

DWP STANDARD TERMS AND CONDITIONS

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A. GENERAL PROVISIONS

A1 Definitions and Interpretation

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

“Approval” means the written consent of the Authority.

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

“Authority Data” means

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

“Benefit” means state welfare benefits which are administered or delivered by the Department for Work and Pensions and its executive agencies.

“Breach of Security” means the occurrence of unauthorised access to or use of the Authority Premises, the Sites, the Services, the Contractor System or any ICT or data (including the Authority's Data) used by the Authority or the Contractor in connection with this Agreement.

“Commencement Date” means the date of the Contract.

“Commercially Sensitive Information” means the Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

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

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means:

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA and
- (b) the Commercially Sensitive Information and does not include any information:
 - (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
 - (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - (iv) is independently developed without access to the Confidential Information.

“Contract” means the written agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, and any document referred to herein.

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

“Contract Management Team” means the authority’s personnel responsible for managing the Framework.

“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 A2 (Initial Contract Period), or
- (b) following an extension pursuant to clause F10 (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 C4 (Price Adjustment on Extension of Initial Contract Period).

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

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

“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.

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

“Fees Regulations” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

“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 Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“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.

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

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

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” means those persons named in the Specification as being key personnel.

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

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Participant” means the person(s) on the Programme(s)/Services run by the Contractor and directly receiving the services specified in this Contract.

“Participant’s records” means the records prepared and maintained by the Contractor (in whatever form or storage media) concerning an individual Participant.

“Party” means a party to the Contract.

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

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

“Project” means the Research Project being undertaken by the Authority.

“Project Manager” means the person appointed by the Contractor.

“Project Staff” means the person(s) appointed by the Authority who are responsible for all aspects of the project/assignment.

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

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for 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.

“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.

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

“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).

“Results” means the results of the evaluation of the Project (expressed in any form or media) or any distinct part of the Project.

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

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 of Schedule 4 Security Requirements and Plan, an outline of which is set out in Appendix 1 of Schedule 4.

“Security Policy” means the Authority’s security policy annexed to Schedule 4 Security Requirements and Plan as updated from time to time.

“Security Tests” means the meaning as set out in paragraph 4.1 of Schedule 4 Security Requirements and Plan.

“Services” means the services to be supplied as specified in the Specification.

“Set-Off” means as defined in clause F6.

“Specification” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule.

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

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

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

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

“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 Services.

“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 general business in the City of London.

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

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;

- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) Reference 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) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on 30 June 2011 unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F10 (Extension of Initial Contract Period).

A3 Contractor's Status

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in 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.

A4 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.

A5 Entire Agreement

A5.1 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.

A5.2 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:

- (1) the clauses of the Contract;
- (2) the Schedules; and
- (3) any other document(s) referred to in the clauses of the Contract.

A5.3 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

A6 Notices

A6.1 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.

A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A6.3 For the purposes of clause A6.2, the address of each Party shall be:

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

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

A6.4 Either Party may change its address for service by serving a notice in accordance with this clause.

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 Services 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.

- A8.3 This clause shall apply during the continuance of the Contract and for a period of 2 years after its termination.

A9 Prevention of Fraud

- A9.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.
- A9.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- A9.3 If the Contractor or its Staff 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 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 this clause.

A10 Volumes

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

B. SUPPLY OF SERVICES

B1 The Services

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services unless specified otherwise.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and

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

B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the 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 thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

B2.7 The Authority may at its option purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.

B3 Manner of Carrying Out the Services

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

B3.2 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises. The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

B3.3 The Contractor shall be responsible for ensuring that his employees and sub-contractors (and their respective employees) are not claiming any Benefit, where payment of that Benefit is precluded due to earnings.

B3.4 The Contractor shall further use all reasonable endeavours to ensure that its employees and sub-contractors (and their respective employees) who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work

permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this Condition.

- B3.5 The conduct of the Contractor (and its Sub-Contractors) in performing the Services shall be subject to the standards laid down by the relevant professional bodies, including where appropriate the Codes of Practice of the Social Research Association; the Market Research Society; the Department of Health guidance "Local Research Ethical Committees" issued under cover of HSG (91) 5 and the guidelines contained in DWP Doing the Right Thing
- B3.6 The Local Research Ethics Committee of each Health District within those areas the Project is being carried out must be consulted about any primary research project involving:
- (a) NHS patients including those treated under contract with private sector providers;
 - (b) access to the records of past and present NHS patients; and
 - (c) the use of, or potential access to, NHS premises or facilities.
- B4 Key Personnel**
- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority.
- B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- B5 Contractor's Staff**
- B5.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff, whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- B5.2 At the Authority's written request, the Contractor shall provide a list of the names and 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.
- B5.3 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.
- B5.4 If the Contractor fails to comply with clause B5.2 within [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.
- B5.5 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 B5.2 shall be final and conclusive.
- B6 Licence to occupy Premises**
- B6.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B6.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B6.3 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the

Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B6.4 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B7 Property

B7.1 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 upon 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.

B7.2 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 Working Days of receipt.

B7.3 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.

B7.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

B9 Offers of Employment

For the duration of the Contract and for a period of 12 months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been

associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 The Contract Price will be subject to annual reviews on each anniversary of the Commencement Date. Price reviews shall be based on the price indexes as specified in the Pricing Schedule.

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

C1.3 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of Law clause C6 (Change of Law) shall apply.

C2 Payment and VAT

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

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

C2.3 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.

C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following its receipt of a valid VAT invoice.

C2.5 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 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.6 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

C3 Recovery of Sums Due

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

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

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

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

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F10 (Extension of Initial Contract Period), the Authority may, where applicable, 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 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 6 Months before the end of the Initial Contract Period.

C5 Euro

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

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

D1.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor's 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.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.

D3 The Contracts (Rights of Third Parties) Act 1999

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

D4 Environmental Requirements

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

D5 Health and Safety

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

- D5.2 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.
- D5.3 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.
- D5.4 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.
- D5.5 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.

D6 Criminal Records Bureau

- D6.1 The Contractor shall ensure that in respect of all potential Staff or persons supplying any of the Services (each a “**Named Employee**”) before a Named Employee enters the Premises:
- (a) each Named Employee is questioned as to whether he has any convictions; and
 - (b) the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:
 - (i) a search of the list held pursuant to the Protection of Children Act 1999 where the supply of the Services may involve contact with children; and/or
 - (ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the supply of the Services may involve contact with vulnerable adults (as defined in that Act); and
 - (c) a copy of the results of such check are notified to the Authority.
- D6.2 The Contractor shall ensure that no person who discloses any convictions, or who is found to have any convictions following the

results of a Criminal Records Bureau check, is employed or engaged by the Contractor or on the Contractor's behalf without prior Approval (such Approval not to be unreasonably withheld or delayed).

- D6.3 The Contractor shall ensure that the Authority is notified of any person who, subsequent to his commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the supply of the Services). The Parties agree that where such notification is made it shall be reasonable for the Authority to withhold access to the Premises from the member of Staff concerned, pursuant to clause B5 (Contractor's Staff).

E PROTECTION OF INFORMATION

E1 Authority Data

- E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.
- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the **Business Continuity and Disaster Recovery Plan**. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than one monthly intervals.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- E1.7 If the Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Authority may:

(i) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Data or Personal Data and the Contractor shall do so as soon as practicable but not later than 5 working days; and/or

(ii) itself restore or procure the restoration of the Data or personal Data, and shall be Set-Off against the Contract Price any reasonable expenses incurred in doing so.

E1.8 If at any time the Contractor suspects or has reason to believe that the Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E1.9 All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

It is the supplier's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.

Failure to comply with any of these policies or standards could result in termination of contract.

E2 Protection of Personal Data

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

E2.2 The Contractor shall:

(a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Contractor during the Term);

(b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

(c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against

accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (d) take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- (e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or agents for the provision of the Services;
- (f) ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- (g) ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- (h) notify the Authority (within five Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that Person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and

- (iv) providing the Authority with any information requested by the Authority;
- (j) permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;
- (k) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- (l) not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (l) any reasonable instructions notified to it by the Authority.

E2.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

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

E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

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

E3.2 In the event that the Contractor or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E4 Confidential Information

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

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

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

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- (e) it is independently developed without access to the other party's Confidential Information.

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

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

- E4.5 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Agreement.
- E4.6 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- (a) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;
 - (b) to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
 - (c) for the purpose of the examination and certification of the Authority's accounts; or
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.8 Nothing in this clause E4 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- E4.9 In the event that the Contractor fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4.11 The Authority reserves the right to have access to and to use Material compiled during the course of any Project and will respect existing guidance on confidentiality of any Material, which it obtains.

E5 Freedom of Information

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

E5.2 The Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E5) the Authority may, acting in accordance with the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

- (a) in certain circumstances without consulting the Contractor;
or

- (b) following consultation with the Contractor and having taken their views into account;

provided always that where 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.

- E5.6 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.
- E5.7 The Contractor acknowledges that the Commercially Sensitive Information listed in schedule [] Confidentiality Requirements is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

- E6.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
- E6.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E6.1.
- E6.3 Where applicable, each Party shall give the other advance notice of proposed visits to the Contractor's premises or any premises of its sub-contractors (including Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its sub-contractors.
- E6.4 If so requested by the Authority the notepaper and other written material of the Contractor and their sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Programme(s) or Services ("Trade Mark") from time to time. All publicity and marketing material produced by the Contractor (or its sub-contractors) in relation to this Contract and the Programme(s) or Services) shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

- E7 Security**
- E7.1 The Contractor shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- E7.2 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.
- E8 Intellectual Property Rights**
- E8.1 Save as otherwise provided in this Contract, the Contractor agrees that the Crown shall be legally and beneficially entitled to any and all Intellectual Property Rights created by the Contractor (or by, or together with, others (including Sub-Contractors) at the Contractor's request or on its behalf) where the Intellectual Property Rights are created in relation to the provision of the Services or the performance by the Contractor of its other obligations under this Contract, which shall include Intellectual Property Rights arising from:-
- (a) any Database created by, or on behalf of, the Contractor for the purposes of providing the Services; and
 - (b) any modification, editing or other adaptation of the Authority's Data and any new data created from the Authority's Data (including the Results).
- E8.2 The Contractor hereby assigns all such Intellectual Property Rights (whether created now or in the future) to the Authority with a warranty that to the best of its knowledge it is or shall be free from all charges, encumbrances and rights of third parties, but that where the Contractor is aware of any such charges, encumbrances or rights of third parties it shall give the Authority prompt and full notification thereof.. Subject to such assignment, the Authority hereby grants to the Contractor a royalty-free, non-transferable, non-exclusive license during the Contract Period to use such Intellectual Property Rights for the exclusive purpose of providing the Services to the Authority, and for the purpose of education and research during the Contract Period and following the expiry of the Contract Period.
- E8.3 The Contractor agrees that at the request of the Authority it will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to secure the vesting in the Crown of all rights assigned to it under this Contract or to assist in the resolution of any question concerning the Intellectual Property Rights under this Contract.
- E8.4 The Contractor warrants that:
- (a) the Intellectual Property Rights hereby assigned comprise the original work of, and were created by or on behalf of, the Contractor;

- (b) the Intellectual Property Rights hereby assigned have not been copied wholly or in part from any other work or material;
 - (c) the exercise by the Authority or the Crown of the Intellectual Property Rights will not infringe the rights of any third party; and
 - (d) the Contractor has not granted or assigned any rights of any nature in the Intellectual Property Rights to any third party.
- E8.5 The Contractor shall not be under an obligation to assign to the Crown Intellectual Property Rights owned by third parties (except where such Intellectual Property Rights are created by such third parties on behalf of the Contractor arising from the Services) but, in any such case, the Contractor shall use all reasonable endeavours to procure that such Intellectual Property Rights are assigned to the Crown for use in all media or that, if assignment is not possible, then the Crown is granted a perpetual, worldwide, royalty-free licence to use such Intellectual Property Rights in all media. The Contractor shall maintain an accurate, complete and up-to-date list of all such Intellectual Property Rights owned by third parties, which are assigned or licensed, to the Authority. The format of the list will be agreed by the Contractor with the Authority (such agreement not to be unreasonably withheld or delayed).
- E8.6 Subject always to the Authority's proper observance of its obligations under this Clause E8, the Contractor shall indemnify and keep indemnified the Authority against all costs or losses arising from or incurred by reason of any alleged infringement of any Intellectual Property Right in connection with the receipt of the Services.
- E8.7 The Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Contractor for alleged infringement of any Intellectual Property Right, which may affect the receipt of the Services.
- E8.8 The Authority shall promptly notify the Contractor if any claim or demand is made or action brought against the Authority by reason of any alleged infringement of any Intellectual Property Right originating from the Contractor in connection with the receipt of the Services. The Contractor shall at its own expense conduct any litigation or negotiations arising from such claim, demand or action.
- E8.9 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim, demand or action for alleged infringement of any Intellectual Property Right brought against the Authority or the Contractor (as the case may be) arising out of the Services. The Contractor shall reimburse the Authority for all costs and expenses incurred in so doing.
- E8.10 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for alleged infringement of any Intellectual Property Right brought against the Authority or the Contractor (as the case may be) in connection with this Contract where the Material comprising the alleged infringement of the Intellectual Property Right originated from the Contractor.

E8.11 If a claim or demand is made or action brought to which Clause E8.6 may apply or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense either:

- (a) modify any or all of the Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Services, so as to avoid the alleged infringement, provided that the terms of this Contract shall apply mutatis mutandis to such modified or substituted services and provided that such modified or substituted services shall be acceptable to the Authority, such acceptance not to be unreasonably withheld; or
- (b) procure any necessary licence to receive the Services on terms, which are acceptable to the Authority.

E8.12 The indemnity in sub-clause E8.6 shall not apply to such part of any claim, demand or action that is in respect of:

- (a) any item not supplied by the Contractor where that item directly gives rise to the claim, demand or action (unless it is the interaction of the Services with the item that gives rise to the claim, demand or action and the Contractor was expressly made aware of the need for the Services to interact with such item); or
- (b) any modification carried out by or on behalf of the Authority to any item supplied by the Contractor under this Agreement if such modification is not authorised by the Contractor in writing; or
- (c) any receipt by the Authority of the Services in a manner not reasonably to be inferred from the specification or requirements of the Authority.
- (d) If a modification or substitution in accordance with Clause E8.11 (a) above is not possible so as to avoid the infringement or the Contractor has been unable to procure a licence in accordance with Clause E8.11 (b), the Contractor shall be liable to the Authority for the value of the replacement Services or part thereof together with additional costs and expenses incurred in implementing and maintaining such replacements.

E8.13 For the avoidance of doubt nothing in this Clause E.8 shall operate to transfer title of any Background Intellectual Property from one Party to the other.

E8.14 Without prejudice to the Authority's ownership of everything relating to information and data emerging from the Project (including the provisions of Clause 30.5 the Contractor shall ensure that all basic factual data is anonymised as and when it is received and that the key to personal identities involved in the Project is kept in a separate and secure place.

E8.15 On the expiry or termination of this Contract the key to the identities of all persons involved in the Project (anonymised as above) and all Personal Data

no longer required shall be destroyed by the Contractor unless the Authority directs otherwise, in writing Crown Copyright and Publication

- E8.16 The Copyright in all Materials, data (including all basic factual data, sometimes referred to as “raw data” and the Results) prepared as part of, incidental to or resulting from the Project activity, shall vest from the outset in the Crown, in accordance with the provisions of Clause 5.

E9 LICENCES TO USE SOFTWARE

- E9.1 The Authority hereby grants to the Contractor a non-exclusive licence to Use, reproduce, modify, adapt and enhance (and to authorise a third party to Use, reproduce, modify, adapt and enhance) any Authority Software which is provided by the Authority to the Contractor during the Contract Period, but only to the extent that such Use, reproduction, modification, adaptation and enhancement is necessary for the performance of the Services and not otherwise and also provided that the Intellectual Property Rights in any Authority Software modified, adapted or enhanced as a result shall be assigned to the Authority. Such licence is granted on the basis that no warranty or representation is given by the Authority that the Authority Software will be uninterrupted or error free or that it will meet any specification or capability or that its functions will be fit for the purposes required by the Contractor. Such licence shall terminate automatically without notice from the Authority upon the expiry or termination of this Contract. In such circumstances the Contractor shall either return or destroy (at the direction of the Authority) all copies of the Authority Software which it then holds, and shall certify to the Authority that such return or destruction (as the case may be) has occurred.
- E9.2 In consideration of the payment of the Charges, the Contractor hereby grants to the Authority an irrevocable, royalty free, non-exclusive licence to Use the Contractor's Software insofar as such Use is necessary or incidental to the Authority receiving the full benefit of the Services.
- E9.3 All Intellectual Property Rights in any Specially Written Software, which is produced by the Contractor or by or together with others (including Sub-Contractors) at the Contractor's request or on its behalf as part of the Services shall be owned by the Authority. Before the Specially Written Software becomes part of the Services, the Contractor shall assign to the Authority, or shall procure that the owner of the Intellectual Property Rights in such Specially Written Software shall forthwith assign to the Authority, all Intellectual Property Rights in such Specially Written Software. Subject to such assignment, the Authority hereby grants to the Contractor a royalty-free, non-transferable, non-exclusive licence (revocable by written notice from the Authority) to use such Intellectual Property Rights in such Specially Written Software for the exclusive purpose of providing the Services to the Authority. The Contractor shall do all such reasonable acts (including providing the Authority with the latest version of the Source Code of any Specially Written Software),

and execute all such documents as may be reasonably necessary or desirable to secure the vesting in the Crown of all Intellectual Property Rights in the Specially Written Software.

E10 Publication of Research

- E10.1 Publication will always be subject to the approval of the Authority and publication of material in connection with the Project is controlled under Clause E11 and this Clause E10 of this Contract. This approval will not unreasonably be withheld.
- E10.2 In limited circumstances and with the prior written permission of the Authority's Representative the Contractor will be able to conduct complementary research. The Contractor accepts that the Authority will not permit extensive research with Participants and any research activity undertaken by the Contractor will not overburden the Participants. The Contractor also agrees that the Authority's evaluation of the Project will take priority over the Contractor's research.
- E10.3 Before the Commencement Date, the Contractor shall provide a research plan to the Authority's Representative. The research plan will contain complete information in respect of the research activity, which the Contractor proposes to undertake during the Contract.
- E10.4 The Contractor agrees it will not Publish (and shall ensure that sub contractors do not publish) the Results, the Works or any other Material connected with the Project without first seeking the approval of the Authority in accordance with the procedure set out in Clause E11; and below.
- E10.5 The Contractor further agrees that it will not Publish without the Authority's approval any research papers, articles, publications or reports in respect of the Project before the end of the Contract Period or before the Authority has published its full and complete research findings.
- E10.6 Any questions or forms which the Contractor proposes to use for its own research purposes shall be submitted in draft to the Authority's Representative, together with any explanatory notes, covering letters to respondents and any other relevant documentation. Those particulars and any other particulars contained within the surveys when carried out may be forwarded by the Authority to the Survey Control Unit of the Central Statistical Office.
- E10.7 After publication, the Contractor shall supply 25 copies of the publication, free of charge to the Authority.
- E10.8 Acknowledgement of Crown Copyright shall be made in any publication unless the Authority agrees otherwise. Acknowledgement shall be in the form of "© Crown Copyright Reserved 20XX (year of first

publication). Published by permission of the Controller of Her Majesty's Stationery Office".

E10.9 Every Publication shall acknowledge the Authority's assistance or carry such disclaimer as the Authority may require (or both) or otherwise as may be directed by the Authority.

E10.10 Once consent has been given by the Authority the Contractor shall send one copy of the relevant Publication to the British Library Lending Division, Boston Spa, Wetherby, West Yorkshire LS23 7BG; and one copy to the British Library Copyright Receipt Office, 2 Sheraton Street, London W1V 4BH. The Contractor will retain a further five copies, as these may be required within one year of the document having been deposited with the British library Copyright Receipt Office, for the other copyright libraries in the British Isles at Oxford, Cambridge, Edinburgh and Aberystwyth; and Dublin in the Republic of Ireland.

E11 Presentations and Seminars

E11.1 The Contractor hereby agrees that any Materials including seminar notes, delegate seminar notes, training materials; videos; training course containing any information in respect of the Project shall be the property of the Authority who reserves the right to determine whether any patent or like protection should be applied for, where appropriate, and they shall take any necessary steps to assign such rights to the Authority, in accordance with the provision of Clause E8.

E11.2 The Contractor acknowledges that this Project/Service/Research Commission is of a sensitive nature as this will entail dealing with confidential data relating to the Department's customers and members of the public, and that the Authority as the owner of any Results, Materials and/or Works concerning the Project has a legitimate interest in controlling their Publication. The Authority acknowledges that the Contractor, as a leading social research organisation has an interest in presenting the work that it does.

E11.3 ***During the period of the contract and prior to Publication***, the Contractor shall not Publish,(and shall ensure that the Contractors sub contractors do not Publish) the Results, the Works, or any other Material connected with the Project without first seeking the approval of the Authority in accordance with the procedure set out in this Clause E10 and below.

E11.4 To allow the Authority time to review any proposed presentation/seminar notes/Publication the Contractor shall, or shall procure that the relevant Sub-Contractor shall, provide to the Authority:

- (a) a copy of any manuscript (or other electronic media form) of the proposed presentation/seminar/Publication; and

- (b) a copy of any slides or other materials, which are intended to be distributed to an audience of any oral presentation

E11.5 In both cases such material to be given to the Authority at least 28 days prior to the proposed Publication wherever possible. In the case of any unplanned or short notice presentations the Contractor must inform the Authority at the earliest opportunity and the Authority will endeavour to try to clear the proposed presentation as soon as is reasonably practicable. For the avoidance of doubt the Authority will endeavour to clear short notice presentation materials within 24 hours.

E12 Audit and the National Audit Office

E12.1 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 Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

E12.2 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the comptroller and auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

F CONTROL OF THE CONTRACT

F1 Compliance with Policies and Laws

The Contractor, at no additional cost to the Authority:

F1.1 undertakes to procure that all the Contractors Staff comply with all the Authority's policies and standards that are relevant to the performance of the Services, including the provisions set out in Schedule 4 (Security Requirements). The Authority shall provide the Contractor with copies of such policies and standards on request.

F1.2 acknowledges that the Authority's policies and standards may vary from time to time and the Contractor shall comply with those variations.

F1.3 shall provide the Services in compliance with all requirements of all Acts of Parliament, statutory instruments, court order, regulations, directives, European Community decisions (in so far as legally binding), treaties and other regulatory requirements relevant to the Contractor's business of the Authority's authority, from time to time in force which are or may become applicable to the Services. The Contractor shall promptly notify the Authority if the Contractor is required to make any changes to the Services for the purposes of complying with obligations under this clause F1.3

In all cases, the costs of compliance with this Clause F1 shall be borne by the Contractor.

The Contractor acknowledge and agree that demonstrating compliance with Schedule 4 (Security Requirements and Plan) as amended from time to time to the satisfaction of the Authority shall be a pre-condition for eligibility for any Projects commissioned through the Framework.

F2 Transfer and Sub-Contracting

F2.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F2.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F2.3 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.

F2.4 Subject to clause F3.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting 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.

- F2.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.6, 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.
- F2.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.4 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;
 - (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 previous consent in writing of the Contractor.
- F2.7 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F2.8 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.

F3 Waiver

F3.1 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.

F3.2 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 A6 (Notices).

F3.3 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.

F4 Variation

F4.1 The Authority may from time to time during the Contract Period, by written notice to the Contractor, request a variation of the Specification provided that such variation does not amount to a material change to it. Such a change is hereinafter called a "Variation". Following such notice, the Authority and the Contractor shall enter into good faith negotiations (for a period of not more than 30 Working Days from the date thereof or where, in the reasonable opinion of the Authority, the Variation is necessary as a matter of urgency due to circumstances outside the Parties' control, such shorter period as the Authority shall direct) to agree the Variation and any variation in the Contract Price that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree such matters within such period, the Authority shall by written notice to the Contractor:

- (a) agree that the Parties shall continue to perform their obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect.

F4.2 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in clause F4.1, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

F4.3 Any such Variation shall be communicated in writing by the Authority to the Contractor in accordance with clause A6 (Notices). All Variations shall form an addendum to the Contract.

F5 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.

F6 Set - Off

The Authority shall be entitled on giving 7 days written notice to the Contractor to set off any liability of the Contractor to the Authority against any liability of the Authority to the Contractor.

F7 Remedies in the event of inadequate performance

F7.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall take all reasonable steps to investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F7.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

- (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F7.3 The Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F7.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

F7.5 In the event that:

- (a) the Contractor fails to comply with clause F6.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause F6.4 above,

the Authority may terminate the Contract with immediate effect by notice in writing.

F8 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.

F9 Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements agreed, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F10 Extension of Initial Contract Period

Subject to satisfactory performance of its obligations under the Contract by the Contractor during the Initial Contract Period and to

clause C4.2 (Price adjustment on extension of the Initial Contract Period), the Authority may, by giving written notice to the Contractor not less than 3 Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 24 Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

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
 - (e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- G1.2 Subject to clause G1.3, 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, or the late or purported supply, of the Services 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, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
 - [(b) loss of savings (whether anticipated or otherwise); and/or]
 - [(b)/(c)] indirect or consequential loss or damage.

- G1.5 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].
- G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.7 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.
- G1.8 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.
- G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

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

G3

Warranties and Representations

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 performing its obligations under this Agreement, all Software used by or on behalf of the Contractor will:
 - be currently supported versions of that Software; and

- perform in all material respects in accordance with its specification,
- (i) in the three 3 years prior to the date of the Contract:
- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established]; and
- (j) 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.
- (k) The Contractor warrants, represents and undertakes for the duration of the Term that:
- all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;
 - it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Agreement.
- (l) For the avoidance of doubt the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Contractor.

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 his 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) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of 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 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 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 clauses C3.1 (Recovery of Sums Due).

H3 Break
The Authority shall have the right to terminate the Contract at any time by giving 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 Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

H4.2 Where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting

evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (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; or
- (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.

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 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 and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or 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.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H5.6 The Contractor shall have robust contingency plans in place, agreed with the Authority, to ensure that the service to the Authority will be maintained in the event of disruption (including, but not limited to, disruption to information technology systems) to the Contractor's operations, and those of sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the currency of the contract.

H6 Recovery upon Termination

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

H6.2 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide assistance to the Authority and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance 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**
- The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the English courts. Each Party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.
- 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 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the overall Project Manager 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.

- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 12.4 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.
- 12.5 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 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 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
 - (b) The Parties shall within 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 the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written

opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

- (f) If the Parties fail to reach agreement in the structured negotiations within 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:

- i. 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]].

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of

SIGNED for and on behalf of

[Authority]

[Contractor]

Signature.....

Signature.....

Name.....

.....

Name.....

Position.....

.....

Position.....

SCHEDULE 1 – THE SERVICES

TABLE OF CONTENTS

1. General

Appendices

Appendix A - Contractor's Anticipated Resource Structure

Appendix B - Contractor's Key Staff

GENERAL

The contents of the following documents shall be deemed to be incorporated into this Contract:-

Document	Dated:
Specification	
Tender	

APPENDIX A

CONTRACTOR'S ANTICIPATED RESOURCE STRUCTURE

Please provide an Organisation Chart

SCHEDULE 2 - ADMINISTRATION REQUIREMENTS

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1. Authority's Authorisation
2. Contractor's Authorisation
3. Payment Information

1. AUTHORITY'S AUTHORISATION

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: -

Title: - Authority's Representative

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

2 CONTRACTOR'S AUTHORISATION

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

Name: -

Title: - Contractor's Representative

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

Name: -

Title: - Contract Manager]

3 PAYMENT INFORMATION

- 3.3 All invoices payable in compliance with the requirements of clause C2, must be identified with all appropriate Contract references and titles and shall be sent for the attention of the Authority's Representative at the following address: -

- 1 Name:
- 2 Address:
- 3 Telephone:
- 4 Fax:
- 5 E-mail:

SCHEDULE 3 - PRICES AND RATES

GENERAL

For the performance of the Services provided in Year 1, the Contractor shall be paid the Contract Price calculated using the Prices and Rates entered in the Schedule of Prices and Rates (Document 4, Part 3).

The Contract Price for the provision of the service for Years 2 shall be subject to yearly review with any increases based upon the Average Earnings Index published by the Office of National Statistics.

Although the Prices and Rates will not be assessed for inclusion in the Framework, the rates quoted will be used for evaluation purposes to assess value for money in relation to quality of research. The final contract agreed with contractors for individual projects once on the Framework, may contain different pricing elements.

The Prices and Rates exclude VAT.

RATES FOR THE PROVISION OF THE SERVICE

You are asked to provide your estimated daily rates for the range of staff shown (if you have different staff titles than those suggested below please place them in the relevant price bracket and alert us to the title used):

Job Title	Daily rate	Other Fees (eg Travel & Subsistence)
Research Director		
Principal Researcher		
Senior Researcher		
Research Assistant		
Admin Staff		

If appropriate to your organisation, you are asked to provide average cost for the following survey fieldwork (assuming a representative sample of JSA clients across the UK):

Article I. Type of Survey Fieldwork	Article II. Average Cost
<i>If not appropriate to your organisation please indicate this in cost boxes</i>	
1000 face-to-face interviews at 30 minutes and 60 minutes duration	
1000 Telephone interviews at 15 and 30 minutes duration	
1000 Postal questionnaires at 8 and 12 pages in length	

SCHEDULE 4: SECURITY REQUIREMENTS AND SECURITY PLAN

1. INTRODUCTION

1.1 This schedule covers:

1.1.1 principles of security for the Contractor System, derived from the Security Policy, including without limitation principles of physical and information security;

1.1.2 the creation of the Security Plan;

1.1.3 audit and testing of the Security Plan;

1.1.4 Breaches of Security.

2. PRINCIPLES OF SECURITY

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

2.2 The Contractor shall be responsible for the security of the Contractor System and shall at all times provide a level of security which:

2.2.1 is in accordance with Good Industry Practice and Law;

2.2.2 complies with the Security Policy;

2.2.3 meets any specific security threats to the Contractor System; and

2.3 Without limiting paragraph 2.2, the Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority):

2.3.1 loss of integrity of Authority Data;

2.3.2 loss of confidentiality of Authority Data;

2.3.3 unauthorised access to, use of, or interference with Authority Data by any person or organisation;

- 2.3.4 unauthorised access to network elements, buildings, the Authority Premises, the Sites, and tools used by the Contractor in the provision of the Services;
- 2.3.5 use of the Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Authority Data; and
- 2.3.6 loss of availability of Authority Data due to any failure or compromise of the Services.

3. SECURITY PLAN

3.1 Introduction

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

3.2 Development

- 3.2.1 Within 20 Days after the Effective Date and in accordance with paragraph 3.4 (Amendment and Revision), the Contractor will prepare and deliver to the Authority for approval the full and final Security Plan which will be based on the draft Security Plan set out in Appendix 1.
- 3.2.2 If the Security Plan is approved by the Authority it will be adopted immediately. If the Security Plan is not approved by the Authority the Contractor shall amend it within 10 Working Days of a notice of non-approval from the Authority and re-submit to the Authority for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than [15] Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this paragraph

3.2.2 of this schedule may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1.1 to 3.3.5 shall be deemed to be reasonable.

3.3 Content

3.3.1 The Security Plan will set out the security measures to be implemented and maintained by the Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:

3.3.1.1 the provisions of this schedule (including the principles set out in paragraph 2);

3.3.1.2 the provisions of Schedule 1 (The Services) relating to security;

3.3.1.3 the data protection compliance guidance produced by the Authority;

3.3.1.4 appropriate ICT standards for technical countermeasures which are included in the Contractor System; and

3.3.1.5 encryption standards in accordance with S(E)N 02/3 from CESG.

3.3.2 The references to standards, guidance and policies set out in paragraph 3.3.1 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

3.3.3 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Contractor should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as

practicable, advise the Contractor which provision the Contractor shall be required to comply with.

3.3.4 The Security Plan will be structured in accordance with the principles of ISO/IEC27002 and ISO/IEC27001.

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

3.4 Amendment and Revision

3.4.1 The Security Plan will be fully reviewed and updated by the Contractor annually, or from time to time to reflect:

3.4.1.1 emerging changes in Good Industry Practice;

3.4.1.2 any change or proposed change to the Contractor System, the Services and/or associated processes; and

3.4.1.3 any new perceived or changed threats to the Contractor System.

3.4.1.4 a reasonable request by the Authority

3.4.2 The Contractor will provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Authority.

3.4.3 Any change or amendment which the Contractor proposes to make to the Security Plan (as a result of an Authority request or change to the schedule 1 (The Services) or otherwise shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

4. AUDIT AND TESTING

- 4.1** *The Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority.*
- 4.2** *The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Contractor shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.*
- 4.3** *Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority shall be entitled at any time and without giving notice to the Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Contractor's compliance with and implementation of the Security Plan. The Authority may notify the Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Contractor shall be granted relief against any resultant under-performance for the period of the tests.*
- 4.4** *Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Contractor shall promptly notify the Authority of any changes to the Security Plan (and the implementation thereof) which the Contractor proposes to make in order to correct such failure or weakness. Subject to the Authority's approval in accordance with paragraph 3.4.3, the Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Authority. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.*

5. COMPLIANCE WITH ISO/IEC 27001

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

6. BREACH OF SECURITY

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

Such steps shall include any action or changes reasonably required by the Authority.

6.2.2 If the Breach of Security consists only of a loss of Data the breach shall be reported to the Authority in the following manner:

- a) By telephone within 4 hours of knowledge of the loss to the Authority's representative and;**
- b) By written report to the Authority's Key Personnel within 3 days of the Authority's knowledge of the breach, detailing the circumstances surrounding the breach, the report to be signed off by the CEO or personnel of equivalent standing and;**
- c) By a written report detailing a recovery plan signed off by CEO to be received by the Authority within 7 days of knowledge of the incident.**

The Authority in its absolute discretion may waive any of the requirements detailed in clause 6.2.2.

APPENDIX 1

SECURITY PLAN

APPENDIX 2

SECURITY POLICY FOR SUPPLIERS OF SERVICES TO THE DEPARTMENT FOR WORK AND PENSIONS AND HMRC

The Department for Work and Pensions and HMRC treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions/HMRC is the Data Controller.

In order to protect Departmental information appropriately, our suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All suppliers of services to the Department for Work and Pensions/HMRC must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.

The Chief Executive or other suitable senior official of each supplier must agree in writing to comply with these policies and standards. Each supplier must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the supplier and where relevant sub-contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.

All suppliers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.

The following are key requirements and all suppliers must comply with relevant DWP policies concerning:

Personnel Security

- Staff recruitment in accordance with government requirements for pre-employment checks;
- Staff training and awareness of Departmental security and any specific contract requirements.

-

Secure Information Handling and Transfers

- Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.

Portable Media

- The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.

Offshoring

- The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

Premises Security

- Security of premises and control of access.

Security Incidents

- Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

It is the supplier's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.

Failure to comply with any of these Policies or Standards could result in termination of current contract.

- 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:
 - 3.1 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
 - 3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

- 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.

- 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.

Words and expressions in this Variation shall have the meanings given to them in the Contract.

The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Authority

For: The Contractor

Signature: _____

Signature: _____

Full Name: _____

Full Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ANNEX 2

CONTRACT TITLE: The Provision of Social and Economic Research Services

CONTRACTED REF: RF2/0709

VARIATION No: 1/2011

DATE: 24th June 2011

BETWEEN:

The Secretary of State for Work & Pensions (hereinafter called “the Authority)

&

West Midlands Enterprise Limited (hereinafter called “the Contractor”

The Contract is varied as follows:

1. The Contract to deliver Social and Economic Research Services to The Department For Work and Pensions DWP and Her Majesty’s Revenue and Customs (HMRC), shall be extended by a further two years until 30th June 2013.

2. The following terms and conditions shall be added to those found in Section C of the original contract document.

E4.12 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E4.13 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E13 Offshoring

E13.1 Supply of the Services

While not in anyway limiting any other provision of this Contract, in delivering the Services the Contractor, or any of its sub-contractors, shall comply with the DWP Offshoring Policy. The DWP Offshoring Policy shall apply to Landed Resources.

E13.2 Protection of Information

In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Contractor, or any of its sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.

Definitions

“DWP Offshoring Policy” means the Authority’s policy and procedures as advised to the Contractor by the Authority from time to time.

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

Words and expressions in this Variation shall have the meanings given to them in the Contract.

The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

For: The Contractor

For: The Authority

By: _____

By: _____

Full Name: _____

Full Name: _____

Grade _____

Title: _____

Date: _____

Date: _____