**CONTRACT TERMS**

**EMMERGENCY ACCOMODATION**

**DYNAMIC PURCHASING SYSTEM**

**REFERENCE NUMBER**

**[ ]**

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# Contract Terms

This Contract is made on the [ ] day of [ ] 201 between:

The Cornwall Council of County Hall, Treyew Road, Truro, Cornwall, TR1 3AY **Authority”);** and

[*Insert name of Provider*] a company registered in [*England and Wales*] under Company Number [*insert registered company number*] whose registered office is at [*insert registered office address*] (“the **Provider**”),

Both the Authority and the Provider can be referred to as a “**Party**” or together the “**Parties**”.

# INTRODUCTION

* 1. The Provider is one of a number of organisations appointed by the Authority to the Dynamic Purchasing System (DPS) and is therefore able to enter into this Contract to provide the Services(s) to the Authority.
  2. This Contract, made between the Authority and the Provider, sets out the terms of the Provider’s appointment as a provider of the Services to the Authority. The Services will be delivered according to the terms of this Contract, any agreed Service Standards, and the DPS Agreement.
  3. The Provider’s appointment has been confirmed in the Order Form.
  4. The Parties agree that the Services and associated Deliverables shall be supplied in accordance with the terms of the DPS Agreement and this Contract.

1. **APPOINTMENT & STATEMENTS OF WORK**
   1. Throughout the Term of this Contract, the Provider will perform Services in accordance with agreed Service Standards.
   2. Subject to Clause 1.4 the Parties may agree new Services to be delivered under this Contract by agreeing a new Service Standards. This must be done in writing and using the form set out at Schedule 2 (Service Standards). Once both Parties have signed a Service Standards, it shall form part of this Contract.
   3. Any schedule attached to a Service Standards will describe in detail the different types of Services to be provided under that Service Standards. A schedule attached to a Service Standards only applies to the Services in scope to be delivered under that Service Standards, and not to any other Service Standards, or to the provision of the Services as a whole.
   4. Where the Authority requires changes to the Services being provided this shall be dealt with as a proposed Variation to this Contract in accordance with the Variation procedure set out in Clause 9.
2. **TERM**
   1. This Contract starts on the **Effective Date** and ends on the **Expiry Date,** as stated in the Order Form unless changed in accordance with the terms of this Contract.
   2. The Authority may extend this Contract for any period up to the Extension Expiry Date by giving the Provider notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Order Form.
   3. The revised date the contract will end (the **New Expiry Date)** will be set out in the notice given under Clause 2.2 above.
   4. The terms and conditions of this Contract will apply throughout any extended period.
   5. Each Services starts on the Services Commencement Date and ends on the Services Completion Date, unless it is terminated earlier in accordance with Clause 23.

# CONTRACT GUARANTEE

* 1. Where the Authority has stated in the Order Form that this Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Authority), the Provider must provide:
     1. an executed Guarantee from a Guarantor; and

* + 1. a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
  1. The Authority may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Provider notice in writing.

# AUTHORITY’S OBLIGATIONS

* 1. The Authority will give the Provider instructions as to its requirements for the Services. These will be included in a Order Form and may include start and end dates for each stage of the proposed Services.

# SERVICE DELAY, DELIVERY & RECTIFICATION Service Delivery

* 1. The Provider will give the Authority full and clear instructions as to what, if any, Authority Materials it reasonably requires to perform the Services.
     1. comply with all Law;
     2. use all reasonable and proper skill and care in its performance of Services;
     3. comply with all reasonable Authority instructions regarding the Services, as long as these instructions do not materially amend the Order Form (unless the amendment has been agreed in accordance with Clause 9.1);
     4. keep Authority Materials under its control safe and secure and in accordance with any security policy provided by the Authority; and
     5. provide all Deliverables by any dates set out in the applicable Order Form or any other date(s) agreed by the parties in writing.

# Delay

* 1. If the Authority materially breaches its obligations in connection with this Contract (including its payment obligations), and consequently delays or prevents the Provider from performing any of the agreed Services or providing any of the agreed Deliverables this will be “**Authority Cause”.** In the event of a Authority Cause, the Provider will be granted an appropriate extension of time (to be approved by the Authority, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Provider will not be liable for any Losses incurred by the Authority as a result of Authority Cause, provided the Provider complies with its obligations set out at Clause 5.4.
  2. The Provider must notify the Authority within two (2) Working Days of the Provider becoming aware that the Authority has breached, or is likely to breach, its obligations in connection with this Contract. This notice must detail:
     1. the Authority Cause and its actual or potential effect on the Provider’s ability to meet its obligations under this Contract, and
     2. any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause.
  3. The Provider must use all reasonable endeavours to eliminate or mitigate the consequences and impact of the Authority Cause. The Provider must try to mitigate against any Losses that the Authority or the Provider may incur, and the duration and consequences of any delay or anticipated delay.
  4. If at any time the Provider becomes aware that it may not be able to deliver the Services by any date set out in the applicable Order Form (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Provider will immediately notify the Authority of the Default and the reasons for the Default.
  5. If the Default described in Clause 5.5 above is in the Authority’s opinion capable of remedy the Authority may, up to 10 Working Days from being notified of the Default, instruct the Provider to comply with the Rectification Plan Process.

# Rectification Plan Process

* 1. If instructed to comply with the Rectification Plan Process by the Authority under Clause 5.6 above, the Provider will submit a draft Rectification Plan to the Authority to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Provider shall submit a draft Rectification Plan even if the Provider does not agree that the Default is capable of remedy.
  2. The draft Rectification Plan shall set out:
     1. full details of the Default that has occurred, including the underlying reasons for it;
     2. the actual or anticipated effect of the Default; and
     3. the steps which the Provider proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
  3. The Provider shall promptly provide to the Authority any further documentation that the Authority requires to assess the Provider’s reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
  4. The Authority may reject the draft Rectification Plan by notice to the Provider if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
     1. is insufficiently detailed to be capable of proper evaluation;
     2. will take too long to complete;
     3. will not prevent reoccurrence of the Default;
     4. will rectify the Default but in a manner which is unacceptable to the Authority; or
     5. will not rectify the Default.
  5. The Authority will tell the Provider as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
  6. If the Authority rejects the draft Rectification Plan, the Authority will give reasons for its decision in its rejection notice. The Provider must take these reasons into account in the preparation of a revised Rectification Plan. The Provider shall submit a revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority’s rejection notice.
  7. If the Authority agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Provider shall immediately start work on the actions set out in the Rectification Plan.

# PROVIDER: OTHER APPOINTMENTS

* 1. Adverse public perception could have a detrimental impact on the Authority’s desired outcomes for the Services. To minimise this risk, the Provider must not, without the Authority’s Approval (not to be unreasonably withheld), provide research services to a third party during the Term of this Contract where the provision of such services (in the reasonable opinion of the Authority):
     1. has the potential to adversely affect the Authority’s desired outcome of the Services or diminish the trust that the public places in the Authority; or
     2. is likely to cause embarrassment to the Authority or bring the Authority into disrepute or may result in a conflict of interest for the Authority.
  2. Where the Provider is already providing research services to a third party in the situations set out in 6.1 prior to the Effective Date, the Provider warrants that it has informed the Authority of this before entering into this Contract.
  3. If the Provider becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Provider must notify the Authority immediately, providing full details of the nature of the breach and the likely impact on any Services
  4. If the Provider breaches Clause 6.1, the Authority may terminate this Contract, a Services, or any part of a Services with immediate effect in accordance with Clause 23.3.

# AUTHORITY: OTHER APPOINTMENTS

7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Authority is entitled to appoint any other Provider to perform the Services which are the same or similar to the Services.

# PERSONNEL

* 1. The Provider must ensure that Provider personnel who provide the Services:
     1. are appropriately experienced, qualified and trained to provide the Services in accordance with this Contract;
     2. apply all reasonable skill, care and diligence in providing the Services;
     3. obey all lawful instructions and reasonable directions of the Authority and provide the Services to the reasonable satisfaction of the Authority, and
     4. are vetted in accordance with Good Industry Practice and where applicable, the security requirements of the Authority and the Standards.
  2. The Provider will be liable for all acts or omissions of the Provider personnel. Any act or omission of a member of any Provider personnel which results in a breach of this Contract is a breach by the Provider.
  3. The Authority acknowledges and agrees that it may be necessary for the Provider to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.
  4. The Provider will seek to ensure that any Key Individual responsible for the provision of the Services will remain involved in the Services. If any Key Individual leaves the Provider, or ceases to be involved in the provision of the Services for any reason (for example, if they are promoted to a different role within the Provider), the Provider will consult with the Authority and, subject to the Authority ’s Approval, appoint a suitable replacement.
  5. If the Authority reasonably believes that any of the Provider personnel are unsuitable to undertake work on this Contract, it will notify the Provider who will then end the person’s involvement in providing the Services.

# VARIATIONS AND CANCELLATIONS

* 1. Either Party may request a change to this Contract, a Services or Order Form. Any requested change must not amount to a material change of this Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
  2. A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
  3. Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Authority, having regard to the nature of the Services and the proposed Variation.
  4. If the Provider requests a Variation, the Authority can ask the Provider to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
     1. the impact of the proposed Variation on the Services and Provider’s ability to meet its other obligations under this Contract (including in relation to other Statements of Work);
     2. the initial cost of implementing the proposed Variation and any ongoing costs post- implementation;
     3. any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
     4. a timetable for the implementation, together with any proposals for the testing of the Variation; and
     5. any other information the Authority reasonably asks for in response to the Variation request.
  5. The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
  6. If the Parties agree the Variation, the Provider will implement it, and be bound by it as if it was part of this Contract.
  7. Until a Variation is agreed, the Provider must continue to perform and be paid for the Services as originally agreed, unless otherwise notified by the Authority.
  8. Subject to Clauses 9.9 and 23.1 the Authority can require the Provider to suspend or cancel any Services or Order Form, or any part of a Services, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Authority Approver in writing. The Provider will take all reasonable steps to comply with any such request as soon as possible.
  9. In the event of any cancellation under Clause 9.8, the Authority will pay the Provider all Contract Charges reasonably and properly incurred by the Provider during the Services Notice Period, provided that the Provider uses all reasonable endeavours to mitigate any charges or expenses.

# APPROVALS AND AUTHORITY

* 1. For the purposes of this Contract, any reference to Authority Approval means written approval in one of the following ways:
     1. the Authority issuing a purchase order bearing the signature of an Authorised Authority Approver, or
     2. e-mail from the individual business e-mail address of an Authorised Authority Approver, or
     3. the signature of an Authorised Authority Approver on the Provider’s documentation
  2. Any reference to Provider Approval means written approval in one of the following ways:
     1. e-mail from the individual business e-mail address of an Authorised Provider Approver, or
     2. the signature of an Authorised Provider Approver on the Authority’s documentation
  3. The Provider will seek the Authority’s Approval of:
     1. any estimates or quotations for any costs to be paid by the Authority that are not agreed in the Order Form.
  4. The Provider will seek the Authority’s Approval of any draft Deliverables. The Authority’s Approval will be the Provider’s authority to proceed with the use of the relevant Deliverables.
  5. If the Authority does not approve of any matter requiring Approval, it must notify the Provider of its reasons for disapproval within fourteen (14) days of the Provider’s request.
  6. If the Authority delays giving Approval or notifying the Provider as to its disapproval, the Provider will not be liable for any resulting delays or adverse impact caused to the delivery of the Services.

# SERVICES MANAGEMENT

* 1. During the Term of this Contract, the Provider will:
     1. keep the Authority fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties.
     2. promptly inform the Authority of any actual or anticipated problems relating to provision of the Deliverables.
  2. During the Term, the Parties’ respective Services managers will arrange and attend meetings to review the status and progress of the Services(s) and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.
  3. Unless otherwise agreed in the Order Form, the Provider will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within three (3) Working Days of such discussions. If the Authority does not question any of the subject matter of a contact report within seven (7) Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

# FEES AND INVOICING

* 1. The Contract Charges for the Services will be the full and exclusive remuneration of the Provider for supplying the Services. Unless expressly agreed in writing by the Authority in the Statements of Work, the Contract Charges will include every cost and expense of the Provider directly or indirectly incurred in connection with the performance of the Services and shall be paid in accordance with Schedule 6..
  2. All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Provider a sum equal to the VAT chargeable in respect of the Services.
  3. The Provider will invoice the Authority in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
  4. The Authority will pay the Provider the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Authority may, without prejudice to any other rights and remedies under this Contract, withhold or reduce payments in the event of unsatisfactory performance.
  5. If the Authority does not pay an undisputed amount properly invoiced by the due date, the Provider has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
  6. The Authority is entitled to deduct from any sum due any money that the Provider owes the Authority. This includes any sum which the Provider is liable to pay to the Authority in respect of breach of this Contract. In these circumstances, the Provider may not assert any credit, set-off or counterclaim against the Authority.
  7. The Provider will indemnify the Authority on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT on payments made to the Provider under this Contract. Any amounts due under Clause 12.2 will be paid by the Provider to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
  8. If there is a dispute between the Parties about an amount invoiced, the Authority will pay the undisputed amount by the due date. The Provider will not suspend the supply of the Services in any Services, unless the Provider is entitled to terminate the Services for a failure to pay undisputed sums in accordance with Clause 23.7.7.

1. **THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING Assignment and Sub-Contracting**
   1. Other than where a Sub-Contractor is agreed in the Order Form, the Provider will not, without the Approval of the Authority, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Contract or any part of it.
   2. In requesting Approval to sub-contract, the Provider will:
      1. use reasonable care and skill in the selection of proposed Sub-Contractors;
      2. if the Authority requests, the Provider will obtain more than one quote for a particular sub-contracted service; and
      3. provide the Authority with a business case for sub-contracting all or part of the Services, identifying the reasons for the Provider to sub-contract to its proposed Sub-Contractor. The Authority may reject the Provider’s request to appoint a proposed Sub-Contractor if it considers the proposed Sub-Contractor does not provide value for money.
   3. If the Authority consents to the Provider’s proposed Sub-Contractor, it shall be a Sub- Contractor as the term is defined in Schedule 1 (Definitions).
   4. In granting consent to any assignment, novation sub-contracting or disposal, the Authority may set additional terms and conditions it considers necessary.
   5. The Provider shall ensure that its Sub-Contractor does not further sub-contract all or part of the Services or Deliverables without the Authority’s Approval.
   6. Any contracts the Provider enters into with third party Providers for Services and Deliverables (“**Sub-Contracts**”) must be on terms that are in line with the Provider’s standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Contract.
   7. Provided that the Provider has notified the Authority of any significant restrictions or contract terms contained in any Sub-Contracts, the Authority hereby acknowledges that:
      1. its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
      2. it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Provider is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Authority or its Affiliates.
   8. The Provider will promptly provide the Authority with a copy of any Sub-Contract if requested to do so.
   9. The Provider will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
   10. The Provider will obtain the Authority’s Approval before commissioning services from any Provider Affiliate.

# Supply Chain Protection

* 1. The Provider will ensure that all Sub-Contracts contain provisions:
     1. Requiring the Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice;
     2. requiring the Provider to verify any invoices submitted by a Sub-Contractor in a timely manner;
     3. giving the Authority the right to publish the Provider’s compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
     4. giving the Provider a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and
     5. requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

1. **DISCOUNTS AND REBATES**
   1. The Provider will disclose to the Authority any commission, discount or rebate earned by the Provider arising in respect of third party costs directly related to the Services. The Authority will receive the full benefit of such commission, discount or rebate.
2. **CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION CONFIDENTIALITY**
   1. For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a “**Recipient**”. A Party which discloses or makes available Confidential Information is a “**Disclosing Party**”.
   2. Unless a Recipient has express permission to disclose Confidential Information, it must:
      1. treat the Disclosing Party's Confidential Information as confidential and store it securely;
      2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or with the owner's prior written consent;
      3. not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract, and
      4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
   3. A Recipient is entitled to disclose Confidential Information if:
      1. where disclosure is required by applicable Law or by a court with the required jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information Contract and extent of the disclosure;
      2. if the Recipient already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
      3. if the information was given to it by a third party without obligation of confidentiality;
      4. if the information was in the public domain at the time of the disclosure;
      5. if the information was independently developed without access to the Disclosing Party’s Confidential Information;
      6. to its auditors or for the purposes of regulatory requirements;
      7. on a confidential basis, to its professional advisers on a need-to-know basis; and/or
      8. to the Serious Fraud Office where the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
   4. If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
   5. Subject to Clauses 15.3 the Provider may disclose Confidential Information, on a confidential basis, to:
      1. Provider personnel or Sub-Contractors who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance under this Contract, and
      2. its professional advisers for the purposes of obtaining advice in relation to this Contract.
   6. Where the Provider discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Contract.
   7. The Authority may disclose the Confidential Information of the Provider:
      1. to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
      2. to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
      3. if disclosure is necessary or appropriate in the course of carrying out its public functions
      4. on a confidential basis to a professional adviser, consultant, Provider or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Contract
      5. on a confidential basis for the purpose of the exercise of its rights under this Contract, or
      6. to a proposed successor in title (transferee, assignee or novatee) of the Authority.
   8. Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 15.
   9. Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
   10. If the Provider fails to comply with this Clause 15, the Authority can terminate this Contract.

# TRANSPARENCY

* 1. Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract (and any Transparency Reports submitted by the Provider under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 [www.gov.uk/government/uploads/system/uploads/attachment\_data/file/458554/Procureme nt\_Policy\_Note\_13\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein.
  2. The Authority will determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Provider to inform its decision regarding any redactions but will have absolute discretion over the final decision.
  3. Notwithstanding any other provision of this Contract, the Provider consents to the Authority publishing this Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).
  4. The Provider will cooperate with the Authority to enable publication of this Contract.

# FREEDOM OF INFORMATION

* 1. The Authority is subject to the requirements of the FOIA and the EIRs. The Provider will:
     1. provide all necessary assistance to the Authority to enable it to comply with its Information disclosure obligations.
     2. send all Requests for Information it receives relating to this Contract to the Authority as soon as practicable and within a maximum of two (2) Working Days from receipt.
     3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days of the Authority’s request.
  2. The Provider must not respond directly to a Request for Information without the Authority’s Approval.
  3. The Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Authority will take reasonable steps to notify the Provider of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Authority will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

1. **PROVIDER WARRANTIES**
   1. The Provider warrants that:
      1. it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party;
      2. the personnel who perform the Services are competent and suitable do so;
   2. The Provider undertakes that:
      1. the use of the Deliverables by the Authority in accordance with this Contract and for the purposes set out in the Order Form will not infringe the copyright of any third party; and
      2. as at the date they are delivered, the Deliverables of this Contract may be used for the purposes set out in the Order Form and comply with all relevant regulations and standards stipulated within the Order Form.
   3. The Provider hereby indemnifies the Authority against any Losses incurred by the Authority as a result of breach by the Provider of its warranty and undertaking in Clauses 16.1 and 16.2.
2. **AUTHORITY WARRANTIES**
   1. The Authority warrants that:
      1. it has full capacity and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party; and
      2. the Authority Materials will not, when used in accordance with this Contract and any written instructions given by the Authority, infringe third party copyright.
3. **LIABILITY**
   1. Nothing in this Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.
   2. Subject always to Clauses 18.1 and 18.3, the maximum amount the Provider can be liable for in respect of all Defaults shall in no event exceed:
      1. in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Order Form or a sum equal to 125% of the Contract Charges estimated by the Authority for the first Contract Year;
      2. in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Order Form or a sum equal to 125% of the Contract Charges payable to the Provider under this Contract in the previous Contract Year; and
      3. in relation to any Defaults occurring in each Contract year that commences after the end of the Initial Term, the higher of the figure specified in the Order Form or a sum equal to 125% of the Contract charges payable to the Provider under this Contract in the last Contract Year commencing during the Term.
   3. Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:
      1. loss of profits
      2. loss of goodwill or reputation
      3. loss of revenue
      4. loss of savings whether anticipated or otherwise; or
      5. indirect or consequential loss or damage of any kind
   4. Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Authority’s total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Order Form.
4. **INSURANCE**
   1. The Provider will hold insurance policies to the value sufficient to meet its liabilities in connection with this Contract (including any specific insurance requirements as are set out in the Order Form). The Provider will provide the Authority with evidence that such insurance is in place at the Authority’s request.
   2. The Provider will effect and maintain the policy or policies of insurance as stipulated in the Order Form.
   3. If, for whatever reason, the Provider fails to comply with the provisions of this Clause 19 the Authority may make alternative arrangements to protect its interests. If the Authority does so, it may recover the premium and other costs of such arrangements as a debt due from the Provider.
   4. Any insurance effected by the Provider will not relieve it of any liability under this Contract. It is the Provider’s responsibility to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability in relation to the performance of its obligations under this Contract.
   5. The Provider must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Provider will use all reasonable endeavours to notify the Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.
5. **INTELLECTUAL PROPERTY RIGHTS (IPR)**
   1. The Provider acknowledges that the Authority retains ownership of Authority

Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Authority Materials produced by the Provider in the course of delivering the Services. The Authority hereby grants to the Provider a non-exclusive license to use the Authority Materials during the applicable Services Term solely for the purposes of delivering the Services.

* 1. The Provider hereby assigns to the Authority all of the Intellectual Property Rights in the Provider Materials which are capable of being assigned (and in the case of copyright, by way of a present assignment of future copyright), together with the right to sue for past infringement of the Intellectual Property Rights in the Provider Materials.]
  2. All Intellectual Property Rights in the Provider Proprietary Materials remain the property of the Provider. The Provider grants to the Authority a non-exclusive, royalty-free license to use any Provider Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Order Form.
  3. All Intellectual Property Rights in Services Specific Materials shall be owned by the Authority and the Authority hereby grants a non-exclusive, royalty-free license to use any Services Specific Materials for the purposes of providing the Services throughout the Term.
  4. Prior to delivery of the Deliverables to the Authority, the Provider will obtain all licenses or consents in respect of Third Party Materials that are required so the Authority can use these Third Party Materials for the purposes set out in the Order Form. The Provider will notify the Authority of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.
  5. The Provider agrees:
     1. at the Authority ’s request and expense, to take all such actions and execute all such documents as are necessary (in the Authority ’s reasonable opinion) to enable the Authority to obtain, defend or enforce its rights in the Provider Materials and Deliverables; and
     2. neither to do nor fail to do any act which would or might prejudice the Authority’s rights under this Clause 20.
  6. To the extent permitted by law, the Provider shall ensure that all Moral Rights in the Provider Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Provider agrees not to assert any Moral Rights in respect of the Provider Materials.
  7. The Provider will use its reasonable endeavors to ensure that all Moral Rights in

Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Provider will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials. If the Provider cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Provider will notify the Authority and will obtain the Authority ’s Approval prior to incorporating such Third Party Materials into the Deliverables.

* 1. During the Term, if the Provider is asked to take part in a competitive pitch or other similar process for the Authority, then notwithstanding any of the previous provisions of this Clause 20, the Provider will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Provider is successful in such pitch and the Parties agree that such Materials will be used in a Services the Provider will assign all such Intellectual Property Rights to the Authority.
  2. The Provider is not liable in connection with this Contract for any modifications, adaptations or amendments to any Deliverables made by the Authority or by a third party on the Authority’s behalf after the Provider has handed them over. The Provider is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Authority or its Affiliates.
  3. The terms of and obligations imposed by this Clause 20 continue after the termination of this Contract.
  4. The Provider will indemnify the Authority in full against all Losses (whether direct or indirect) in connection with any claim made against the Authority for actual or alleged infringement of a third party’s intellectual property rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Provider any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority.

1. **AUDIT**
   1. The Provider will keep and maintain full and accurate records and accounts of the operation of this Contract, the Services provided under it, any Sub-Contracts and the amounts paid by the Authority for at least seven (7) years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
   2. The Provider will:
      1. keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and
      2. afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Provider's premises and/or provide records and accounts (including copies of the Provider's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Provider and/or its Sub-Contractors with the Provider's obligations under this Contract, and in particular to:
         1. verify the accuracy of the Contract Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);
         2. verify the costs of the Provider (including the costs of all Sub-Contractors and any third party Providers) in connection with the provision of the Services;
         3. verify the Provider's and each Sub-Contractor's compliance with the applicable Laws;
         4. identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Authority is not obliged to inform the Provider of the purpose or objective of its investigations;
         5. identify or investigate any circumstances which may impact upon the financial stability of the Provider or any Sub-Contractors or their ability to perform the Services;
         6. obtain such information as is necessary to fulfil the Authority’s obligations to supply information for parliamentary, ministerial, judicial or administrative purposes, including the supply of information to the Comptroller and Auditor General;
         7. review any books of account and the internal contract management accounts kept by the Provider in connection with this Contract;
         8. carry out the Authority’s internal and statutory audits and to prepare, examine and/or certify the Authority’s annual and interim reports and accounts
         9. enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
         10. review any records relating to the Provider's performance of the provision of the Services and to verify that these reflect the Provider's own internal reports and records;
         11. verify the accuracy and completeness of any information delivered or required by this Contract;
         12. inspect the Authority Materials, including the Authority 's Intellectual Property Rights, equipment and facilities, for the purposes of ensuring that the Authority Materials are secure; and
         13. review the integrity, confidentiality and security of any Authority data.
      3. audit does not unreasonably disrupt the Provider or delay the provision of the Services (although the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.)
   3. Subject to the Provider's rights in respect of Confidential Information, the Provider will on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:
      1. all reasonable information requested by the Authority within the scope of the audit;
      2. reasonable access to sites controlled by the Provider and to any equipment used in the provision of the Services; and
      3. access to the Provider personnel.
   4. The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Provider, whereby the Provider will reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.
   5. If an Audit reveals that the Authority has been overcharged, the Provider will reimburse to the Authority the amount of the overcharge within thirty (30) days. If an Audit reveals the Provider has been underpaid, the Authority shall pay to the Provider the amount of the underpayment within thirty (30) days.
2. **TERMINATION**

***Authority Rights of Termination***

* 1. The Authority may, by giving no less than three (3) month’s written notice to the Provider, terminate this Contract without cause.
  2. The Authority may terminate or cancel a Services at any time subject to Clause 9.8 and payment of all Contract Charges specifically set out at Clause 9.9 of Clause 9 (Variations and Cancellations).
  3. The Authority may terminate this Contract or a Services by written notice to the Provider with immediate effect if the Provider:
     1. commits a material Default which cannot be remedied;
     2. repeatedly breaches any of the terms and conditions of this Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
     3. commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within thirty (30) days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
     4. breaches any of the provisions of Clauses 6.1 (Provider: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
     5. is subject to an Insolvency Event; or
     6. fails to comply with legal obligations.
  4. The Provider must notify the Authority as soon as practicable of any Change of Control or any potential Change of Control.
  5. The Authority may terminate this Contract with immediate effect by written notice to the Provider within six (6) Months of:
     1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
     2. where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

* 1. The Authority may terminate this Contract or a Services by giving the Provider at least fourteen (14) days’ notice if:
     1. the DPS Agreement is terminated for any reason;
     2. the Parties fail to agree a Variation under Clause 9; or
     3. the Provider fails to implement an agreed Variation.
  2. Where this Contract is conditional upon them Provider procuring a Guarantee pursuant to Clause 3 (Contract Guarantee), the Authority may terminate this Contract by issuing a notice of termination Notice to the Provider where:
     1. the Guarantor withdraws the Guarantee for any reason;
     2. the Guarantor is in breach or anticipatory breach of Guarantee;
     3. an Insolvency Event occurs in respect of the Guarantor; or
     4. the Guarantee becomes invalid or unenforceable for any reason whatsoever,
     5. and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Authority; or
     6. the Provider fails to provide the documentation required by Clause 3.1 by the date so specified by the Authority.

## Provider Rights to Terminate

* 1. The Provider may terminate a Services by written notice to the Authority if:
  2. the Authority has not paid any undisputed amounts falling due under that Services, and
  3. the undisputed sum due remains outstanding for forty (40) Working Days after the Authority has received a written notice of non-payment from the Provider specifying:
     + 1. the Authority’s failure to pay;
       2. the correct overdue and undisputed sum;
       3. the reasons why the undisputed sum is due; and
       4. the requirement on the Authority to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Authority exercising its rights under this Contract (including the right to set off under Clause 29). This Contract shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice), save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this Contract including Clause 30 (Retention and Set off).

* 1. The Provider shall not suspend the supply of the Goods and/or Services for failure of the Authority to pay undisputed sums of money (whether in whole or in part).

1. **CONSEQUENCES OF TERMINATION**
   1. Termination of a Services in accordance with the terms of this Contract by either Party shall not serve to terminate this Contract, which will continue in full force and effect.
   2. If this Contract is terminated, all ongoing and outstanding Services will also terminate on the same date as this Contract.
   3. Upon termination of this Contract or a Services for any reason:
      1. the Expiry Date or New Expiry Date shall be the date this Contract terminates;
      2. the Authority will pay the Provider all Contract Charges falling properly due and payable to the Provider prior to the date of termination (including in accordance with Clause 9 where relevant);
      3. each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Services. On the request of the other Party, each will certify in writing that the same has been done; and
      4. the Provider and its staff will vacate any premises of the Authority occupied for any purpose of providing the Services or Deliverables.
   4. Any provisions of this Contract which are to continue after termination will remain in full force and effect after this Contract is terminated. Such provisions may include (but are not limited to):
      1. Clause 15 (Confidentiality, Transparency and Freedom of Information)
      2. Clause 16 (Provider warranties)Clause 17 (Authority warranties)
      3. Clause 18 (Liability)
      4. Clause 19 (Insurance)
      5. Clause 20 (Intellectual Property Rights)
      6. Clause 21 (Audit)
      7. Clause 23 (Termination)
      8. Clause 26 (Notices)
      9. Clause 27 (Staff Transfer)
      10. Clause 28 (Third Party Rights)
      11. Clause 29 (GDPR, Security & Publicity)
      12. Clause 32 (General) and
      13. Clause 34 (Governing law and jurisdiction)
      14. Contract Schedule 1 (Definitions and Interpretation), Contract Schedule 3 (Staff Transfer), Contract Schedule 4 (Dispute Resolution Procedure).
2. **FORCE MAJEURE**
   1. Neither Party will have any liability under or be in breach of this Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).
   2. Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for sixty (60) consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this DPS Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.
   3. If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Contract as far as is possible. Where the Provider is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
3. **NOTICES**
   1. Any notices sent under this Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

|  |  |  |
| --- | --- | --- |
| **Notice delivered** | **Deemed time of delivery** | **Proof of service** |
| In person | At the time of delivery | Proof that delivery was made (e.g. a signature is obtained) |
| By first class post, special delivery or other recorded delivery | 2 Working Days from the date of posting | Proof that the envelope was addressed and delivered into the custody of the postal authorities |
| Email | 09:00 hours on the first Working Day after sending | Dispatched in an emailed pdf to the correct email address without any error message |

* 1. The address and email address of each Party will be:
     1. Provider:
     2. Authority:
  2. For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

# STAFF TRANSFER

* 1. The Parties agree that
     1. if providing the Services means staff must be transferred from the Authority to the Provider, where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:
        1. where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 3 (Staff Transfer) will apply
        2. where the Relevant Transfer involves the transfer of Transferring Former Provider Employees, Part B of Schedule 3 (Staff Transfer) will apply
        3. where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Provider Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
        4. Part C of Schedule 3 (Staff Transfer) will not apply
  2. Where providing the Services does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer)) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and
  3. art D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the

Services or any part of the Services.

* 1. Both during and after the Term, the Provider will indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority due to any act or omission of the Provider or any Provider personnel.

1. **THIRD PARTY RIGHTS**
   1. Except for AUTHORITY and the persons that the provisions of Schedule 3 of this Contract confer benefits on, a person who is not a Party to this Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
2. **DATA PROTECTION, SECURITY AND PUBLICITY**
   1. In addition to its general security obligations under this Contract, the Provider shall comply with any security requirements specifically set out in the Order Form.

# Data Protection

* 1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in Contract Schedule 7 (Processing, Personal Data and Data Subjects) by the Authority and may not be determined by the Provider.
  2. The Provider shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
  3. The Provider shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
     1. a systematic description of the envisaged processing operations and the purpose of the processing;
     2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
     3. an assessment of the risks to the rights and freedoms of Data Subjects; and
     4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
     1. process that Personal Data only in accordance with Schedule 7 (Processing, Personal Data and Data Subjects), unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
     2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Data Loss Event;
        3. state of technological development; and
        4. cost of implementing any measures;
     3. ensure that :
        1. the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Contract Schedule 7 (Processing, Personal Data and Data Subjects));
        2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Provider’s duties under this clause;
           2. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
           3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
           4. have undergone adequate training in the use , care, protection and handling of Personal Data; and
     4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
        1. the Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
        2. the Data Subject has enforceable rights and effective legal remedies;
        3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
        4. the Provider complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
     5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.
  5. Subject to Clause 29.7, the Provider shall notify the Authority immediately if it:
     1. notify the Authority promptly if the Provider receives a Data Subject Access Request (or purported Data Subject Access Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, any complaint, notice or communication relating to either Party's obligations under the Data Protection Legislation;
     4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
     5. receives a request from any third Party for disclosure of Personal Data where that relates directly to its compliance with such request is required or purported to be required by Law; or Data Protection Legislation and/or the processing of personal data under or in connection with this Contract;
     6. becomes aware of a Data Loss Event.
  6. The Provider’s obligation to notify under Clause 29.6 shall include the provision of further information to the Authority in phases, as details become available.
  7. Taking into account the nature of the processing, the Provider shall provide the Authority the Authority with full cooperation and assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.6 (and insofar as possible (within the timescales reasonably required by the Authority) including by promptly providing:
     1. the Authority with full details and copies of the complaint, communication or request;
     2. the Authority) in relation to any such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation; complaint, communication or request;
     3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as if requested by the Authority following any Data Loss Event;
     5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with Authority, provide a written description of the Information Commissioner's Office.
  8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
     1. the Authority determines that the processing is not occasional;
     2. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
     3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  9. The Provider shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.
  10. The Provider shall designate a data protection officer if required and use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Legislation.
  11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:
      1. notify the Authority in writing of the intended Sub-processor and processing;
      2. obtain the written consent of the Authority;
      3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 29.12 such that they apply to the Sub-processor; and
      4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
  12. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
  13. The Provider may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
  14. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Working Days’ notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
  15. The Provider will not cause the Authority to breach any of the Authority's obligations under the Data Protection Legislation, to the extent the Provider is aware (or ought reasonably to have been aware), that the same would be a breach of such obligations. It will not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission under Article 25(6) of Directive 95/46/EC without Approval from the Authority.
  16. The Provider will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
  17. Notwithstanding Clause 28.6, if Malicious Software is found, the Parties will co- operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

# Authority Data

* 1. The Provider will not store, copy, disclose, or use the Authority Data except as necessary to perform its obligations under this Contract or where the Authority has given Approval.
  2. If any Authority Data is held and/or Processed by the Provider, the Provider must supply that Authority Data to the Authority, at the time and in the format the Authority requests.
  3. The Provider is responsible for preserving the integrity of any Authority Data it holds or processes, and preventing its corruption or loss.
  4. The Provider will perform secure back-ups of all Authority data and shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) on request.
  5. The Provider will ensure that any system it uses to holds any Authority Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Authority Data.
  6. If any time the Provider suspects or has any reason to believe that the Authority Data is corrupted, lost or sufficiently degraded in any way, then the Provider must notify the Authority immediately. This notification must contain information detailing the remedial action the Provider proposes to take.

# Publicity and Branding

* 1. The Provider may not make any press announcements or publicise this Contract or use the Authority's name or brand in any promotion or marketing or announcement of orders without Approval from the Authority.
  2. The Provider will seek the Authority’s Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

1. **RETENTION AND SET OFF**
   1. If the Provider owes the Authority any money, the Authority may retain or set off this money against any amount owed to the Provider under this Contract or any other agreement between the Provider and the Authority. In order to exercise this right, the Authority will, within thirty (30) days of receipt of the relevant invoice, notify the Provider of its reasons for retaining or setting off the relevant Contract Charges.
   2. The Provider will make any payments due to the Authority without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Provider has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority.
2. **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**
   1. Where the Provider or any Provider personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Provider will:
      1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, and
      2. indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Provider or any Provider Personnel.
   2. If any of the Provider Personnel is a Worker as defined in Contract Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 31.1, the Provider must ensure that its contract with the Worker contains the following requirements:
      1. that the Authority may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 31.1, or why those requirements do not apply to it. In such case, the Authority may specify the information which the Worker must provide and the period within which that information must be provided
      2. that the Worker's contract may be terminated at the Authority’s request if:
         1. the Worker fails to provide the information requested by the Authority within the time specified by the Authority under Clause 31.2.1 and/or
         2. the Worker provides information which the Authority considers is inadequate to demonstrate how the Worker complies with Clause 31.2.1, or confirms that the Worker is not complying with those requirements
      3. that the Authority may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.
3. **PREVENTION OF FRAUD AND BRIBERY**
   1. The Provider represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
      2. been listed by any government department or Provider as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Provider must not:
      1. commit a Prohibited Act; or
      2. do or suffer anything to be done which would cause the Authority or any of the Authority’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Provider shall during the Term:
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. keep appropriate records of its compliance with its obligations under 32.3.1 and make such records available to the Authority on request;
      3. if so required by the Authority, within 20 days of the Effective Date, and annually thereafter, certify to the Authority in writing that the Provider and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract are compliant with the Relevant Requirements. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request; and
   4. have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Provider staff or Sub-Contractors or any person acting on the Provider’s behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Authority on request.
   5. The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Provider staff or Sub-Contractors have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or Provider as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract; or
      4. otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
   6. If the Provider makes a notification to the Authority under to Clause 32.5, the Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
   7. If the Provider breaches Clause 32.5, the Authority may by notice:
      1. require the Provider to remove any Provider Personnel whose acts or omissions have caused the Provider’s breach from any Services; or
      2. immediately terminate this Contract for material Default.
   8. Any notice served by the Authority under Clause 32.5 shall set out:
      1. the nature of the Prohibited Act;
      2. the identity of the Party who the Authority believes has committed the Prohibited Act;
      3. the action that the Authority has elected to take; and
      4. if relevant, the date on which this Contract shall terminate.
4. **GENERAL**
   1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licenses and permissions to enter into and perform
   2. its obligations under this Contract, and that this Contract is executed by its duly authorised representative.
   3. This Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.
   4. Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
   5. Any entire or partial waiver or relaxation of any of the terms and conditions of this Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Contract.
   6. This Contract does not constitute or imply any partnership, joint venture, Provider, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party’s behalf.
   7. Unless expressly stated in this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
   8. If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Contract.

# DISPUTE RESOLUTION

* 1. The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
  2. The Provider shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

# GOVERNING LAW AND JURISDICTION

* 1. This Agreement will be governed by the laws of England and Wales.
  2. Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.

1. **Additional Clauses**
   1. Where the Authority has so specified in the Order Form, the Provider shall comply with the provisions of set out in Schedule 6 (Additional Clauses).

# SCHEDULE 1

# Definitions and Interpretation

1. **INTERPRETATION**
   1. In this Contract, any references to numbered Clauses and schedules refer to those within this Contract unless specifically stated otherwise. If there is any conflict between this Contract, the Order Form, the provisions of the DPS Agreement and the Service Standard(s), the conflict shall be resolved in accordance with the following order of precedence:
      1. the Order Form (except the Provider Proposal)
      2. the Order Form
      3. the Contract Terms
      4. the Provider Proposal, and
   2. The definitions and interpretations used in this Contract are set out in this Schedule 1 (Definitions).
   3. Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.
   4. Unless the context otherwise requires:
      1. words importing the singular meaning include where the context so admits the plural meaning and vice versa
      2. words importing the masculine include the feminine and the neuter and vice versa
      3. the words ‘include’, ‘includes’ ‘including’ ‘for example’ and ‘in particular’ and words of similar effect will not limit the general effect of the words which precede them
      4. references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
      5. references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
      6. headings are included in this Contract for ease of reference only and will not affect the interpretation or construction of this Contract
   5. If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Schedule, it shall have the meaning given to it in the DPS Agreement. If no meaning is given to it in the DPS Agreement, it shall be interpreted in accordance with the relevant market sector/ industry meaning. Otherwise it shall be interpreted in accordance with the dictionary.
   6. In this contract the following terms have the following meaning:

|  |  |
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| **Agreement** | means this Contract; |
| **Approval** | means the Approval given in accordance with Clause 10.1 or 10.2 as the context requires and "**Approve**", “**Approving”** and "**Approved**" shall be construed accordingly. |
| **Affected Party** | means the Authority or the Provider affected by the  event |
| **Associates** | A Party’s employees, officers, agents, sub-contractors or authorised representatives. |
| **Authorised Provider Approver** | Any personnel of the Provider who have the authority to contractually bind the Provider in all matters relating to Contract. They must be named in the applicable Order Form, and the Authority must be notified if they change. |
| **Authorised Authority Approver** | Any personnel of the Authority who have the authority to contractually bind the Authority in all matters relating to this Contract. They must be named in the applicable Order Form, and the Provider must be notified if they change. |
| **Contract** | This contract between the Authority and the Provider (entered into under the provisions of the DPS Agreement), which consists of the terms set out in the Order Form, the Contract Terms, the Schedules and any Order Form. |
| **Contract Terms** | The terms and conditions set out in this Contract including this Schedule 1 but not including any other Schedules or Order Form. |
| **Central Government Body** | A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non- Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Provider. |
| **Change of Control** | Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988. |
| **Authority Affiliates** | Any organisation associated with the Authority that will directly receive the benefit of the Services. Authority Affiliates must be named in the Order Form, or subsequently notified to the Provider. |
| **Authority Services Specification** | The document containing the Authority’s requirements issued either as part of the Call For Competition Process set out in Section 3 of the DPS Agreement or as set out in the Order Form from time to time. |
| **Authority Cause** | A situation where the Authority does not fulfil its obligations in connection with this Contract (including its payment obligations), and as a consequence the Provider is prevented from performing any of the agreed Services. |
| **Authority Confidential Information** | All Authority Data and any information that the Authority or AUTHORITY gives to Agencies that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Authority’s business, affairs, developments, trade secrets, Know-How, personnel and Providers. |
| **Authority Data** | Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Authority’s Confidential Information, supplied to the Provider by or on behalf of the Authority, or which the Provider is required to generate, process, store or transmit in connection this Contract, and any Personal Data for which the Authority is the Data Controller. |
| **Authority Materials** | Any Authority Data, Authority equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Authority which are provided to the Provider or its Associates by or on behalf of the Authority. |
| **Contract Charges** | All charges payable by the Authority for the Services provided under this Contract calculated in accordance with DPS Schedule 3 (Charging Structure) and the Order Form including all Approved costs properly incurred by the Authority including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees. |
| **Confidential Information** | The Authority’s Confidential Information and/or the Provider Confidential Information. |
| **Contractor Personnel** | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement. |
| **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** | The meaning given in the GDPR. |
| **Contract Year** | A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof. |
| **Data Loss Event** | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. |
| **DPA 2018** | Data Protection Act 2018 |
| **Data Protection Impact Assessment** | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **Data Subject Access Request** | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| **Data Protection Legislation or DPA** | (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy; |
| **Default** | Any breach of the obligations of the Provider (including but not limited failing to provide any Deliverables by any date set out in the applicable Order Form (or any other deadline agreed by the Parties in writing), and abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Provider, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Provider is liable to the Authority. |
| **Deliverables** | The applied research services from Section 2 of the DPS Agreement that are to be provided as specified in the Order Form. |
| **Dispute** | Any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure. |
| **Dispute Resolution Procedure** | The dispute resolution procedure set out in Contract Schedule 4 (Dispute Resolution Procedure). |
| **DPS Agreement** | The DPS Agreement between the Cornwall Council and the Provider. |
| **DPS** | Means the dynamic purchasing system established by the Cornwall Council for the provision of Emergency Accommodation Services which are to be provided by the Provider under the DPS Agreement. |
| **Effective Date** | The date this Contract starts, as set out in the Order Form. |
| **Environmental Information Regulations or EIRs** | The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department. |
| **Expenses** | Reasonable travelling, hotel, subsistence and other expenses incurred by the Provider in connection with the supply Services of and Deliverables, provided that such Expenses have either received the Authority’s Approval or are in accordance with any expenses policies which have been supplied to the Provider and set out in the agreed Order Form. |
| **Expiry Date** | The date this Contract ends, as set out in the Order Form. |
| **Extension Expiry Date** | The latest date this Contract can end, as set out in the Order Form. |
| **FOIA** | The Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that 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:  • acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party  • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare  • fire, flood, any disaster and any failure or shortage of power or fuel  • an industrial dispute affecting a third party for which a substitute third party is not reasonably available but does not mean:   * any industrial dispute relating to the Provider, its staff, or any other failure in the Provider’s (or a subcontractor’s) supply chain * any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned, and   any failure of delay caused by a lack of funds |
| **Further Competition Procedure** | The process of a Authority issuing a Services Specification and the Provider submitting a proposal in response to such Services Specification, as set out in DPS Clause 5. |
| **GDPR** | Means the General Data Protection Regulation *(Regulation (EU) 2016/679)* |
| **Good Industry Practice** | Standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector. |
| **Guarantee** | A deed of guarantee that may be required under this Contract in favour of the Authority in the form set out in clause 7 DPS. |
| **Guarantor** | The person, in the event that a Guarantee is required under this Contract, acceptable to the Authority to give a Guarantee. |
| **Impact Assessment** | The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4. |
| **Information** | The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time |
| **Insolvency Event** | Means, in respect of the Provider [or DPS Guarantor (as applicable)]:   1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or 2. a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or 3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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 4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 5. 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 6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or 7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or 8. where the Provider is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or 9. any event analogous to these listed in this definition occurs under the law of any other jurisdiction |
| **Intellectual Property Rights or IPR** | The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:   * any patents or patent applications * any trade marks (whether or not registered) * inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration * copyright or design rights (whether registered or unregistered) * database rights * performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world * any goodwill in any trade or service name, trading style or get-up and * any and all other intellectual or proprietary rights |
| **Key Individuals** | Individuals named by the Provider in the Letter or Appointment or Order Form as having a major responsibility for delivering the Services. |
| **Law** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply; |
| **LED** | means Law Enforcement Directive (Directive (EU) 2016/680) |
| **Order Form** | The Order Form, substantially in the form set out in Appendix A, signed by both Parties and dated on the Effective Date. |
| **Losses** | Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.2. |
| **Malicious Software** | Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **Materials** | Any questionnaires, discussion guides, transcripts, tables, data files, reports, pre-notifications, stimulus materials or any other material protected by Intellectual Property Rights or produced as part of the Services. |
| **Moral Rights** | All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world. |
| **New Expiry Date** | Has the meaning given to it in Clause 2.3 |
| **Party** | Means a Party to this Agreement. |
| **Personal Data** | Personal Data has the same meaning as set out in the Data Protection Act 2018 |
| **Prohibited Act** | To directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:   1. induce that person to perform improperly a relevant function or activity 2. reward that person for improper performance of a relevant function or activity 3. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; 4. commit any offence:    * under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or    * under legislation or common law concerning fraudulent acts; or    * defrauding, attempting to defraud or conspiring to defraud the Authority ; or    * any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK; |
| **Services** | Any Services(s) agreed between the Parties from time to time whereby the Provider performs the Services which are the subject of this Contract and supplies Deliverables to the Authority as more fully described in the applicable Order Form; |
| **Services Commencement Date** | The date a Services will start, as set out in the relevant Order Form. |
| **Services Completion Date** | The date by which the Services are to be completed, as set out in the relevant Order Form. |
| **Services Notice Period** | The period of notice for cancellation of the Services as set out in the Order Form. |
| **Services Specific Materials** | Means:  Intellectual Property Rights in items created by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or  Intellectual Property Rights in or arising as a result of the performance of the Provider’s obligations under this Contract and all updates and amendments to the same. |
| **Services Term** | The period during which the Services for each Services will be provided as specified in the applicable Order Form. |
| **Protective Measures** | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it. |
| **Purchase Order Number** | The order number set out in the Order Form. |
| **Records** | The accounts and information maintained by the Provider related to the operation and delivery of this Contract, including all expenditure which is reimbursable by the Authority, as are necessary for the provision of management information and to enable the Authority to conduct an audit as set out in Clause 21. |
| **Rectification Plan** | The rectification plan pursuant to the Rectification Plan Process. |
| **Rectification Plan Process** | The process set out in Clauses 5.8 to 5.14. |
| **Regulations** | The Public Contracts Regulations 2015. |
| **Relevant Requirements** | All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **Request for**  **Information** | A request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs. |
| **Schedule** | Any Schedule attached to this Contract. |
| **Services** | The Services to be supplied by the Provider under this Contract and in accordance with clause 4 of the DPS Agreement, as set out in the relevant Order Form. This includes the provision of Deliverables. |
| **Special Terms** | Any terms specifically designated as varying these Contract Terms or the terms of any schedule, as set out in the applicable Order Form. |
| **Standards** | Any:  standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with;  • standards detailed in the specification in DPS Section 2 (Services and Key Performance Indicators):  • standards detailed by the Authority in the Order Form and any Order Form or agreed between the Parties from time to time;  • relevant Government codes of practice and guidance applicable from time to time i.e. including but not limited to Market Research Society (MRS) Code of Conduct and Social Research Association (SRA). |
| **Order Form** | One or more documents describing the relevant Services(s) as agreed and signed by the parties and which shall comprise both the Authority Services Specification and the Provider’s Proposal (whether agreed as part of a Call for Competition or during the Term of this Contract). |
| **Sub-Contract** | A contract entered into between the Provider and a Sub- Contractor. |
| **Sub-Contractor** | Any person or Provider appointed by the Provider to provide elements of the Services on behalf of the Provider to the Authority. |
| **Sub-Processor** | Means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement |
| **Provider Affiliate** | Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Provider, including as a subsidiary, parent or holding company. |
| **Provider Confidential Information** | Any information that the Provider gives to Authority that is designated as being confidential, or which ought to be reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however it is conveyed, that relates to the Provider’s business, affairs, developments, trade secrets, Know-How, personnel and Providers including all Intellectual Property Rights. |
| **Provider Materials** | Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Provider for the purposes of a Services, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Authority Materials). |
| **Provider Proprietary Materials** | Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Provider and which:  - were in existence prior to the date on which it is intended to use them for a Services, or  are created by or for the Provider outside of a Services and which are intended to be reused across its business |
| **Provider Proposal** | The Provider’s solution in response to the Authority’s Services Specification, as set out in the Order Form or in any Order Form. |
| **Tender** | The tender submitted by the Provider in response to the Invitation to Tender. |
| **Term** | The period from the Effective Date to the earlier of:   * the Expiry Date or New Expiry Date; and * any date of termination |
| **Territory** | The United Kingdom, unless specified otherwise in the applicable Order Form. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide. |
| **Third Party Materials** | Any Materials used in the Deliverables which are either commissioned by the Provider from third parties or which have already been created by a third party and the Provider proposes to use. Excludes software which is owned or licensed by a third party. |
| **Transparency Principles** | The principles set out at [www.gov.uk/government/publications/transparency-of-Providers-](http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public)  [and-government-to-the-public](http://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public) detailing the requirement for the proactive release of contract information under the Government’s transparency commitment. |
| **Transparency Reports** | The information relating to the Services and performance of this Contract which the Provider is required to provide to the AUTHORITY in accordance with its reporting requirements. |
| **Variation** | A change in this Contract that is formally agreed by both Parties, as detailed in Clause 10.2. |
| **Variation Form** | The template form to process and record variations to this Contract as set out at Schedule 5. |
| **Worker** | Any Provider personnel to whom the Authority considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies  See [https://www.gov.uk/government/publications/procurement-](https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees)  [policy-note-0815-tax-arrangements-of-appointees](https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) |
| **Working Day** | Any day other than a Saturday, Sunday or public holiday in England and Wales. |

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| **SCHEDULE 2**  **ORDER FORM**  **(Service Standards)** | | |
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**Between the parties dated *[insert date of signature of Contract****.]*

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| **Services:** |  |  | *Set out a short description of the Services.* |  |
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| **Services start Date**  **Notice period for cancellation**  **[Services Notice Period]:** |  |  | *Set out the start date for this Services and its duration and the likely end date if known– state whether for a fixed term or an initial term and then rolling subject to notice.*  *Where the parties are agreeing a Services Notice Period for cancellation of Services, specify the notice period* |  |
|  |  |  |  |  |
| **Services & Deliverables:** |  |  | Set out a description of the Services and Deliverables to be supplied by the Provider for this OREDR FORM.  State any specific agreed activities that are to be delivered as part of the Services.  State if you require any specific requirements and ways of working such as third party consents, licenses, clearances that Provider needs to obtain and products or purchases.  State that Authority’s use of the Deliverables will be “subject to any third party usage rights which are notified to the Authority in accordance with this Contract“. |  |
| **Inclusion of Additional Schedules** |  |  | The following Schedule are incorporated into this Scope of Work. This could include a copy of the agreed Proposal from the Provider or the original Services description. |  |
| **Services Plan:** |  |  | *Set out the timing of each phase of the Services, any key dates and/ or delivery of the Services and/or the Deliverables (if known)* |  |

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| **Contract Charges:** |  | *Set out the calculation of the Contract Charges [(including rules for the recovery of expenses)] payable to Provider for this Services e.g. details of any fixed price, time and materials in which case Provider’s Rate Card should be att ached, together with invoice dates or milestones that trigger payment.*  All rates should be less than the maximum rates set out in the Provider rate card submitted as part of the original DPS as set out in DPS Schedule 3.  *Set out any payment terms specific to the Services.*  ***Examples of different wording for Contract Charges:***  *The Authority shall pay the Provider the sum of £[...] for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third party costs*  *OR*  *The Contract Charges shall be calculated using the hourly charge out rates shown in [the Provider’s rate card, [provided that the total Contract Charges shall not exceed*  *£ [...].] For the avoidance of doubt, the Contract Charges shall inclusive of all third party costs.* |  |  |
| **Authority Materials:** |  | *Set out details of the materials or information to be provided to the Provider.* |  |  |
| **International locations** |  | *If Services are to be supplied outside the UK, specify additional territories here* |  |  |
| **Authority Affiliates:** |  | *If relevant, set out any Authority Affiliates which will be using Deliverables* |  |  |
| **Special Terms:** |  | Set out any special terms that are intended to take precedence over the Contract Terms and/or the Schedules to the Contract Terms such as, security requirements, warranties, specific insurance requirements etc. |  |  |
| **Key Individuals :** |  | *Set out details of the key personnel from the Provider for this Services if relevant.* |  |  |
| **Authorised Provider Approver:** |  | *Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Provider for this Services.* |  |  |

|  |  |
| --- | --- |
| **Authorised** | |
| **Authority** |  |
| **Approver:** |  |

|  |  |  |
| --- | --- | --- |
|  | *Set out details of the person(s) who have the authority to agree day* |  |
| *to day decisions on behalf of Authority for this Services.* | | |

Signed by: ……………………………………………….

By (print name) …………………………………………

As Provider Authorised Approver for and on behalf of [Provider]

Date……….....................................................................

Sig ned by:………………………………………..........

by (print name):……………………………………….

As Authority Authorised Approver for and on behalf of [Authority]

Date………... ................................................................

**SCHEDULE 3: STAFF TRANSFER**

**1. DEFINITIONS**

In this Contract Schedule 3, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Admission Agreement”** | The agreement to be entered into by which the Provider agrees to participate in the Schemes as amended from time to time; |
| **“Eligible Employee”** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement; |
| **“Employee Liabilities”** | all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:   1. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; 2. unfair, wrongful or constructive dismissal compensation; 3. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; 4. compensation for less favourable treatment of part-time workers or fixed term employees; 5. outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; 6. employment claims whether in tort, contract or statute or otherwise;   any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |

|  |  |
| --- | --- |
| **“Fair Deal Employees”** | those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Provider Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal; |
| **“Former Provider”** | any Provider supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Provider (or any sub- contractor of any such sub-contractor); |
| **“New Fair Deal”** | the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013; |
| **“Notified Sub-Contractor”** | a Sub-Contractor identified in the Annex to this Contract Schedule 3 to whom Transferring Authority Employees and/or Transferring Former Provider Employees will transfer on a Relevant Transfer Date; |
| **“Replacement Sub- Contractor”** | a sub-contractor of the Replacement Provider to whom Transferring Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub- contractor); |
| **“Relevant Transfer”** | a transfer of employment to which the Employment Regulations applies; |
| **“Relevant Transfer Date”** | in relation to a Relevant Transfer, the date upon which the  Relevant Transfer takes place; |
| **“Schemes”** | the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Provider by the Minister for the Cabinet Office); |
| **“Service Transfer”** | any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-Contractor to a Replacement Provider or a Replacement Sub-Contractor; |
| **“Service Transfer Date”** | the date of a Service Transfer; |
| **“Staffing Information”** | in relation to all persons identified on the Provider's Provisional Provider Personnel List or Provider's Final Provider Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all |

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|  | applicable provisions of the DPA), but including in an anonymised format:   1. their ages, dates of commencement of employment or engagement and gender; 2. details of whether they are employed, self-employed contractors or consultants, Provider workers or otherwise; 3. the identity of the employer or relevant contracting party; 4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; 5. their wages, salaries and profit sharing arrangements as applicable; 6. details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; 7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); 8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence; 9. copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and 10. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations; |
| **“Provider's Final Provider Personnel List”** | a list provided by the Provider of all Provider Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date; |
| **“Provider's Provisional Provider Personnel List”** | a list prepared and updated by the Provider of all Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Provider; |
| **“Transferring Authority Employees”** | those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date; |

1. Where a provision in this Contract Schedule 3 imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub- Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Provider, Replacement Provider or Replacement Sub- Contractor, as the case may be.

**PART A**

**TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES**

**3. RELEVANT TRANSFERS**

3.1 The Authority and the Provider agree that:

the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Provider and/or any Notified Sub-Contractor and each such Transferring Authority Employee.

3.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including)the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority ; and (ii) the Provider and/or any Notified Sub-Contractor (as appropriate).

1. **AUTHORITY INDEMNITIES**
   1. Subject to Paragraph 4.2, the Authority shall indemnify the Provider and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the Authority occurring before the Relevant Transfer Date;
      2. the breach or non-observance by the Authority before the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Authority Employees; and/or
         2. any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
      3. any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
      4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

relates to financial obligations arising before the Relevant Transfer

Date; and

* + - 1. in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
    1. a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
    2. any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
    3. any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Provider or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
  1. The indemnities in Paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider or any Sub- Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
     1. arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Provider and/or any Sub- Contractor to occur in the period from (and including) the Relevant Transfer Date; or
     2. arising from the failure by the Provider or any Sub-Contractor to comply with its obligations under the Employment Regulations.
  2. If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Provider and/or any Notified Sub- Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
     1. the Provider shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
     2. the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Provider and/or any Notified Sub-Contractor, or take such

other reasonable steps as the Authority considers appropriate to deal with

the matter provided always that such steps are in compliance with Law.

* 1. If an offer referred to in Paragraph 4.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Provider shall, or shall procure that the Notified Sub- Contractor shall, immediately release the person from his/her employment or alleged employment.
  2. If by the end of the 15 Working Day period specified in Paragraph 4.3.2:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or
     3. the situation has not otherwise been resolved,
     4. the Provider and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
  3. Subject to the Provider and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 4.3 to 4.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 4.5 provided that the Provider takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  4. The indemnity in Paragraph 4.6:
     1. shall not apply to:
        1. any claim for:
           + discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           + equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
           + in any case in relation to any alleged act or omission of the Provider and/or any Sub-Contractor; or
           + any claim that the termination of employment was unfair because the Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
        2. shall apply only where the notification referred to in Paragraph 4.3.1 is made by the Provider and/or any Notified Sub-Contractor (as appropriate) to the Authority within 6 months of the Contract Commencement Date.
  5. If any such person as is referred to in Paragraph 4.3 is neither re-employed by the Authority nor dismissed by the Provider and/or any Notified Sub-Contractor within the time scales set out in Paragraph 4.5 such person shall be treated as having transferred to the Provider and/or any Notified Sub-Contractor and the Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

1. **PROVIDER INDEMNITIES AND OBLIGATIONS**
   1. Subject to Paragraph 3.2 the Provider shall indemnify the Authority against any Employee Liabilities in respect of any Transferring Authority Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the Provider or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Authority Employees; and/or
         2. any custom or practice in respect of any Transferring Authority Employees which the Provider or any Sub-Contractor is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the Provider or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Provider or the relevant Sub- Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the Provider or any Sub-Contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Provider or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
      7. a failure of the Provider or any Sub-Contractor to discharge or procure the

discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date; and

* + 1. any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority 's failure to comply with its obligations under regulation 13 of the Employment Regulations.
  1. The indemnities in Paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority’s failure to comply with its obligations under the Employment Regulations.
  2. The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Provider.

# INFORMATION

The Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

# PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

* 1. The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Provider of employees whose employment begins after the Relevant Transfer Date, and the Provider undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
  2. The Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
     1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
     2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

7.2.3

7.2.4

HM Treasury's guidance “Fair deal for staff pensions: procurement of Bulk

Transfer Agreements and Related Issues” of June 2004; and/or

the New Fair Deal.

7.3 Any changes embodied in any statement of practice, paper or other guidance that

replaces any of the documentation referred to in Paragraphs 7.1 or 7.2 shall be agreed in accordance with the Variation Procedure.

**8. PENSIONS**

The Provider shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex to PART A (PENSIONS).

**ANNEX TO PART A: PENSIONS**

1. **PARTICIPATION**
   1. The Provider undertakes to enter into the Admission Agreement.
   2. The Provider and the Authority :

9.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Provider to participate in the Schemes in respect of the Fair Deal Employees;

* + 1. agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Provider breaches the Admission Agreement;
    2. notwithstanding Paragraph 9.2.2 of this Annex, the Provider shall notify the Authority in the event that it breaches the Admission Agreement; and
    3. agree that the Authority may terminate this Contract for material default in the event that the Provider breaches the Admission Agreement.

9.3 The Provider shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Provider participating in the Schemes.

# FUTURE SERVICE BENEFITS

* 1. The Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
  2. The Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
  3. The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

# FUNDING

* 1. The Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
  2. The Provider shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Provider to or in respect of the Schemes.

# PROVISION OF INFORMATION

The Provider and the Authority respectively undertake to each other:

matters referred to in this Annex and set out in the Admission Agreement, and to supply

the information as expeditiously as possible; and

12.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

# INDEMNITY

The Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

# EMPLOYER OBLIGATION

The Provider shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

# SUBSEQUENT TRANSFERS

The Provider shall:

* 1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
  2. provide all such co-operation and assistance as the Schemes and the Replacement Provider and/or the Authority may reasonably require to enable the Replacement Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
  3. for the period either:
     1. after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
     2. after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Provider or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the Approval of the Authority (such Approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

**PART B**

**TRANSFERRING FORMER PROVIDER EMPLOYEES AT COMMENCEMENT OF SERVICES**

**16. RELEVANT TRANSFERS**

16.1 The Authority and the Provider agree that:

16.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Provider Employees; and

16.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Provider and the Transferring Former Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Provider and/or Notified Sub-Contractor and each such Transferring Former Provider Employee.

16.2 Subject to Paragraph 6, the Authority shall procure that each Former Provider shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Provider shall make, and the Authority shall procure that each Former Provider makes, any necessary apportionments in respect of any periodic payments.

# FORMER PROVIDER INDEMINITIES

* 1. Subject to Paragraphs 17.2 and 21, the Authority shall procure that each Former Provider shall indemnify the Provider and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
     1. any act or omission by the Former Provider arising before the Relevant Transfer Date;
     2. the breach or non-observance by the Former Provider arising before the Relevant Transfer Date of:
        1. any collective agreement applicable to the Transferring Former Provider Employees; and/or
        2. any custom or practice in respect of any Transferring Former Provider Employees which the Former Provider is contractually bound to honour;
     3. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        1. in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
        2. in relation to any employee who is not a Transferring Former Provider

Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Provider to the Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;

* + 1. a failure of the Former Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
    2. any claim made by or in respect of any person employed or formerly employed by the Former Provider other than a Transferring Former Provider Employee for whom it is alleged the Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive;
    3. any claim by any trade union or other body or person representing any Transferring Former Provider Employees arising from or connected with any failure by the Former Provider to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date; and
    4. any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Former Provider in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Provider or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
  1. The indemnities in Paragraph 17.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider or any Sub- Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
     1. arising out of the resignation of any Transferring Former Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Provider or any Sub- Contractor to occur in the period from (and including) the Relevant Transfer Date; or
     2. arising from the failure by the Provider and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
  2. If any person who is not identified by the Authority as a Transferring Former Provider Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Provider Employee, that his/her contract of employment has been transferred from a Former Provider to the Provider and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
     1. the Provider shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Provider; and
     2. the Former Provider may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
  3. If an offer referred to in Paragraph 17.3.2 is accepted, or if the situation has otherwise been resolved by the Former Provider and/or the Authority, the Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
     1. If by the end of the fifteen (15) Working Day period specified in Paragraph 17.3.2:
     2. no such offer of employment has been made;
     3. such offer has been made but not accepted; or
     4. the situation has not otherwise been resolved,

the Provider and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Provider and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 17.3 to 17.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Provider indemnifies the Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 17.5 provided that the Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 17.6:
     1. shall not apply to:
        1. any claim for:
           + discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           + equal pay or compensation for less favourable treatment of part- time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Provider and/or any Sub-Contractor; or

* + - 1. any claim that the termination of employment was unfair because the Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 17.3.1 is made by the Provider and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Provider, within 6 months of the Contract Commencement Date.
  1. If any such person as is described in Paragraph 17.3 is neither re-employed by the Former Provider nor dismissed by the Provider and/or any Notified Sub-Contractor within the time scales set out in Paragraph 17.5, such person shall be treated as having transferred to the Provider or Notified Sub-Contractor and the Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

1. **PROVIDER INDEMNITIES AND OBLIGATIONS**
   1. Subject to Paragraph 18.2, the Provider shall indemnify the Authority and/or the Former Provider against any Employee Liabilities in respect of any Transferring Former Provider.
   2. Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
      1. any act or omission by the Provider or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
      2. the breach or non-observance by the Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
         1. any collective agreement applicable to the Transferring Former Provider Employee; and/or
         2. any custom or practice in respect of any Transferring Former Provider Employees which the Provider or any Sub-Contractor is contractually bound to honour;
      3. any claim by any trade union or other body or person representing any Transferring Former Provider Employees arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
      4. any proposal by the Provider or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Provider Employees to their material detriment on or after their transfer to the Provider or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
      5. any statement communicated to or action undertaken by the Provider or a Sub- Contractor to, or in respect of, any Transferring Former Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Provider in writing;
      6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
         1. in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
         2. in relation to any employee who is not a Transferring Former Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Provider to the Provider or a Sub- Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
         3. a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Provider Employees in respect of the period from (and including) the Relevant Transfer Date; and;
         4. any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Provider or any Sub- Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Provider's failure to comply with its obligations under regulation 13 of the Employment Regulations.
   3. The indemnities in Paragraph 18.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Provider’s failure to comply with its obligations under the Employment Regulations.
   4. The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub- Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Provider and the Former Provider.
2. **INFORMATION**

The Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority’s direction, the Former Provider, in writing such information as is necessary to enable the Authority and/or the Former Provider to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 21, the Authority shall procure that the Former Provider shall promptly provide to the Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

1. **PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**
   1. The Provider shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Provider Employee as set down in:
      1. the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
      2. HM Treasury's guidance “Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
      3. HM Treasury's guidance: “Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues” of June 2004; and/or
      4. the New Fair Deal
   2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 20.1 shall be agreed in accordance with the Variation Procedure.
2. **PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority 's contract with the Former Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

1. **PENSIONS**

The Provider shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Provider Employees who transfer from the Former Provider to the Provider.

**ANNEX to PART B: PENSIONS**

1. **PARTICIPATION**
   1. The Provider undertakes to enter into the Admission Agreement.
   2. The Provider and the Authority :
      1. undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Provider to participate in the Schemes in respect of the Fair Deal Employees;
      2. agree that the Authority is entitled to make arrangements with the body responsible for the Schemes for the Authority to be notified if the Provider breaches the Admission Agreement;
      3. notwithstanding Paragraph 23.2.2 of this Annex, the Provider shall notify the Authority in the event that it breaches the Admission Agreement; and
      4. agree that the Authority may terminate this Contract for material default in the event that the Provider breaches the Admission Agreement.
   3. The Provider shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Provider participating in the Schemes.

# FUTURE SERVICE BENEFITS

* 1. If the Provider is rejoining the Schemes for the first time, the Provider shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
  2. If staff have already been readmitted to the Schemes, the Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
  3. The Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary’s Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
  4. The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

# FUNDING

* 1. The Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
  2. The Provider shall indemnify and keep indemnified the Authority on demand against any claim by, claim to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Provider to or in respect of the Schemes.

# PROVISION OF INFORMATION

The Provider and the Authority respectively undertake to each other:

* 1. to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
  2. not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

# INDEMNITY

The Provider undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

# EMPLOYER OBLIGATION

The Provider shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

# SUBSEQUENT TRANSFERS

The Provider shall:

* 1. not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
  2. provide all such co-operation and assistance as the Schemes and the Replacement Provider and/or the Authority may reasonably require to enable the Replacement Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
  3. for the period either
     1. after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
     2. after the date which is two (2) years prior to the date of expiry of this Contract, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Provider or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the Approval of the Authority (such Approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

# PART C:

**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

# PROCEDURE IN THE EVENT OF TRANSFER

* 1. The Authority and the Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Provider.
  2. If any employee of the Authority and/or a Former Provider claims, or it is determined in relation to any employee of the Authority and/or a Former Provider, that his/her contract of employment has been transferred from the Authority and/or the Former Provider to the Provider and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
     1. the Provider shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Provider; and
     2. the Authority and/or the Former Provider may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
  3. If an offer referred to in Paragraph 30.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Provider), the Provider shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
  4. If by the end of the fifteen (15) Working Day period specified in Paragraph 30.2.2:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or
     3. the situation has not otherwise been resolved,

the Provider and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

# INDEMNITIES

* 1. Subject to the Provider and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 30.2 to 30.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 31.4, the Authority shall:
     1. indemnify the Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 30.2 made pursuant to the provisions of Paragraph 30.4 provided that the Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
     2. subject to paragraph 32, procure that the Former Provider indemnifies the Provider and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the former Provider made pursuant to the provisions of Paragraph 30.4 provided that the Provider takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. If any such person as is described in Paragraph 30.2 is neither re employed by the Authority and/or the Former Provider as appropriate nor dismissed by the Provider and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 30.4 such person shall be treated as having transferred to the Provider and/or the Sub-Contractor (as appropriate) and the Provider shall, or shall procure that the Sub- Contractor shall, comply with such obligations as may be imposed upon it under Law.
  3. Where any person remains employed by the Provider and/or any Sub-Contract pursuant to Paragraph 30.2, all Employee Liabilities in relation to such employee shall remain with the Provider and/or the Sub-Contractor and the Provider shall indemnify the Authority and any Former Provider, and shall procure that the Sub-Contractor shall indemnify the Authority and any Former Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Provider and/or employees of the Sub-Contractor.
  4. The indemnities in Paragraph 31.1:
     1. shall not apply to:
        1. any claim for:
           + discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           + equal pay or compensation for less favourable treatment of part- time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Provider and/or any Sub-Contractor; or

* + - 1. any claim that the termination of employment was unfair because the Provider and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 30.2.1 is made by the Provider and/or any Sub-Contractor to the Authority and, if applicable, Former Provider within 6 months of the Contract Commencement Date.

# PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Provider contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

# PART D: EMPLOYMENT EXIT PROVISIONS

# PRE-SERVICE TRANSFER OBLIGATIONS

* 1. The Provider agrees that within twenty (20) Working Days of the earliest of:
     1. receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
     2. receipt of the giving of notice of early termination or any Partial Termination of this Contract;
     3. the date which is twelve (12) months before the end of the Term; and
     4. receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Provider's Provisional Provider Personnel List, together with the Staffing Information in relation to the Provider's Provisional Provider Personnel List and it shall provide an updated Provider's Provisional Provider Personnel List at such intervals as are reasonably requested by the Authority.

* 1. At least thirty (30) Working Days prior to the Service Transfer Date, the Provider shall provide to the Authority or at the direction of the Authority to any Replacement Provider and/or any Replacement Sub-Contractor:
     1. the Provider's Final Provider Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and
     2. the Staffing Information in relation to the Provider’s Final Provider Personnel List (insofar as such information has not previously been provided).
  2. The Authority shall be permitted to use and disclose information provided by the Provider under Paragraphs 33.1 and 33.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-Contractor.
  3. The Provider warrants, for the benefit of the Authority, any Replacement Provider, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 33.1 and 33.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 33.1, the Provider agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Provider’s Provisional Provider Personnel List and shall not without the Approval of the Authority (not to be unreasonably withheld or delayed):
     1. replace or re-deploy any Provider Personnel listed on the Provider Provisional Provider Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
     2. make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);
     3. increase the proportion of working time spent on the Services (or the relevant

part of the Services) by any of the Provider Personnel save for fulfilling assignments and Services previously scheduled and agreed;

* + 1. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Provider Personnel List;
    2. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
    3. terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Provider Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Provider or relevant Sub-Contractor or received from any persons listed on the Provider's Provisional Provider Personnel List regardless of when such notice takes effect.

* 1. During the Term, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services; and
     3. a description of the nature of the work undertaken by each employee by location.
  2. The Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Provider's Final Provider Personnel List who is a Transferring Provider Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

# EMPLOYMENT REGULATIONS EXIT PROVISIONS

* 1. The Authority and the Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the Provider of the Services (or any part of

this Contract or otherwise) resulting in the Services being undertaken by a

Replacement Provider and/or a Replacement Sub-Contractor. Such change in the identity of the Provider of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Provider and the Transferring Provider Employees (except in relation to any Contract Terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Provider Employee.

* 1. The Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Provider Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Provider and/or the Sub-Contractor (as appropriate); and

(ii) the Replacement Provider and/or Replacement Sub-Contractor.

* 1. Subject to Paragraph 34.4, where a Relevant Transfer occurs the Provider shall indemnify the Authority and/or the Replacement Provider and/or any Replacement Sub- Contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
     1. any act or omission of the Provider or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
     2. the breach or non-observance by the Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Provider Employees; and/or
        2. any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-Contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
     4. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
        1. in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

Date; and

* + - 1. in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider to the Authority and/or Replacement Provider and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
    1. a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);
    2. any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-Contractor other than a Transferring Provider Employee for whom it is alleged the Authority and/or the Replacement Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
    3. any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.
  1. The indemnities in Paragraph 34.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
     1. arising out of the resignation of any Transferring Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
     2. arising from the Replacement Provider’s failure, and/or Replacement Sub- Contractor’s failure, to comply with its obligations under the Employment Regulations.
  2. If any person who is not a Transferring Provider Employee claims, or it is determined in relation to any person who is not a Transferring Provider Employee, that his/her contract of employment has been transferred from the Provider or any Sub-Contractor to the Replacement Provider and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
     1. the Authority shall procure that the Replacement Provider shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Provider; and

employment to such person within fifteen (15) Working Days of the notification

by the Replacement Provider and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

* 1. If such offer is accepted, or if the situation has otherwise been resolved by the Provider or a Sub-Contractor, the Authority shall procure that the Replacement Provider shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
  2. If after the fifteen (15) Working Day period specified in Paragraph 34.5.2 has elapsed:
     1. no such offer of employment has been made;
     2. such offer has been made but not accepted; or
     3. the situation has not otherwise been resolved

the Authority shall advise the Replacement Provider and/or Replacement Sub- Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

* 1. Subject to the Replacement Provider and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 34.5 to 34.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Provider shall indemnify the Replacement Provider and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 34.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
  2. The indemnity in Paragraph 34.8:
     1. shall not apply to:
        1. any claim for:
           + discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
           + equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-Contractor; or

* + - 1. any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
    1. shall apply only where the notification referred to in Paragraph 34.5.1 is made by the Replacement Provider and/or Replacement Sub-Contractor to the Provider within six (6) months of the Service Transfer Date.
  1. If any such person as is described in Paragraph 34.5 is neither re-employed by the Provider or any Sub-Contractor nor dismissed by the Replacement Provider and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 34.5 to 34.7, such person shall be treated as a Transferring Provider Employee and the Replacement

be imposed upon it under applicable Law.

* 1. The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
     1. the Provider and/or any Sub-Contractor; and
     2. the Replacement Provider and/or the Replacement Sub-Contractor.
  2. The Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Provider and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Provider and/or Replacement Sub-Contractor shall promptly provide to the Provider and each Sub-Contractor in writing such information as is necessary to enable the Provider and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  3. Subject to Paragraph 34.14, where a Relevant Transfer occurs the Authority shall procure that the Replacement Provider indemnifies the Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee) arising from or as a result of:
     1. any act or omission of the Replacement Provider and/or Replacement Sub- Contractor;
     2. the breach or non-observance by the Replacement Provider and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
        1. any collective agreement applicable to the Transferring Provider Employees; and/or
        2. any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement Sub- Contractor is contractually bound to honour;
     3. any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
     4. any proposal by the Replacement Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working

conditions of any person who would have been a Transferring Provider

Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

* + 1. any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
    2. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
       1. in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
       2. in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Provider or Sub-Contractor, to the Replacement Provider or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
    3. a failure of the Replacement Provider or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from (and including) the Service Transfer Date; and

14.13.8 any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

* 1. The indemnities in Paragraph 34.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any Sub- Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Provider and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**SCHEDULE 4:**

**DISPUTE RESOLUTION PROCEDURE**

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Contract or any Services, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify AUTHORITY of the details of the Dispute and escalate the dispute to the Authority Representative, the Provider Representative and AUTHORITY who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Authority considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
   * appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
   * meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non- binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Authority considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
    * the arbitration will be governed by the provisions of the Arbitration Act 1996

deemed to be incorporated into this Contract. It however there is any conflict between the LCIA procedural rules and this Contract, this Contract will prevail

* the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
* the tribunal shall consist of a sole arbitrator to be agreed by the Parties
  + if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
  + the arbitration proceedings shall take place in a location to be agreed between the Parties.

No of Order Form being varied:

…………………………………………………………………… Variation Form No:

…………………………………………………………………………………… BETWEEN:

**[**insert name of Authority **]** ("**the Authority "**) and

**[**insert name of Provider**]** (**"the Provider"**)

1. This Contract is varied as follows and shall take effect on the date signed by both Parties:

## [Insert details of the Variation]

1. Words and expressions in this Variation shall have the meanings given to them in this Contract.
2. This Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority Signature

Date

Name (in Capitals) Address

Signed by an authorised signatory to sign for and on behalf of the Provider Signature

Date

Name (in Capitals) Address

**SCHEDULE 6: CONTRACT CHARGES, PAYMENT AND INVOICING**

**1. DEFINITIONS**

1.1 The following terms used in this Contract Schedule 6 shall have the following meaning:

"**Indexation"** means the adjustment of an amount or sum in accordance with paragraph 11 of this Contract Schedule 6;

**"Indexation Adjustment Date"** has the meaning given to it in paragraph 11.1.1(a) of this Contract Schedule 6;

**"Reimbursable Expenses”** means the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including:

a) travel expenses incurred as a result of Provider Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and

b) subsistence expenses incurred by Provider Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

**"Review Adjustment Date**" has the meaning given to it in paragraph 10.1.2 of this Contract Schedule 6;

**"CPI**" means the Consumer Prices Index as published by the Office of National Statistics ( http://www.statistics.gov.uk/instantfigures.asp); and

**"Supporting Documentation"** means sufficient information in writing to enable the Authority to reasonably assess whether the Contract Charges, Reimbursable Expenses and other sums due from the Authority under this Contract detailed in the information are properly payable.

**2. GENERAL PROVISIONS**

2.1 This Contract Schedule 6 details:

2.1.1 the Contract Charges for the Goods and/or the Services under this Contract; and

2.1.2 the payment terms/profile for the Contract Charges;

2.1.3 the invoicing procedure; and

2.1.4 the procedure applicable to any adjustments of the Contract Charges.

**3. CONTRACT CHARGES**

3.1 The Provider acknowledges and agrees that:

3.1.1 subject to paragraph 8 of this Contract Schedule 6 (Adjustment of Contract Charges), the Contract Charges cannot be increased during the Contract Period.

**4. COSTS AND EXPENSES**

4.1 Except as expressly set out in paragraph 5 of this Contract Schedule 6(Reimbursable Expenses),] the Contract Charges include all costs and expenses relating to the Goods and/or Services and/or the Providers performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Provider in respect of such performance, including in respect of matters such as:

4.1.1 any incidental expenses that the Provider incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Provider Personnel, network or data interchange costs or other telecommunications charges; or

4.1.2 any amount for any services provided or costs incurred by the Provider prior to the Contract Commencement Date.

**5. REIMBURSEABLE EXPENSES**

5.1 If the Authority has so specified in the Contract Order Form, the Provider shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Contract Charges under this Contract ), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Authority shall provide a copy of their current expenses policy to the Provider upon request.

**6. PAYMENT TERMS/PAYMENT PROFILE**

6.1 Not Used

**7. INVOICING PROCEDURE**

7.1 The Authority shall pay all sums properly due and payable to the Provider in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in paragraph 7.6 of this Contract Schedule 6 and in accordance with the provisions of this Contract.

7.2 The Provider shall ensure that each invoice (whether submitted electronically through a purchase-to-pay (P2P) automated system (or similar) or in a paper form, as the Authority may specify (but, in respect of paper form, subject to paragraph 7.3 below)):

7.2.1 contains:

(a) all appropriate references, including the unique order reference number set out in the Contract Order Form; and

(b) a detailed breakdown of the Delivered Goods and/or Services, including the Milestone(s) (if any) and Deliverable(s) within this Contract to which the Delivered Goods and/or Services relate, against the applicable due and payable Contract Charges; and

7.2.2 shows separately:

(a) any Service Credits due to the Authority; and

(b) the VAT added to the due and payable Contract Charges in accordance with Clause 23.2.1 of this Contract (VAT) and the tax point date relating to the rate of VAT shown; and

7.2.3 is exclusive of any Management Charge (and the Provider shall not attempt to increase the Contract Charges or otherwise recover from the Authority as a surcharge the Management Charge levied on it by the Authority); and

7.2.4 it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

7.3 If the Authority is a Central Government Body, the Authority’s right to request paper form invoicing shall be subject to procurement policy note 11/15 (available at Procurement policy note 11/15: unstructured electronic invoices - Publications - GOV.UK which sets out the policy in respect of unstructured electronic invoices submitted by the Provider to the Authority (as may be amended from time to time).

7.4 The Provider shall accept the Government Procurement Card as a means of payment for the Goods and/or Services where such card is agreed with the Authority to be a suitable means of payment. The Provider shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Authority.

7.5 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

7.6 The Provider shall submit invoices directly to the Authority’s billing address set out in the Contract Order Form.

**8. ADJUSTMENT OF CONTRACT CHARGES**

8.1 The Contract Charges shall only be varied:

8.1.1 due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Contract Charges in accordance with Clause 22.2 of this Contract (Legislative Change);

8.1.2 where all or part of the Contract Charges are reduced as a result of a review of the Contract Charges in accordance with Clause 18 of this Contract (Continuous Improvement);

8.1.4 where all or part of the Contract Charges are reduced as a result of a review of Contract Charges in accordance with Clause 25 of this Contract (Benchmarking);

8.1.5 where all or part of the Contract Charges are reviewed and reduced in accordance with paragraph 9 of this Contract Schedule 6;

8.1.6 where a review and increase of Contract Charges is requested by the Provider and Approved, in accordance with the provisions of paragraph 10 of this Contract Schedule 6; or

8.1.7 where Contract Charges or any component amounts or sums thereof are expressed in this Contract Schedule 6 as “subject to increase by way of Indexation”, in accordance with the provisions in paragraph 11 of this Contract Schedule 6.

8.2 Subject to paragraphs 8.1.1 to 8.1.5 of this Contract Schedule 6, the Contract Charges will remain fixed for the number of Contract Years specified in the Contract Order Form.

**9. PROVIDER PERIODIC ASSESSMENT OF CONTRACT CHARGES**

9.1 Every six (6) Months during the Contract Period, the Provider shall assess the level of the Contract Charges to consider whether it is able to reduce them.

9.2 Such assessments by the Provider under paragraph 9 of this Contract Schedule 6 shall be carried out on the dates specified in the Contract Order Form in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Provider is able to decrease all or part of the Contract Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 12.1.5 of this Contract Schedule 6 below.

**10. PROVIDER REQUEST FOR INCREASE OF THE CONTRACT CHARGES**

10.1 If the Authority has so specified in the Contract Order Form, the Provider may request an increase in all or part of the Contract Charges in accordance with the remaining provisions of this paragraph 10 subject always to:

10.1.1 paragraph 3.2 of this Contract Schedule 6;

10.1.2 the Providers request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Contract Charges ("Review Adjustment Date") which shall be subject to paragraph 10.2 of this Contract Schedule 6; and

10.1.3 the Approval of the Authority which shall be granted in the Authority’s sole discretion.

10.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the anniversary of the Contract Commencement Date after the expiry of the period specified in paragraph 8.2 of this Schedule 6 during which the Contract Charges shall remain fixed (and no review under this paragraph 10 is permitted). Thereafter any subsequent increase to any of the Contract Charges in accordance with this paragraph 10 of this Contract Schedule 6 shall not occur before the anniversary of the previous Review Adjustment Date during the Contract Period.

10.3 To make a request for an increase of some or all of the Contract Charges in accordance with this paragraph 10, the Provider shall provide the Authority with:

10.3.1 a list of the Contract Charges it wishes to review;

10.3.2 for each of the Contract Charges under review, written evidence of the justification for the requested increase including:

(a) a breakdown of the profit and cost components that comprise the relevant Contract Charge;

(b) details of the movement in the different identified cost components of the relevant Contract Charge;

(c) reasons for the movement in the different identified cost components of the relevant Contract Charge;

(d) evidence that the Provider has attempted to mitigate against the increase in the relevant cost components; and

(e) evidence that the Providers profit component of the relevant Contract Charge is no greater than that applying to Contract Charges using the same pricing mechanism as at the Contract Commencement Date.

**11. INDEXATION**

11.1 Where the Contract Charges or any component amounts or sums thereof are expressed in this Contract Schedule 6 as “subject to increase by way of Indexation” the following provisions shall apply:

11.1.1 the relevant adjustment shall:

(a) be applied on the effective date of the increase in the relevant Contract Charges by way of Indexation (“Indexation Adjustment Date”) which shall be subject to paragraph 11.1.2 of this Contract Schedule 6;

(b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) Months ended on the 31st of January immediately preceding the relevant Indexation Adjustment Date;

(c) where the published CPI figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Authority and the Provider shall agree otherwise;

(d) if the CPI is no longer published, the Authority and the Provider shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Contract Schedule 6.

11.1.2 The earliest Indexation Adjustment Date will be the (1st) Working Day following the expiry of the period specified in paragraph 8.2 of this Contract Schedule 6 during which the Contract Charges shall remain fixed (and no review under this paragraph 11 is permitted). Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Contract Period;

11.1.3 Except as set out in this paragraph 11 of this Contract Schedule 6, neither the Contract Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Provider or Sub-Contractors of the performance of their obligations under **this Contract.**

**12. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES**

12.1 Variations in accordance with the provisions of this Contract Schedule 6 to all or part the Contract Charges (as the case may be) shall be made by the Authority to take effect:

12.1.1 in accordance with Clause 22.2 of this Contract (Legislative Change) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.1 of this Contract Schedule 6;

12.1.2 in accordance with Clause 23.1.4 of this Contract (Contract Charges and Payment) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.2 of this Contract Schedule 6;

12.1.3 in accordance with Clause 18 of this Contract (Continuous Improvement) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.3 of this Contract Schedule 6;

12.1.4 in accordance with Clause 25 of this Contract (Benchmarking) where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.4 of this Contract Schedule 6;

12.1.5 on the dates specified in the Contract Order Form where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.5 of this Contract Schedule 6;

12.1.6 on the Review Adjustment Date where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.6 of this Contract Schedule 6;

12.1.7 on the Indexation Adjustment Date where an adjustment to the Contract Charges is made in accordance with paragraph 8.1.7 of this Contract Schedule 6;

and the Parties shall amend the Contract Charges shown in Annex 1 to this Contract Schedule 6 to reflect such variations.

**SCHEDULE 7: PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

* + 1. The Provider shall comply with any further written instructions with respect to processing by the Authority.
    2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), Authoritys/ clients, Providers, patients, students / pupils, members of the public, users of a particular website etc]* |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |