to E8.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

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

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

E8.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in

accordance with clause E8.1 (b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E8.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor in the performance of the Contract.

E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.

E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

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

E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the Authority; and
- c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement

or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5 (a) or (b).

E8.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Authority or the Contractor in connection with the performance of its obligations under the Contract.

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

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or
- (b) procure a licence to use and supply the Goods, which are the subject of the alleged infringement, on terms which are acceptable to the Authority, and in the event that the Contractor is unable to comply with clauses E8.10 (a) or (b) within [ValSug 20] Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

E8.11 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to use the Goods and exercise its rights and take the benefit of this Contract.

E9 Audit

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

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval.

Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

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

F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.

F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurred under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

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

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

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

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

F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the

Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- a) the rights of termination of the Authority in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

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

F2 Waiver

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

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

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

F3 Variation

F3.1 Subject to the provisions of this clause F3, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is thereafter called a "Variation".

F3.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:

- a) allow the Contractor to continue to fulfil its obligations under the Contract without the Variation to the Specification;
- b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Goods or where the Contractor can show evidence of substantial work being carried out to fulfil the requirement of the Specification, and in such case the Parties shall attempt to agree upon a resolution to the matter where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed in clause I2.

F4 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Liquidated Damages

F5.1 If the Contractor fails to deliver the Goods by the date(s) agreed, specified in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "Agreed Delivery Date"):

- a) the Contractor shall pay the Authority a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Authority, equal to **[[TextReq]]%** of the Contract Price for the relevant Goods, up to a maximum amount of **[[TextReq]]%** of the Contract Price for the relevant Goods ("Liquidated Damages Threshold"). Subject to clause F5.3, during the period in which liquidated damages are payable under this clause F5.1(a) ("Liquidated Damages Period") the liquidated damages payable in accordance with this clause F5.1(a) shall be the Authority's only remedy for any loss or damage suffered or incurred by the Authority in relation to the failure by the Contractor to deliver the Goods by the Agreed Delivery Date; and
- b) where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Authority shall be entitled to:

- i) claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
- ii) without prejudice to clause F5.1(b)(i), the Authority shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Contractor.

F5.2 The Contractor shall not be obliged to pay any sums pursuant to clause F5.1(a) if and to the extent the failure by the Contractor to deliver the Goods by the Agreed Delivery Date directly results from the Authority's Default provided that the Contractor notifies the Authority immediately of such circumstances in sufficient detail to enable the Authority to remedy the situation. Except as set out in this clause F5.2, no payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect its rights to liquidated damages pursuant to clause F5.1 or be deemed to be a waiver of the right of the Authority to recover any damages unless such waiver has been expressly made in writing by the Authority.

F5.3 Notwithstanding clause F5.1(a), the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Authority, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Authority whether by way of costs, reimbursement or otherwise.

F5.4 Having given careful consideration to this matter, all monies payable by the Contractor under clause F5.1(a) are considered by the Parties to be a genuine pre-estimate of the losses which the Authority will incur in relation to the Contractor's failure to deliver the Goods by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Authority in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Authority might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause F5. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

F5.5 Each Party confirms that (a) it has taken specific legal advice on the effect of this clause and (b) based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this clause will be unenforceable for any reason.

F6 Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be

exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Extension of Initial Contract Period

Subject to clause C4 (Price adjustment on extension of the Initial Contract Period), the Authority may, by giving written notice to the Contractor not less than [TextReq] Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to [TextReq] Month(s). The provisions of the Contract will apply (subject to any adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

F8 Entire Agreement

F8.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- a) the clauses of the Contract;
- b) the Schedules; and
- c) any other document referred to in the clauses of the Contract.

F9 Counterparts

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, indemnity and Insurance

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

- a) death or personal injury caused by its negligence; or
- b) Fraud; or
- c) fraudulent misrepresentation; or
- d) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in

consequence of, the supply, installation and/or commissioning of the Goods, or the late or purported supply, installation and/or commissioning of the Goods, or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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

G1.4 Subject always to clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed **[TextReq words]** million pounds **[TextReq figures]**; and
- b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses G1.4(a) or E8.5 (Intellectual Property Rights)) shall in no event exceed the greater of **[TextReq words (figures)]** or **[TextReq words]** per cent (**[TextReq figures]**%) of the Contract Price paid or payable by the Authority to the Contractor in the year in which the liability arises].

G1.5 Subject always to clause G1.1, in no event shall either Party be liable to the other for any:

- a) loss of profits, business, revenue or goodwill; and/or
- [TextOpt b)]** loss of savings (whether anticipated or otherwise); and/or
- [TextOpt b/c)]** indirect or consequential loss or damage.

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents that:

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- b) in entering the Contract it has not committed any Fraud;
- c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

- h) in the 3 years prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- i) 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.

[TextOpt G3 Parent Company Guarantee

For use only where the Department requires a Parent Company Guarantee to be in place

- a) On or about the effective date (and in any event no later than the first Commencement Date), the Contractor shall procure that the Guarantor shall:
 - i) execute and deliver to the Authority the Guarantee; and
 - ii) deliver to the Authority a certified copy of the board minutes of the Guarantor approving the execution of the Guarantee.
- b) In the event that the Contractor fails to comply with its obligations under this clause G3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.]

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on insolvency and change of control

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

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
- b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
- c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- d) the Contractor is unable to pay its debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or
- f) dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- g) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) months of:

- a) being notified that a change of control has occurred; or
- b) where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.

H2 Termination on Default

H2.1 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- b) the Default is not in the opinion of the Authority, capable of remedy; or
- c) the Default is a material breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

H3 Break

The Authority shall have the right to terminate the Contract at any time by giving [ValSub 3] Months' written notice to the Contractor.

H4 Consequences of Expiry or Termination

H4.1 Where the Authority terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Goods, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Goods supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Subject to clause G1, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).

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

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

H4.4 Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses B6 (Inspection, Rejection and Guarantee), C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.

H6 Recovery upon Termination

H6.1 On the termination of the Contract for any reason, the Contractor shall:

- a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods;
- b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under clause B11. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Contractor and/or the completion of any work in progress.
- d) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if

such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 (twenty) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [ValSug finance director (or equivalent)] of each Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act,

either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to [an appropriate mediation provider] to appoint a Mediator.

- b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from [an appropriate mediation provider] to provide guidance on a suitable procedure.
- c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- e) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts / [unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.]

I2.6 Subject to clause I2.2 the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:

- a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
- c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Authority may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to clause I2.6:

- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;

- b) the Authority shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
 - i) that the dispute is referred to arbitration; and
 - ii) providing details of the issues to be resolved;
- c) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- e) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- f) the arbitration proceedings shall take place in London and in the English language; and
- g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

FORM OF AGREEMENT

This agreement has been entered into on the date stated at the beginning of it

SIGNED for and on behalf of

The Secretary of State for Work and Pensions

SIGNED for and on behalf of

[TextReq; Contractor]

Name [TextReq]

Position [TextReq or leave further space to write]

Signature

Date [TextReq]

Name [TextReq]

Position [TextReq or leave further space to write]

Signature

Date [TextReq]

This leaflet is no longer current.
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SCHEDULE 1 – Specification

[**TextReq** insert description of the Goods to be supplied including, where appropriate, the quantity, Quality Standards, location for delivery/installation, any installation works, equipment with which the Goods must be compatible, date/time of delivery and any training/instruction for use].

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SCHEDULE 2 – Administration Requirements

1 Authority's Authorisation

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

Name; [TextReq]
Title; Authority's Representative

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

2 Contractor's Authorisation

2.1 The following person is the Contractor's Representative and is authorised to act on behalf of the Contractor on all matters relating to the Contract. Contact details are shown in clause A5.3.

Name; [TextReq]
Title; Contractor's Representative

[ClauseOpt 2.2 The following person is the Contractor's contract manager and is authorised to act on behalf of the Contractor on [ValSug all] matters relating to the Contract;

Name; [TextReq]
Title; Contract Manager]

3 Payment Information

[ConsReq Consider alongside para C2.2. This section assumes use of RM Purchase Order and will require amendment where an alternative compliant route is used.]

3.1 The Authority shall issue a purchase order to the Contractor prior to dispatch of the goods.

3.2 All invoices payable in compliance with the requirements of clause C2, must include the appropriate purchase order number shall be sent to the following address;

DWP
Shared Services
Purchase to Pay,
3rd Floor, Companies House
Crown Way
Maindy
Cardiff
CF14 3UW

Shared Services Helpline: 0845 602 8244

3.3 The following information is required independently of the invoice;

[InfoNote] Include details here on the information which needs to be provided for RM receipt action to be taken, for example, timesheets, MI on volumes for validation]

a) **[TextReq]**

b) **[TextReq]**

and shall be sent to the following person;

[TextReq Name]

[TextReq Address]

4 Disputed Claims

4.1 Notwithstanding paragraph 4.5 of this Schedule, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Contractor shall not signify 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.

4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the authority.

4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.

4.4 If any invoice rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.

4.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set off any amounts owed to it or which are in dispute or subject to question either in respect of the invoice for which payment is being made or any previous invoice.

5 Final Claims

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

[ConsReq SCHEDULE 3 – Monitoring Requirements]

1 Reviewing Contract Performance

1.1 The Contractor shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified in Schedule 1.

1.2 The Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor's management and delivery of it.

1.3 The Contractor shall supply information requested relevant to the delivery of the Goods to the Authority, using formats and to timescales specified by the Authority in Appendix B.

1.4 The Authority intends, wherever it can, to capture and collate information through its IT system(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.

1.5 Any additional requests for information shall be considered in consultation with the Contractor as shall the process of defining the methods of collection.

1.6 Where an ongoing, short term or one off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule 3.

1.7 The 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 customers and stakeholder, change control procedures and the prompt resolution of any problems. The Authority will agree with the Contractor day-to-day relationship management, contact points, communication flows and escalation procedures. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.

1.8 Review meetings between the Authority and the Contractor shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.

1.9 The Authority may undertake spot checks at any time to ensure that the Contractor is complying with its obligations under this Contract and the Contractor shall co-operate fully, at its own cost, with the Authority.

2 Access

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

3 Health and Safety Responsibilities of the Authority Visiting Officers

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

4 Diversity and Equality

4.1 The Authority will review the Contractor's Diversity and Equality Delivery Plan when originally submitted by the Contractor in accordance Schedule 6 and at least annually thereafter. The Authority can request full policy/procedure documents at any time throughout the Contract.

5 Sustainable Development

5.1 The Authority will review the Contractor's Sustainable Development Policy Statement and Sustainable Development Plan when submitted by the Contractor in accordance with Schedule 6 and at least annually thereafter.

5.2 Sustainable Procurement Risk Assessment Methodology (SPRAM) is a tool used by the Authority to identify and mitigate any potential risks to sustainability in contracts. The process requires that each Contract be assessed for its potential social, economic and environmental risks, throughout the various stages of its lifetime. Where risks are identified, appropriate mitigation action is required to reduce or eliminate the risk to sustainability. The Authority may at times require input from the Contractor in order to ensure that this process is given the required levels of consideration.

6 [Annual Financial Assurance Declaration ConsReq for contracts over £50,000]

6.1 The Authority will review the Contractor's financial information when submitted by the Contractor in accordance with Appendix C of this Schedule 3.

[ValSug Appendix A – Contractor’s Performance Review Table]

The following definitions shall be used to determine the standard rating scale for the Performance Index rating in the Contractor’s Performance Review Table: -

4	High Standard	Sometimes exceed and consistently achieves the required standard Very few weaknesses Limited management support needed.
3	Acceptable Standard	Meets required standard Few weaknesses Some management support needed.
2	Below Standard	Usually meets, but sometimes fails to meet required standard Some weaknesses Considerable management support needed.
1	Failure	Cannot meet required standard without excessive management support Many weaknesses.

Contractor’s Performance Review Table

Date	Description	Score	Remarks
------	-------------	-------	---------

**TOTAL
Comments**

Signed	for	the	Date
Authority			
Signed	for	the	Date
Contractor			

[ValSug Appendix B – Key Performance Indicators/Contract Performance Targets]

[TextReq Insert details of Key Performance Indicators & contract performance targets]

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Find up to date information on GOV.UK

Appendix C – Annual Financial Assurance Declaration

Where the Contractor has more than one contract with the Department the information and returns detailed in this section will only be required at an organisational level not contract level.

1 Financial information required on an ongoing basis and annual basis

- 1.1 The Contractor is required to disclose material changes to the organisation that impact on the ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.
- 1.2 The Contractor is required to notify the Authority immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Contractor's financial viability.
- 1.3 The Contractor confirms its compliance with clauses 1.1 and 1.2 by completing and returning the Annual Assurance Declaration (Annex 2) to: CDFINANCE.FVRA@DWP.GSI.GOV.UK

2 Financial Assurance Documents

- 2.1 The Contractor is required to provide the documents detailed at 2.2.1 – 2.2.5 if requested by The Authority.
- 2.2 If requested so by The Authority, where a Parent Company Guarantee has been provided, the Contractor is required to provide the documents detailed below (2.2.1 – 2.2.5) for the Parent Company, including a translation and conversion (Profit and Loss, Balance Sheet and key Balance Sheet Notes) into £GB if necessary, stating the conversion rate used.

2.2.1 Annual Accounts – A copy of the final audited financial statements including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within the 10 Months of the end of the accounting period, as per the deadline imposed by Companies House, for Contractors registered in the UK. Where Contractors are not registered with Companies House, they must forward the information detailed in Annex 1. Where Annual Accounts are not signed off, we may request a copy of the latest Financial Year Draft Accounts prior to Annual Accounts being signed off. The draft accounts should include Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the Accounts.

2.2.2 Annual Return – A copy of the Annual Return form AR01 submitted to Companies House for Contractors registered in the UK. Where Contractors are not registered with Companies House, they must forward the information detailed in Annex 1.

- 2.2.3 **Forecast Accounts** - A copy of the latest Forecast Accounts including Balance Sheet and Profit and Loss Account with associated accounting policies and notes to the accounts for the year following the accounts submitted in 1 above.
- 2.2.4 **Current Borrowing** – A statement of current borrowing against lending limits and terms including review and renewal dates (including overdrafts, loans and mortgages). Disclosure of any material changes to the borrowing potential of the organisation, bank overdraft facility etc.
- 2.2.5 **Supply Chain Monitoring** - A copy of the supply chain monitoring process, which should include details of the process for monitoring the financial viability of the supply chain (including timing), together with any known risks to supply chain stability and material changes to the supply chain. This should include extracts from Board level meetings, risk registers etc where any of the above items have been discussed.

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Annex 1

1 Information from Contractors who are not required to submit form AR01 to Companies House

1.1 Where Contractors are not required to submit form AR01 to Companies House, they must supply a copy of the Annual Accounts as appropriate for the Country in which they are registered, including Balance Sheets and Profit and Loss Accounts with associated accounting policies and notes to the accounts within the 10 months of the end of the accounting period, together with the following information:

- Organisation name in full
- Registered Company number (if any)
- Annual Return made up date
- Principal Business Activities – give a brief description of your business activities
- Company Type e.g. Public or Private
- Registered Office Address of the Organisation
- The address where the organisation keeps company records if not at the Registered Office
- The name and address of the company secretary, where applicable
- For all Company Directors provide details including name, country/state of residence, nationality, date of birth and business occupation of all the company's directors

1.2 If the company has share capital, the annual return must also contain:

- Information about the issued share capital; and
- Details of the shareholders.

Annex 2

Annual Contractor Financial Assurance Declaration

Contractor's name.....

Contractor's address.....

1. We enclose the following documents for DWP –

Document Required

Explanation if not supplied

Annual Accounts

Annual Return

Forecast Accounts

Current Borrowing

Supply Chain Monitoring

2. We declare that the information supplied to the Authority provides a complete, true and fair view of the Organisation's financial position and performance for the year ending

3. We have declared to DWP any proposed changes to the control or structure of the Organisation, proposed mergers or acquisitions, or any changes to the Organisation's Financial Viability. We have disclosed any material changes to borrowing potential overdraft facility. We have disclosed to DWP our supply chain monitoring process and any material changes to our supply chain.

Signed.....

Name.....

Position in Organisation.....

On behalf of.....

Date.....

SCHEDULE 4 – Prices and Rates

1 General

1.1 For the delivery of the Goods, the Contractor shall be paid the Contract Price calculated using the prices and rates entered in this Schedule 4.

[TextReq Include appropriate information in this Schedule]

This leaflet is no longer current.
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SCHEDULE 5 – Commercially Sensitive Information

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

[TextReq Insert information supplied by the Contractor within their proposal]

Document	Page Number	Section	Condition paragraph number	or	Explanation of harm which may result from disclosure and time period applicable to any sensitivity
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2 The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.

3 The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at Clause E4 of this Contract.

4 The Authority will automatically publish all information provided by the Contractor not identified in this Schedule as constituting Commercially Sensitive Information.

5 The Authority reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

[TextOpt SCHEDULE 6 – Sustainable Development requirements
InfoNote For use only where the contract is longer than 6 months

This schedule sets out the Sustainable Development Requirements which are applicable to the delivery of the Contract.

1. General

1.1 The Contractor acknowledges that the Authority must at all times be seen to be actively promoting Sustainable Development.

1.2 In delivering the Contract, the Contractor shall and shall procure that its Sub-contractors assist and cooperate with the Authority, by fully complying with the requirements of this Schedule 6

2. Compliance

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

2.2 In delivering the Contract, the Contractor shall prepare a Sustainable Development Policy Statement giving, for each organisation involved in delivery of the contract:

- a) full assurance of waste disposal by a registered waste collector in accordance with current government regulations; and
- b) full assurance of the observation of Waste Electrical and Electronic Equipment (WEEE) regulations.

2.3 In delivering the Contract, the Contractor shall prepare a Sustainable Development Plan which as a minimum, detail how each organisation involved in delivery of the contract will:

- a) minimise waste produced and promote recycling;
- b) minimise energy consumption;
- c) minimise use of transport and promote use of public transport where transport is unavoidable;

Also required for each organisation are:

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

[TextOpt SCHEDULE 7 – Diversity and Equality requirements
InfoNote For use only where the contract is longer than 6 months

1. General

- 1.1 The 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 from the protected characteristic groups covered by the Equality Act: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Contractor must ensure that each of its Sub-contractors involved in delivery of the contract are aware of, and acknowledge, that the Authority has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Contractor shall, and shall procure that its Sub-contractors, assist and cooperate with the Authority in satisfying Equality duties by fully complying with the requirements of this Schedule 7.

2. Compliance

- 2.1 The Contractor acknowledges the provisions of the equality legislation set out in clause D2 (Discrimination).
- 2.2 The Contractor shall produce a Diversity and Equality Delivery Plan in accordance with paragraph 2.5 (and sub paragraphs) and paragraph 2.6 (and sub paragraphs) of this Schedule 7, within six (6) Months of the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract.
- 2.3 The Contractor will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule 7, within six (6) Months of the Commencement Date and annually thereafter.
- 2.4 The Authority will consider and agree the submissions made by the Contractor when complying with paragraph 2 (and sub paragraphs of paragraph 2) and paragraph 3 (and sub paragraphs of paragraph 3) of this Schedule 7. Any issues will be raised with the Contractor by the Contract Manager acting on behalf of the Authority. If an issue relates to a Sub-contractor, the Contractor must raise and resolve the issue with the Sub-contractor. Once submissions are agreed by the Authority the Contractor will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and Equality aspects will also be discussed jointly by the Authority and the Contractor as an ongoing item at the Contract review meetings.
- 2.5 In delivering the Services, the Contractor shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:
- a) an overview of Contractor and any Sub-contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - i) Age;
 - ii) Disability;

- iii) Gender reassignment;
 - iv) Marriage and civil partnership;
 - v) Pregnancy and maternity;
 - vi) Race;
 - vii) Religion or Belief;
 - viii) Sex; and
 - ix) Sexual orientation.
- b) An overview of Contractor and any Sub-contractor's policy/policies and procedures covering:
 - i) Harassment
 - ii) Bullying
 - iii) Victimisation
 - iv) Recruitment procedures
 - v) Staff training and development

Full policy documents must be made available to the Authority on request;
- c) Details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- d) Details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- e) Details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Contractor and any Sub-contractor's organisation; and
- f) Details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Contractor and any Sub-contractors.

2.6 In delivering the Services, the Contractor shall provide evidence, as required below, within the Diversity and Equality Delivery Plan as detailed at paragraph 2.2 of this Schedule 7:

- a) Where a Contractor is delivering Services to customers on behalf of the Authority or Services to the Authority's staff, the Contractor must provide written evidence that:
 - i) Equality Analysis has been carried out in conjunction with the Authority prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with equality legislation;
 - ii) reasonable adjustments are made, as required by equality legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Authority's standards;
 - iii) all Staff have had appropriate training so that they understand the duties required by equality legislation, and where Services are being delivered on behalf of the Authority, the Contractor shall provide evidence that Staff understand the duties not to discriminate and to promote equality, in accordance with equality legislation.

- 2.7 The Authority may request further information and assurance relating to Diversity & Equality at any point during the duration of the Contract.

3. Monitoring and Reporting

- 3.1 The Contractor shall provide workforce monitoring data as detailed in paragraph 3.2 of this Schedule 8. A template for data collected in paragraphs 3.2, 3.3 and 3.4 can be found in the supporting document, Diversity and Equality Requirements – Guidance for Contractors, or can be provided by the Authority on request. Completed templates for the Contractor and each Sub-contractor will be submitted by the Contractor with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date and annually thereafter. Contractors are required to provide workforce monitoring data for the workforce involved in delivery of the Contract. Data relating to the wider Contractor workforce and wider Sub-contractors workforce would however be well received by the Authority. Contractors and any Sub-contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

- 3.2 The Contractor and Sub-contractors will each provide separate information detailing:

- a) the proportion of employees who are:
- i) female; and/or
 - ii) disabled
 - iii) those who prefer not to state gender and/or disability

- b) the proportion of Staff who in terms of ethnicity are:

White

- i) English/Welsh/Scottish/Northern Irish/British Irish;
- ii) Gypsy or Irish Traveller;
- iii) Any other white background

Mixed/Multiple Ethnic Groups

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) Any other mixed/multiple ethnic background

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) Chinese;
- xii) Any other Asian background

Black/African/Caribbean or Black British

- xiii) African;
- xiv) Caribbean;
- xv) Any other Black/African/Caribbean background

Other ethnic group

- xvi) Arab;
- xvii) Any other ethnic group

Prefer not to state

- xviii) Prefer not to state ethnicity

For the avoidance of doubt, the eighteen (18) percentage figures submitted under categories i) to xviii) of this paragraph 3.2(b) (in each template in respect of the Contractor's employees and each Sub-contractors employees)

should total one hundred percent (100%). These ethnicity categories are those used by the Office of National Statistics based on the 2011 UK Census.

- c) The Contractor will provide details of the proportion of its Sub-contractors that are:
- i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and which have an annual turnover not exceeding fifty (50) million euro, and/or an annual balance sheet total not exceeding forty-three (43) million euro);
 - ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule 8; and
 - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black, African, Caribbean or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black, African, Caribbean or Black British ethnic group). For this purpose, the Black, African, Caribbean or Black British ethnic group has the meaning referred to at categories xiii) to xv) in paragraph 3.2(b) of this Schedule 7.

For the avoidance of doubt, any given Sub-contractor may fall into one (1), two (2) or all of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule 7, depending on its composition.

- 3.3 The Contractor and any Sub-contractors will compare their figures, in all categories listed in paragraphs 3.2(a) & 3.2(b) of this Schedule 8, and provide (where possible) comparisons against any official national/regional statistics that are publicly available. (In the Diversity & Equality guidance for contractor's document there are links to a number of data collection sources but it must be stressed this is not a full exhaustive list and other sources will be available). The Department acknowledges that there are regional variations in terms of population demographics and some data categories and coverage may not be complete or fully align, however, it should enable high level analysis and identification of trends.
- 3.4 The Contractor and any Sub-contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a) & 3.2(b) of this Schedule 7.
- 3.5 The Contractor shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.

[TextOpt Schedule 8 Parent Company Guarantee
[InfoNote To be inserted when instructed by CD Finance Team]

DATED

PARENT COMPANY GUARANTEE

between

THE SECRETARY OF STATE FOR WORK AND PENSIONS

and

[INSERT NAME OF PARENT COMPANY]

THIS DEED is dated

[DATE]

PARTIES

- (1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** whose address is Caxton House, Tothill Street, Greater London, SW1H 9NA (**"the Authority"**); and
- (2) **[INSERT NAME OF PARENT COMPANY]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**"the Guarantor"**).

BACKGROUND

- (1) By an agreement dated on or about the date of this guarantee (**"the Contract"**), which term includes all amendments to, variations of, or supplements to such agreement, from time to time in force), the Authority has agreed to engage **[INSERT NAME]** (**"the Contractor"**) to deliver **[INSERT DETAILS]**.
- (2) It is a condition of the Contract **[being awarded to the Contractor]** that the Contractor procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this guarantee.
- (3) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor.
- (4) It is the intention of the parties that this document be executed as a deed.

AGREED TERMS

1. Interpretation

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

2. Obligations Of The Guarantor

- 2.1 In consideration of the Authority entering into the Contract with the Contractor, the Guarantor agrees:
 - 2.1.1 as primary obligor, to guarantee to the Authority the due and punctual performance by the Contractor of each and all of the obligations, representations, warranties, duties and undertakings of the Contractor under and pursuant to the Contract when and if such obligations, representations, warranties, duties and undertakings shall become due and performable according to the terms of the Contract;
 - 2.1.2 in addition to its obligations set out in Clause 2.1.1, to indemnify the Authority against all losses which may be awarded against the Authority or which the Authority may otherwise incur arising out of, under or otherwise in connection with the Contract whether arising under statute, contract or at common law including without limitation

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

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

3. Liability

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

3.1.1 any arrangement made between the Contractor and the Authority;

3.1.2 any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in Clause 4 or otherwise;

3.1.3 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;

3.1.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;

3.1.5 any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Contractor's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;

3.1.6 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or

3.1.7 the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

4. Addendum Or Variation

4.1 The Guarantor by this guarantee authorises the Contractor and the Authority to make any addendum or variation to the Contract, the due and punctual performance of which addendum and variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this guarantee.

5. Guarantee

5.1 This guarantee shall be a primary obligation of the Guarantor and accordingly the Authority shall not be obliged before enforcing this guarantee to take any action in any court or arbitral proceedings against the Contractor, to make any claim against or any demand of the Contractor, to enforce any other security held by it in respect of the obligations of the Contractor under the Contract or to exercise, levy or enforce any distress, diligence or other process of execution against the Contractor. In the event that the Authority brings proceedings against the Contractor, the Guarantor shall be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

5.2 This guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by the Contractor, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Contractor under the Contract have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

6. Outstanding Payments

6.1 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, the Guarantor shall not as a result of this guarantee or any payment or performance under this guarantee be subrogated to any right or security of the Authority or claim or prove in competition with the Authority against the Contractor or any other person or demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be held by the Guarantor in trust for and shall be promptly paid to the Authority.

6.2 The Guarantor shall not hold any security from the Contractor in respect of this guarantee and any such security which is held in breach of this provision shall be held by the Guarantor in trust for and shall promptly be transferred to the Authority.

6.3 Until all amounts which may be or become payable under the Contract or this guarantee have been irrevocably paid in full, if (notwithstanding the provisions of Clause 6.1 and Clause 6.2) the Guarantor has any rights of subrogation against the Contractor or any rights to prove in a liquidation of the Contractor, the Guarantor agrees to exercise such rights in accordance with the directions of the Authority.

7. Change Of Control

7.1 The Guarantor shall not be discharged of its obligations under this Guarantee in the event there is a change of control of the Contractor within the meaning of section 416 of the Income and Corporation Taxes Act 1988, save unless the Authority gives its prior written consent to an assignment of the guarantee by the Guarantor to another entity of comparable financial standing.

8. Payment And Expenses

8.1 Each payment to be made by the Guarantor under this guarantee shall be made in pounds sterling, free and clear of all deductions or withholdings of any kind,

except for those required by law, and if any deduction or withholding must be made by law, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this guarantee from the day after the date on which payment was due up to and including the date of payment in full (whether before or after judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

8.3 The Guarantor shall reimburse the Authority for all legal and other costs (including VAT) incurred by the Authority in connection with the enforcement of this guarantee.

9. Settlement

9.1 Any settlement or discharge between the Authority and the Contractor and/or the Guarantor shall be conditional upon no settlement with security or payment to the Authority by the Contractor or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation (or the time being in force and accordingly (but without limiting the Authority's other rights hereunder) the Authority shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the Authority has placed upon such settlement or security or the amount of any such payment.

10. Warranties

10.1 The Guarantor warrants and confirms to the Authority that:

10.1.1 it is duly incorporated with limited liability and validly existing under the laws of England;

10.1.2 it has full power under its memorandum and articles of association or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;

10.1.3 it has full power to perform the obligations expressed to be assumed by it or contemplated by this guarantee;

10.1.4 it has been duly authorised to enter into this guarantee;

10.1.5 it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;

10.1.6 this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

10.1.7 all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained; and

10.1.8 it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances,

regulations, rules, decrees, awards, permits or orders which may affect its ability to perform under this guarantee.

10.2 The Guarantor warrants and undertakes to the Authority that it will take all necessary action directly or indirectly to perform the obligations expressed to be assumed by it or contemplated by this guarantee and to implement the provisions of this guarantee.

10.3 The Guarantor warrants and confirms to the Authority that it has not entered into this guarantee in reliance upon, nor has it been induced to enter into this guarantee by any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this guarantee.

11. Assignment

11.1 The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

12. Notices

12.1 Any notice to or demand on the Guarantor to be served under this guarantee may be by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter) to the Guarantor at its address appearing in this guarantee or at such other address as it may have notified to the Authority in accordance with this Clause 12.

12.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 (two) 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 letters, facsimile transmission or item of electronic mail.

13. Waiver

13.1 No delay or omission of the Authority in exercising any right, power or privilege under this guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Authority provided for in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

13.2 A waiver given or consent granted by the Authority under this guarantee will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

13.3 A waiver by the Authority shall not constitute a continuing waiver and shall not prevent the Authority from subsequently enforcing any of the provisions of this guarantee.

14. Severability

14.1 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this guarantee.

15. Contracts (Rights Of Third Parties) Act 1999

15.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this guarantee is not intended to, and does not, give to any person who is not a party to this guarantee any rights to enforce any provisions contained in this guarantee except for any person to whom the benefit of this guarantee is assigned or transferred in accordance with Clause 11.

16. Governing Law

16.1 This guarantee and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) is governed by and shall be construed in accordance with English law.

16.2 The Guarantor submits to the exclusive jurisdiction of the English courts for all purposes relating to this guarantee and any disputes or claims arising out of, or in connection with, its subject matter or formation (including non-contractual disputes or claims) [and the Guarantor irrevocably appoints [INSERT NAME] as its agent for service of process.

17. Entire Agreement

17.1 This guarantee contains the whole agreement between the parties relating to the transactions contemplated by this guarantee and supersedes all previous agreements between the parties relating to the subject matter of this deed.

17.2 Each party acknowledges that in entering into this guarantee it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this guarantee and the documents referred to in it) made by or on behalf of any other party before the date of this guarantee. Each party waives all rights and remedies which, but for this Clause 17.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

17.3 Nothing in Clause 17.2 limits or excludes any liability for fraud.

This deed has been entered into on the date stated at the beginning of it.

Executed as a deed by:

[NAME OF GUARANTOR] acting by [NAME OF FIRST DIRECTOR], a Director

and

[NAME OF SECOND DIRECTOR OR SECRETARY], [a Director OR its Secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]

Director

Date of Signature.....

.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director OR Secretary]
Date of Signature.....

Executed as a deed by
The Department for Work and Pensions

Signed by

.....
Name
[NAME OF SENIOR RESPONSIBLE OFFICER]

.....
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
.....]

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**[TextOpt SCHEDULE 9 – Apprenticeships and Skills Requirements
InfoNote For use only where the contract is longer than 6 months]**

[ConsReq]This Schedule sets out the Apprenticeships and Skills Requirements which are applicable to the provision of the Contract.

1. General

1.1 Government is committed to addressing skills issues and promoting training opportunities through procurement, to maximise the potential for improvements provided by its considerable spend.

1.2 Supporting apprenticeships, skills and the fight against youth unemployment will support and drive economic growth.

1.3 The Contractor acknowledges that the Authority is required to support the above apprenticeships and skills aims and targets.

1.4 In delivering the Contract, the Contractor shall and shall procure that its Sub-contractors assist and cooperate with the Authority by fully complying with the requirements of this Schedule 9.

2. Compliance

2.1 The Contractor shall and shall procure that its Sub-contractors take all reasonable steps to employ apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during delivery of the Contract.

2.2 The Contractor shall and shall procure that its Sub-contractors shall take all reasonable steps to ensure that 5% of their employees are on a formal apprenticeship programme. This can include administration and support staff.

2.3 The Contractor shall and shall procure that its Sub-contractors make available to employees information about the Government's Apprenticeship Programme and wider skills opportunities.

2.4 The Contractor shall and shall procure that its Sub-contractors provide any appropriate further skills training opportunities for employees involved in delivery of the Contract.

2.5 The Contractor will produce an Apprenticeships and Skills Report in accordance with paragraph 3 (and sub-paragraphs) of this Schedule 9.

3. Monitoring and reporting

3.1 The Contractor shall provide an Apprenticeships and Skills Report within six (6) months of the Commencement Date and [ValSug annually] thereafter. The Apprenticeships and Skills Report must be specific to the Contract and include details for all Sub-contractors involved in delivery of the Contract. The Contractor must obtain the required information from Sub-contractors and collate and submit an Apprenticeships and Skills Report that relates specifically to the Contract.

The Apprenticeships and Skills Report will include:

- a) the number of Staff during the reporting period involved in delivery of the Contract, including administration and support staff;
- b) the number of existing apprentices involved in the delivery of the Contract;
- c) the number of new starts on apprenticeships initiated as a result of delivery of the Contract;
- d) if applicable, a robust explanation as to why it is not possible to meet the 5% target. (It may be that use of apprentices is not possible or appropriate in delivery of the Contract);
- e) action being taken to improve the take up of apprenticeships. These could include issuing leaflets on apprenticeships to eligible existing staff, advertising apprenticeship vacancies with local Jobcentre Plus, schools and colleges, offering apprenticeships in administration/support roles or seeking advice from the National Apprenticeship Service; and
- f) other training/skills development being undertaken by staff involved in delivery of the Contract including:
 - i) Work experience placements for 14 to 16 year olds
 - ii) Work experience/work trial placements for other ages
 - iii) Student sandwich/gap year placements
 - iv) Graduate placements
 - v) Vocational training
 - vi) Basic skills training
 - vii) On site training provision/facilities.

3.2 The Contractor shall, and shall procure that its Sub-contractors will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Authority.