**DATED 20[ ]**

***[INSERT NAME OF AUTHORITY]***

**AND**

***[INSERT NAME OF CONTRACTOR]***

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**THIS AGREEMENT** is made the *[DAY]* day of *[MONTH]* 20[ ]

**BETWEEN:**

1. *[NAME]* of *[ADDRESS]* (the **“Authority”**); and
2. *[NAME]* whose registered office is at *[ADDRESS]* and whose registered [company] number is *[NUMBER]* (the **“Contractor”**);

each one a **“Party”** and together the **“Parties”**.

**RECITALS**

The Authority has initiated a procurement process and identified the Contractor as the bidder appearing most likely to deliver the Outcomes in the most economically advantageous manner.

The Authority has selected the Contractor to provide the Services and the Contractor undertakes to provide the Services on the terms set out below.

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Agreement:

|  |  |
| --- | --- |
| **“1998 Act”** | means the Data Protection Act 1998; |
| **“Affiliate”** | means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded; |
| **“Agreement”** | means the terms and conditions below together with the Schedules listed in the table of contents; |
| **“Agreement Term”** | means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date; |
| **“Authorised Change Note”** | means a Proposed Change Note signed by the Parties in accordance with paragraph ‎3 of ‎Schedule 6 (*Change Procedure*); |
| **“Authority Default”** | means:   * + - 1. failure to pay sums properly due and payable under this Agreement within forty (40) days of their due date;       2. [failure to make [at least [x]% of] the Required Referrals in any [month]/[quarter]]; or       3. breach of any obligations under this Agreement which has a material adverse impact on the Contractor in performing the Services or achieving the Minimum Expected Outcomes; |
| **“Authority Default Termination Sum”** | means an amount which is reasonably determined by the Authority, on the basis of information available to the Authority following consultation with the Contractor and having regard to any representations made by the Contractor (provided that, if the Contractor does not agree with the Authority’s determination the matter shall be determined in accordance with the Dispute Resolution Procedure), as being equivalent to the amount the Contractor would have received (net of any payments already received under this Agreement) had this Agreement continued until the Expiry Date and the Contractor had met [the Minimum Expected Outcomes] less the additional costs that the Contractor would have incurred in providing the Services from the Termination Date to the Operational Period End Date (for the avoidance of doubt without adjusting either the Outcomes Payments or the additional costs for inflation); |
| **“Authority Mobilisation Obligations”** | means the obligations set out at ‎Schedule 1 ‎Part 4 (*Authority Mobilisation Obligations*); |
| **“Authority Obligations”** | means the obligations set out in ‎Schedule 1 ‎Part 3 (*Authority Obligations*); |
| **“Authority Policies”** | means the policies of the Authority referred to in ‎Schedule 1 ‎Part 2 (*Authority Policies*); |
| **“Authority Related Party”** | means an officer, agent, contractor, employee or subcontractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate) but excluding the Contractor and any Contractor Related Parties; |
| **“Authority’s Authorised Representative”** | means the person appointed and authorised by the Authority in accordance with clause ‎11 to represent the Authority for the purposes of this Agreement; |
| **“CEDR”** | means the Centre for Effective Dispute Resolution; |
| **“Change in Ownership”** | Means:   * + - 1. any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends). and/or       2. any other arrangements that have or may have or which result in the same effect as paragraph ‎(a); |
| **“Change Procedure”** | means the change procedure set out in ‎Schedule 6 (*Change Procedure*); |
| **“Commencement Date”** | means *[DATE]*/[*the date on which the conditions precedent referred to in clause* ‎*3.2 are satisfied*]; |
| **“Commercially Sensitive Information”** | means the subset of Confidential Information listed in column 1 of ‎Part 1 of ‎Schedule 9 (*Commercially Sensitive Contractual Provisions*) and column 1 of ‎Part 2 of ‎Schedule 9 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of ‎Part 1 and ‎Part 2 of ‎Schedule 9 |
| **“Confidential Information”** | means:   * + - 1. information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of any Party and all personal data within the meaning of the 1988 Act;       2. Commercially Sensitive Information; and       3. Personal Data; |
| **“Contract Review Date”** | means each of the dates falling six, eighteen, thirty and forty-two months following the Services Commencement Date; |
| **“Contractor Default”** | means one of the following events:   * + - 1. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;       2. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor that is the subject of a charge;       3. any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;       4. an administration order is made or an administrator is appointed in respect of the Contractor;       5. a failure by the Contractor to implement a Performance Improvement Plan in accordance with clause ‎24.1.3, or the occurrence of a Service Failure or Negative Outcomes Assessment which the Parties agree, or it is determined pursuant to clause ‎24.1.4, cannot be remedied through a Performance Improvement Plan;       6. a breach by the Contractor of its obligation to take out and maintain the Required Insurances;       7. the existence of a conflict of interest on the part of the Contractor which, in the reasonable opinion of the Authority, presents a material reputational risk to the Authority or compromises the Contractor’s ability to perform the Services and which the Contractor fails to address in accordance with clause ‎7 (*Conflicts of Interest*);       8. a breach by the Contractor of its obligations in clause ‎30 (*Assignment and Sub-Contracting*);       9. where a consent, licence or approval which is material to the provision of the Services is suspended, cancelled, revoked, terminated or otherwise ceases to be in full force and effect and is not replaced by an equivalent consent, licence or approval within thirty (30) Days of such consent, licence or approval being suspended, cancelled, revoked, terminated or otherwise ceasing to be in full force and effect;       10. a breach by the Contractor of its obligations in clause ‎31 (*Change in Ownership*); |
| **“Contractor Related Party”** | means an officer, servant or agent of the Contractor, or any Affiliate of the Contractor, or any Subcontractor and any officer, servant or agent of such a person; |
| **“Contractor’s Authorised Representative”** | means the person appointed and authorised by the Contractor in accordance with clause ‎11 to represent the Contractor for the purposes of this Agreement; |
| **“Current Employer”** | means the employer of an individual providing part of the Services at the Service Transfer Date; |
| **“Data Sharing Policy”** | means the policy at ‎Schedule 4 (*Data Sharing Policy*); |
| **“Day”** | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; |
| **[“Deed of Assurance”** | means an agreement executed as a deed between the Authority, the Contractor and a Principal Subcontractor in the form set out in ‎Schedule 3 (*Deed of Assurance*);] |
| **“Demobilisation Plan”** | means the plan at ‎Part 2 of ‎Schedule 5 (*Mobilisation and Demobilisation Plans*); |
| **“Directive”**  **“Direct Losses”** | means EC Council Directive 2001/23/EC;  means all Losses other than Indirect Losses; |
| **“Dispute Resolution Procedure”** | means the procedure to deal with disputes as set out at clause ‎29 (*Dispute Resolution Procedure*); |
| **“Employee Liability Information”** | means the information listed in Regulation 11(2) of TUPE; |
| **“Environmental Information Regulations”** | means the Environmental Information Regulations 2004; |
| **“Expiry Date”** | means *[day falling [•] years/months following]* the Operational Period End Date or such other date agreed between the Authority and the Contractor in accordance with this Agreement; |
| **“FOIA”** | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation; |
| **“Force Majeure Event”** | means any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any act, event, omission, happening or non-happening beyond its reasonable control including, without limitation, acts of God, strikes, lock-outs or other industrial disputes, war, riot, flood or any disaster affecting either one of the Parties; |
| **“Future Service Provider”** | shall have the meaning given in clause ‎27.3.1; |
| **“Good Industry Practice”** | means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor providing services of a similar scope, type and complexity to the Services, seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions; |
| **“Indirect Losses”** | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement; |
| **“Information”** | has the meaning given under Section 84 of FOIA; |
| **“Initial Subcontractor[s]”** | means *[NAME (if any)]*; |
| **“Intellectual Property Rights”** | means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Contractor, any Contractor Party or by other third parties (for the use by or on behalf of or for the benefit of the Contractor) for the purposes of providing the Services or otherwise for the purposes of this Agreement; |
| **“Investor[s]”** | means [the parties providing finance to the Contractor to fund the delivery of the Services] /[*NAME[S]*]; |
| **“Legislation”** | means any Act of Parliament, government regulation or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom; |
| **“Loss”** | means all damages, losses, liabilities, claims, actions, costs, expenses (including legal and other professional charges and expenses, legal costs being on an indemnity basis) proceedings, demands and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands; |
| **“Minimum Expected Outcomes”** | means *[the minimum number of Outcomes that the Authority and the Contractor agree are expected to be achieved in each of the [weeks / months / years] of the Operational Period]*; |
| **“Mobilisation Period”** | means the period commencing on *[DATE]*/[the Commencement Date] and expiring on the Day immediately prior to the Services Commencement Date; |
| **“Mobilisation Plan”** | means the plan at ‎Schedule 5 (*Mobilisation and Demobilisation Plans*); |
| **“Negative Outcomes Assessment”** | means an assessment, conducted at a Review Meeting in accordance with clause ‎12.1.2, which establishes that the current performance levels for the Service have not achieved the Satisfactory Level of Outcomes; |
| **“Objective”** | means the intended effect of delivering the Outcomes under this Agreement, namely [*insert details*] |
| **“Operational Period”** | means the period during which the Contractor shall provide the Services which will start on the Services Commencement Date and end on the Operational Period End Date or the Termination Date if earlier; |
| **“Operational Period End Date”** | the Day falling [*[•] years and [•] months*] following the Services Commencement Date, save where extended pursuant to clause ‎3.4; |
| **“Outcomes”** | means the Outcomes identified as such in the Services Specification; |
| **“Outcomes Payment”** | means the payments by the Authority to the Contractor for the achievement of the Outcomes calculated in accordance with ‎Schedule 2 (*Payment Schedule*); |
| **“Performance Improvement Plan”** | means the plan agreed in accordance with clause ‎24.1.2 to remedy a Service Failure or address a Negative Outcomes Assessment; |
| **“Personal Data”** | means personal data as defined in the 1998 Act which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services; |
| **“Potential Service Users”** | means [*describe target client group*]; |
| **“Prescribed Rate”** | means [*four (4)*] per cent above the Bank of England base rate from time to time; |
| **“Principal Subcontractor”** | means the Subcontractor to whom the Contractor subcontracts performance of all or a major part of the Services; |
| **“Prohibited Act”** | means:   * + - 1. offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:   for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority; or  for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;   * + - 1. entering into this Agreement or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;       2. committing any offence:   under the Bribery Act 2010;  under Legislation creating offences in respect of fraudulent acts; or  at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority; or  defrauding or attempting to defraud or conspiring to defraud the Authority; |
| **“Proposed Change Note”** | means a note issued by the Contractor in accordance with paragraph ‎2 of ‎Schedule 6 (*Control Procedure*); |
| **“Requests for Information”** | has the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations; |
| **“Required Insurances”** | means the insurances listed in ‎Schedule 7 (*Required Insurances*); |
| **“Retendering Information”** | means, in respect of any employee, Employee Liability Information (other than the name of the employee, who shall instead be identified by his or her staff reference number), date of birth, gender, site, department, national insurance letter (A or D), salary or if applicable salary scale and point, details of involvement in the Services, terms and conditions of employment and any applicable policies (whether contractual or discretionary), records of the employee’s sick, maternity, paternity, parental or other leave and all the pensions information as required under clause ‎27.4; |
| **“Review Meeting”** | has the meaning given to such term in clause ‎12.1.2; |
| **“Satisfactory Level of Outcomes”** | means [*threshold to be negotiated on a project specific basis reflecting acceptable performance of the project*]; |
| **“Service Failure”** | means a breach by the Contractor of any of its obligations under this Agreement which materially and adversely affects the Authority or the Service Users; |
| **“Service Transfer Date”** | has the meaning given to it in clause ‎27.5.2 of this Agreement (*Expiry, Termination or a Transfer Change*); |
| **“Service Users”** | means [*describe individuals selected for participation in the program*]; |
| **“Services”** | means the services to be provided by the Contractor to the Authority under this Agreement in accordance with the Services Specification; |
| **“Services Commencement Date”** | means the latest to occur of (i) [*insert expected Services Commencement Date*] and (ii) the date on which the Mobilisation Plan has been completed, or such other date as the Parties agree in accordance with clause ‎4.5; |
| **[“Services Fee”** | means the fee payable by the Authority in consideration of the performance of the Services by the Contractor in accordance with this Agreement being [*insert amount*] as may be amended in accordance with this Agreement;] |
| **“Services Specification”** | means the specification contained in ‎Part 1 of ‎Schedule 1 (*Services Specification*); |
| **“Subcontractor”** | means a person to whom the Contractor directly subcontracts any of its obligations under this Agreement; |
| **“Suitable Third Party”** | means any person who is not   * + - 1. a person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;       2. a person whose activities may, in the reasonable opinion of the Authority, have a material adverse effect on the reputation of the Authority;       3. a person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of the Services in the area; or       4. a person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security; |
| **“Tender Submission”** | means the bid documents (comprising *[INSERT DETAILS OF RELEVANT DOCUMENTS]*) submitted by the Contractor and relied upon by the Authority in selecting the Contractor to deliver the Services pursuant to this Agreement; |
| **“Termination Date”** | means the date of early termination of this Agreement in accordance with its terms; |
| **“Termination Notice”** | means a notice of termination issued in accordance with this Agreement; |
| **“Transferring Employees”** | has the meaning given to it in clause ‎27.5.2 of this Agreement (*Expiry, Termination or a Transfer Change*); |
| **“TUPE”** | means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246); and |
| **“VAT”** | means Value Added Tax. |

* 1. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
  2. Save where it is stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
  3. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
  4. References to clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and Schedules to this Agreement.
  5. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between Schedules, the conflict should be resolved according to the following descending order of priority:
     1. ‎Schedule 2 (*Payment Schedule*);
     2. ‎Schedule 1, ‎Part 1 (*Services Specification*);
     3. the Schedules other than ‎Schedule 1, ‎Part 1 (*Services Specification*) and ‎Schedule 2 (*Payment Schedule*).
  6. Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Authority under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
  7. A reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders.
  8. The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
  9. The words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

1. **STATEMENT OF SHARED AIMS**
   1. The principal purpose of the Parties in entering into this Agreement is to achieve the Objective by delivering the Outcomes.
   2. The successful implementation of this Agreement will depend on the Parties’ ability effectively to co-ordinate and combine their expertise, manpower and resources in order to deliver an integrated approach to the provision of the Services under this Agreement in accordance with its terms.
   3. The Parties shall develop a close working relationship between the Authority and the Contractor at all appropriate levels, based upon openness and trust in a transparent information and data sharing environment.

1. **COMMENCEMENT AND DURATION**
   1. The rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date and shall continue in force until the Expiry Date unless terminated earlier in accordance with the termination provisions of this Agreement.
   2. [The Commencement Date shall take place on the occurrence of the last of the following events:
      1. *If conditions precedent are required, insert here, otherwise this clause* ‎*3.2 and clause* ‎*3.3 may be deleted*
   3. If the conditions specified in clause ‎3.2 are not satisfied by *[DATE]* the Parties may terminate this Agreement immediately, following which this Agreement and the rights and obligations of the Parties under this Agreement shall terminate so that neither Party shall be liable to the other in respect of such termination.]
   4. [The Parties may extend the Operational Period for a further period not exceeding an additional [five] years from the Operational Period End Date where they are satisfied that the Outcomes are being achieved and will continue to be so and such extension can be agreed on terms that deliver value for money to the Authority.
   5. The Parties shall agree the details of any such extension to this Agreement not less than six months prior to the Operational Period End Date, failing which this Agreement shall terminate on the Expiry Date.
   6. The Parties shall not exercise the right to extend this Agreement contained in clause ‎3.4 above on more than one occasion.]
2. **MOBILISATION**
   1. The Contractor will perform the responsibilities allocated to it under the Mobilisation Plan during the Mobilisation Period to achieve the commencement of the Services on the Services Commencement Date.
   2. The Authority will perform the Authority Mobilisation Obligations during the Mobilisation Period to support the commencement of the Services on the Services Commencement Date.
   3. During the Mobilisation Period the Contractor shall provide a monthly report to the Authority on progress against the Mobilisation Plan.
   4. If at any time during the Mobilisation Period the Authority and/or the Contractor reasonably believes that the Mobilisation Plan will not be delivered in accordance with the timings contained in the Mobilisation Plan and/or the Services Commencement Date will not be achieved the relevant Party shall immediately notify the other in writing.
   5. The Authority and the Contractor will meet to discuss any matter notified under clause ‎4.4 of this Agreement in order to agree actions to ensure that the Services Commencement Date is met, or to amend the Mobilisation Plan and/or the Services Commencement Date if appropriate.
3. **DEED OF ASSURANCE**

The Contractor shall:

* 1. deliver the Deed of Assurance signed by the Principal Subcontractor and the Contractor to the Authority on the date of this Agreement;
  2. deliver to the Authority certified copies of the subcontract entered into between the Contractor and the Principal Subcontractor on or prior to the date of this Agreement; and
  3. not engage any replacement Principal Subcontractor unless such person has delivered to the Authority a duly executed agreement substantially in the form of the Deed of Assurance and in each case such Deed of Assurance must be delivered to the Authority before such person performs any part of the Services.

1. **CONTRACTOR WARRANTIES AND REPRESENTATIONS**
   1. The Contractor warrants and represents to the Authority that on the date of this Agreement:
      1. it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
      2. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement;
      3. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Agreement has been taken;
      4. the obligations expressed to be assumed by the Contractor under this Agreement are legal, valid, binding and enforceable to the extent permitted by law;
      5. the execution, delivery and performance by it of this Agreement does not contravene any provision of:
         1. any existing Legislation, either in force or enacted but not yet in force, binding on the Contractor;
         2. the Memorandum and Articles of Association of the Contractor;
         3. any order or decree of any court or arbitrator which is binding on the Contractor; or
         4. any obligation which is binding upon the Contractor or upon any of its assets or revenues, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement;
      6. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement; and
      7. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues,

and the Authority relies upon such warranties and representations.

* 1. Each warranty and representation in this clause ‎6 shall be construed as a separate warranty or representation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or representation or any other term of this Agreement.
  2. The Contractor shall be deemed to have satisfied itself before entering into this Agreement as to the accuracy and sufficiency of the payments it has agreed to receive, which shall (except as otherwise provided in this Agreement) cover all its obligations under this Agreement.

1. **CONFLICTS OF INTEREST**
   1. Each Party warrants to the other that at the date of this Agreement it does not have (and is not aware that it will have in the future) any interest in any matter where there is or is reasonably likely to be a conflict of interest between its interest and that of the other Party or Service Users.
   2. If a Party becomes aware of any conflict of interest or any potential conflict of interest it shall promptly notify the other Party. The Parties shall discuss the actual or potential conflict and shall use reasonable endeavours to eliminate or avoid the conflict or minimise its impact, taking into account in particular any statutory duties of the Authority and the interests of the Service Users.
2. **GENERAL ASSISTANCE AND COOPERATION**
   1. Subject to clause ‎8.2, each Party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and in particular will:
      1. use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party;
      2. not interfere with the rights of the other Party and its servants, agents, representatives, contractors or subcontractors (of any tier) on its behalf in performing its obligations under this Agreement nor in any other way hinder or prevent such other Party or its servants, agents, representatives, contractors or subcontractors (of any tier) on its behalf from performing those obligations; and
      3. assist the other Party (and its servants, agents, representatives, contractors or subcontractors (of any tier)) in performing those obligations so far as is reasonably practicable.
   2. Nothing in clause ‎8.1 shall:
      1. interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
      2. oblige any Party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;
      3. relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such document; or
      4. fetter the discretion of the Authority in fulfilling its statutory functions.
3. **THE SERVICES**
   1. The Contractor shall provide the Services during the Operational Period with the intent of achieving the Outcomes.
   2. The Services shall be delivered in accordance with:
      1. the Service Specification;
      2. all applicable Legislation;
      3. the Authority Policies (insofar as they are relevant and do not refer to matters addressed specifically elsewhere in this Agreement); and
      4. Good Industry Practice.
   3. Subject to clause ‎30 (*Assignment and Sub-Contracting*) the Contractor shall [,or shall procure that the Subcontractor does,] at all times engage a sufficient number of personnel and/or Contractor Related Parties to deliver the Services in accordance with applicable Legislation and Good Industry Practice.
   4. All personnel involved in the provision of the Services (whether employed by the Contractor or Contractor Related Parties) shall possess the skills, qualifications and competence to deliver the Services in accordance with applicable Legislation and Good Industry Practice.
   5. The Contractor shall procure that all aspects of the Services are the subject of, and are conducted in accordance with appropriate quality assurance systems. The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of six (6) months. If the Authority believes (acting reasonably) that the Contractor is in breach of this clause ‎9.5 it may carry out other periodic monitoring, spot checks and auditing of the Contractor’s quality systems. The Contractor shall procure that the Authority shall have a like right in respect of any relevant Subcontractors. The Contractor shall co-operate and shall procure that any relevant Subcontractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this clause ‎9.5.
4. **AUTHORITY OBLIGATIONS**
   1. The Authority shall perform the Authority Obligations in a timely manner to support the delivery of the Outcomes.
   2. During the Agreement Term, the Authority shall not omit, delay or do anything, including enter into any contract or other arrangement for services, that may reasonably be expected to affect adversely the Contractor’s ability to perform the Services or achieve the Outcomes or to make it materially more difficult or expensive for it to do so.
   3. Nothing in this clause ‎10 shall fetter or constrain the Authority’s discretion in the carrying out of its statutory functions.
5. **AUTHORISED REPRESENTATIVES**

*The Authority’s Authorised Representative*

* 1. The Authority’s Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this clause ‎11.
  2. The Authority’s Authorised Representative shall liaise with and give instructions to the Contractor and its officers, employees, agents or representatives in relation to all matters concerning the performance by the Contractor of its obligations under this Agreement and to determine any matters, or give any notices as may be the function of the Authority’s Authorised Representative under this Agreement.
  3. To the extent it is reasonably practicable the Authority shall not change the identity of the Authority’s Authorised Representative without first discussing the matter with the Contractor and having reasonable regard to the views of the Contractor in relation to any proposed replacement.

*The Contractor’s Authorised Representative*

* 1. The Contractor’s Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this clause ‎11.
  2. The Contractor’s Authorised Representative shall have the power to act on behalf of the Contractor in connection with any matter relating to the performance of the Services and exercise the rights, functions and obligations of the Contractor under this Agreement.
  3. To the extent it is reasonably practicable the Contractor shall not change the identity of the Contractor’s Authorised Representative without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement.

1. **REVIEW,** **MONITORING AND INFORMATION**
   1. *Review*
      1. The Parties shall meet at least every three (3) months to review:
         1. the performance of the Services and progress towards achieving the Outcomes; and
         2. the effectiveness of the contract management arrangements

in order to assess whether any improvements may be made and implemented by the Parties.

* + 1. The Parties shall meet on or around each Contract Review Date (such meeting being a Review Meeting) to review:
       1. the performance to date of the Contractor, including whether a Negative Outcomes Assessment has arisen;
       2. the ongoing suitability of the Services and the delivery of the Outcomes to achieve the Objective; and
       3. the terms of this Agreement and its effect upon the Outcomes, the Parties and the Service Users.
    2. If the Parties conclude that a Negative Outcomes Assessment has arisen, clause ‎24.1.1 shall apply.
    3. The Parties shall consider in good faith whether amendments may be made to this Agreement, the Services or the Outcomes which would improve the prospect of achieving the Objective without having a material adverse effect on the Parties, the Investor or the Service Users.
    4. If the Parties agree there are amendments as described in clause ‎12.1.4 they shall be implemented in accordance with clause ‎14 and ‎Schedule 6. If the Parties cannot so agree, no such changes shall be made.
    5. Each Party shall provide, not less than ten (10) Days before a Contract Review Date, all information it reasonably believes to be relevant and any other information reasonably requested by the other Party (in each case within its possession or control) to inform the review processes to be conducted pursuant to this clause ‎12.1.
  1. *Monitoring*
     1. The Contractor shall comply with the management information requirements set out in ‎Schedule 8 (*Management Information*).
     2. The Contractor shall keep and maintain such data and information and shall provide such assistance as the Authority may reasonably require by written notice to the Contractor to enable the Authority:
        1. to complete all official returns, including, but without limitation the following:

returns to any central government body or properly authorised agency of central government; and

information required by any statutory body or compliance with any statute or statutory instrument; and

* + - 1. to comply with its statutory duties relating to the Services;

provided in each case the nature of such data and information and the format for the same has been agreed by the Parties (acting reasonably).

* + 1. Subject to clause ‎12.2.4, the Contractor shall, not more than three (3) times per annum, use reasonable endeavours to procure the Authority’s Authorised Representative (or his or her nominee) and/or any elected member of the Authority access on reasonable notice during normal working hours (save where the Contractor, acting reasonably, believes such access may have a detrimental impact on Service Users) to any premises used by the Contractor or a Subcontractor for the provision of the Services for the purpose of:
       1. monitoring and inspecting performance of the Services;
       2. inspecting any or all records and documents in the possession, custody or control or held by the Contractor in connection with the provision of the Services;
       3. interviewing Contractor employees, officers, agents and any Subcontractors in connection with the provision of the Services; and
       4. inspecting equipment (including any Contractor assets), systems and procedures used by the Contractor to provide the Services.

Notice for such access shall not be required in cases of emergency.

* + 1. The Authority may be entitled to access premises used by the Contractor or a Subcontractor for the provision of the Services more than three (3) times per annum where such additional access is necessary to monitor compliance with statutory obligations of the Parties or to establish that a Performance Improvement Plan has been implemented in accordance with clause ‎24.1.3.
  1. *Information*
     1. The Contractor shall maintain separate records of the information in accordance with ‎Schedule 8 (*Management Information*) and retain them for a period of at least [six (6)] years after the Contractor’s obligations under this Agreement have come to an end.
     2. All information referred to in this clause ‎12.3 is subject to the obligations set out in clause ‎17 (*Confidentiality*).
     3. The Authority shall promptly supply accurate and relevant data held by the Authority to the Contractor to determine whether the Outcomes have been delivered and the Outcomes Payments triggered and any other relevant data within its control which is required to comply with ‎Schedule 8 (*Management Information*). In the case where a Mediator is appointed as set out in clause ‎29 (*Dispute Resolution Procedure*), the Authority shall promptly supply any data reasonably requested by the Mediator, including access to any primary data sources held by the Authority insofar as the Authority is legally permitted to do so and subject where appropriate to confidentiality measures being agreed.
  2. *Audit*
     1. On up to two (2) occasions per annum, the Contractor shall permit and procure for the internal and external auditors of the Authority access to all such locations, staff, property and Information of the Contractor and its agents, consultants and Subcontractors (excluding Commercially Sensitive Information) as those auditors may properly require for the purpose of testing audit and investigation on behalf of the Authority notwithstanding whether such purposes relate to periods prior to the Commencement Date or require access to information which may relate to parties other than the Authority but the Contractor may not be required to act in breach of any obligation of confidentiality lawfully undertaken prior to the date of this Agreement toward any third party as a condition of the supply of the Information.
     2. The Contractor shall provide to the Authority’s internal and/or external auditors within five (5) Days of request such complete and up-to-date files and other documents as those auditors could have inspected by personal attendance under the provisions of this Agreement and those auditors may retain and copy the same for up to five (5) Days and shall return the same by making them available for collection by the Contractor.

1. **PAYMENT PROVISIONS**
   1. *Payment of [the Services Fee and] the Outcomes Payment*

[The Authority shall pay the Contractor the Services Fee in consideration of delivery of the Services.] In consideration of the achievement of the Outcomes, the Authority shall pay the Contractor the Outcomes Payments, calculated in accordance with ‎Schedule 2 (*Payment Schedule*).

* 1. *Report and Invoice*
     1. The Contractor shall submit to the Authority an invoice for the Services Fee and for any VAT payable in respect of that amount at the start of each month (the first invoice being submitted following the Services Commencement Date).
     2. At the times prescribed in ‎Schedule 2 (*Payment Schedule*), the Contractor shall submit to the Authority:
        1. a report detailing the Outcomes Payment sought and each item taken into account in calculating that Outcomes Payment pursuant to ‎Schedule 2 (*Payment Schedule*); and
        2. an invoice for the amount shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.
  2. *Payment*

Subject to clause ‎13.4 (*Disputed Amounts*), the Authority shall pay the amount stated in any invoice submitted under clause ‎13.2 (*Report and Invoice*) within twenty (20) Days of receipt of the invoice in question.

* 1. *Disputed Amounts*
     1. If the Authority disputes the Contractor’s entitlement to any part of the amount claimed by the Contractor pursuant to clause ‎13.2 (*Report and Invoice*) in respect of any invoice the provisions of this clause ‎13.4 shall apply.
     2. Within ten (10) Days of receipt by the Authority of the relevant invoice and supporting report, the Authority shall notify the Contractor in writing of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (**a “Disputed Amount”**) and shall submit to the Contractor such supporting evidence as the Authority may have.
     3. The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor’s entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.
  2. *Response to Authority Notice*

Within five (5) Days following receipt by the Contractor of any notice served by the Authority pursuant to clause ‎13.4.2 (*Disputed Amounts*), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled to retain on a permanent basis any amounts withheld pursuant to clause ‎13.4.3 (*Disputed Amounts*).

* 1. *Dispute*

If the Contractor responds (pursuant to clause ‎13.5 (*Response to Authority Notice*)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause ‎13.4.2 (*Disputed Amounts*), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

* 1. *Determination of Dispute*

If the determination of any dispute conducted pursuant to clause ‎13.6 (*Dispute*) shows that the Authority has withheld any amount which the Contractor was entitled to be paid the Authority shall pay such amount to the Contractor with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgment. Relevant monies should be paid within ten (10) Days of the determination of dispute.

* 1. *Rights of Set Off*

Any Party may retain or set off any amount owed to it under this Agreement that has fallen due and payable against any amount due and payable under this Agreement, provided that no amount due and payable as a result of a Party’s breach of this Agreement or pursuant to clause ‎20 (*Indemnities*) may be set off or retained from any other amount due and payable under this Agreement unless the Parties agree or unless such amount is finally judicially determined as due and payable. A Party shall notify the other Party as soon as reasonably practicable of any such retention or set off and provide particulars of the reasons for it.

* 1. *Set Off and Disputed Amounts*

If the payment or deduction of any amount referred to in clause ‎13.8 (*Rights of Set Off*) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

* 1. *VAT on Payments*
     1. All amounts due under this Agreement are exclusive of VAT.
     2. If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (**the “Recipient”**) shall in addition pay the person making the supply (**the “Supplier”**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
     3. Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.
     4. The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.
  2. *Late Payment and Interest*

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

* 1. *Payments following expiry or termination*

For the avoidance of doubt, the Contractor may submit invoices following expiry or termination of this Agreement where payments properly fall due in accordance with ‎Schedule 2 (*Payment Schedule*) and the provisions of this clause ‎13 shall apply to any amounts which are the subject of such invoices.

1. **CHANGE PROCEDURE**
   1. Each of the Contractor and the Authority may request a change to this Agreement in accordance with the Change Procedure. The Parties shall act in good faith in proposing and considering any changes to this Agreement, including not making any frivolous proposals.
   2. In the eventuality that the Authority requests a change which would increase the capacity of the Services and would result in the Contractor having to obtain additional finance, the Contractor shall present the financial proposal for the requested change to the Authority for review and testing to ensure that this presents value for money and is affordable:
      1. The additional increases (or reductions), in the costs of financing will be shared using the same principles outlined in the payment mechanism as set out at ‎Schedule 2 (*Payment Schedule*);
      2. The Authority and the Contractor shall undertake a financial remodelling exercise to re-calculate the investor returns and associated ceiling on investor returns; and
      3. The Authority or the Contractor may in its absolute discretion decide not to proceed with any change following the re-modelling exercise set out in clause ‎14.2.2 above.
   3. This Agreement can only be varied or amended where such variation or amendment is agreed in writing by the Parties in accordance with paragraph ‎3 of the Change Procedure.
2. **DATA PROTECTION**
   1. The Contractor shall comply with its obligations under the 1998 Act and the Computer Misuse Act 1990 insofar as performance of this Agreement gives rise to obligations under those Acts. The Contractor shall also comply with the Caldicott Principles set out in ‎Schedule 10 (*The Caldicott Principles*).
   2. Notwithstanding the general obligations in clause ‎15.1 above, where it is processing personal data (as defined by the 1998 Act) as a data processor for the Authority (as defined by the 1998 Act) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the 1998 Act. The Contractor shall:
      1. provide the Authority with such Information as the Authority may reasonably require to satisfy itself that the Contractor is complying with its obligations under the 1998 Act;
      2. promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause ‎15.2; and
      3. ensure that it does nothing knowingly or negligently which places the Authority in breach of the Authority’s obligations under the 1998 Act.
   3. The Contractor shall and will ensure that any Subcontractor shall implement, maintain and administer the Data Sharing Policy or such equivalent policy which is acceptable to the Authority and meets its minimum standards from time to time.
3. **FREEDOM OF INFORMATION**
   1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Contractor’s expense) to enable the Authority to comply with relevant Requests for Information.
   2. The Contractor shall and shall use reasonable endeavours to procure that its Subcontractors shall:
      1. transfer a Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Days of receiving a Request for Information;
      2. provide the Authority with a copy of all Information in its possession or power that the Authority reasonably requires to enable the Authority to respond to a Request for Information in accordance with the FOIA within five (5) Days (or such other longer period as the Authority may specify) of the Authority requesting that Information, such Information to be provided in the form reasonably required by the Authority; and
      3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
   3. The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
      1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; or
      2. is to be disclosed in response to a Request for Information,

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

* 1. The Authority acknowledges that the Confidential Information is *prima facie* likely to be exempt from disclosure under the provisions of the FOIA or the Environmental Information Regulations (although such acknowledgement does not prejudice the Authority’s discretion as set out in clause ‎16.3). The Authority shall notify the Contractor prior to providing any Confidential Information as part of a response to a Request for Information unless prohibited by law.
  2. The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
     1. without consulting with the Contractor; or
     2. following consultation with the Contractor and having taken its views into account.
  3. The Contractor shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for a period of six years following the Agreement Term and shall permit the Authority to inspect such records as requested from time to time.

1. **CONFIDENTIALITY**
   1. Each Party:
      1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
      2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
   2. The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with this Agreement:
      1. is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement; and
      2. is treated as confidential and not disclosed (without prior approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement.
   3. The Contractor shall ensure that:
      1. its staff (temporary or permanent), professional advisors and consultants are aware of the Contractor’s confidentiality obligations under this Agreement and that, where requested by the Authority, such staff, professional advisors and consultants sign a confidentiality undertaking before commencing work in connection with this Agreement; and
      2. where the Services include the provision or recruitment of temporary staff for the Authority, such staff are aware that they will be required to operate in accordance with the confidentiality and intellectual property obligations undertaken by the Contractor under this Agreement (including in particular those set out in clause ‎15 (*Data Protection*), clause ‎19 (*Intellectual Property*) and clause ‎24 (*Termination*)) and the Contractor shall, if so required by the Authority, obtain and furnish to the Authority a personal undertaking from such temporary employees directly to the Authority to this effect before such employees begin work in connection with this Agreement.
   4. The Contractor shall not use any Confidential Information it receives from the Authority other than for the purposes of this Agreement.
   5. The provisions of clauses ‎17.1 to ‎17.4 shall not apply to any Confidential Information received by either Party:
      1. which is or becomes public knowledge (otherwise than by breach of this clause ‎17);
      2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
      3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
      4. is independently developed without access to the Confidential Information; or
      5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause ‎16 (*Freedom of Information*).
   6. Nothing in this clause shall prevent the Authority:
      1. disclosing any Confidential Information (excluding Commercially Sensitive Information) for the purpose of:
         1. the examination and certification of the Authority’s accounts; or
         2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
      2. disclosing any Confidential Information (excluding the Commercially Sensitive Information) obtained from the Contractor:
         1. to any government department or any other contracting authority. All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the Information is confidential and is not to be disclosed to a third party which is not part of any government department or any contracting authority; or
         2. to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement,

provided that in disclosing information under this clause ‎17.6 the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

* 1. Nothing in this clause shall prevent any Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
  2. The provisions under this clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
  3. The Parties recognise the potential social value in sharing with third parties information relating to the Services and the Outcomes (including, without limitation, data relating to the nature, volume and effectiveness of interventions with Service Users). Without prejudice to the other provisions of this Agreement, the Parties shall use reasonable endeavours to respond positively to reasonable requests for such information and where to do so would put one of the Parties in breach of this Agreement, the affected Party shall consider, at their discretion but acting in good faith, whether to give prior written consent to such an act on that occasion. In such circumstances, the Parties agree that no breach of this Agreement shall arise (provided that such consent shall be required on every occasion such information is sought).

1. **PUBLICITY**

Except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, or otherwise in accordance with any publicity guidelines agreed in writing by the Parties from time to time, neither Party shall make any press announcement or publicise this Agreement or the Services in any way.

1. **INTELLECTUAL PROPERTY**
   1. The Contractor:
      1. hereby grants to the Authority, free of charge, a non exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement ) licence to use the Intellectual Property Rights which are or become vested in the Contractor; and
      2. shall, where any Intellectual Property Rights are or become vested in a third party (and are not generally commercially available), use all reasonable endeavours to procure the grant of a like licence to that referred to in clause ‎19.1.1 above to the Authority,

in both cases, solely for the purpose of the Authority carrying out its duties or exercising any of its rights or statutory functions relating to the Services.

* 1. The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in the Contractor and the Contractor shall enter into appropriate agreements with any Contractor Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.
  2. Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any item infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of clause ‎20 (*Indemnities*) shall apply.
  3. Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any Intellectual Property Rights or because the use of any item infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this clause ‎19 by the Contractor then the Authority shall indemnify the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.

1. **INDEMNITIES**
   1. *Contractor’s Indemnity*
      1. The Contractor shall, subject to clause ‎20.2 (*Contractor not Responsible*), be responsible for, and shall release and indemnify the Authority or any Authority Related Party on demand from and against all liability for Direct Losses arising from:
         1. death or personal injury;
         2. loss of or damage to property; and
         3. third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause ‎20.1.2) brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Agreement.

* + 1. The Contractor shall, subject to clause ‎20.2 (*Contractor not Responsible*), be responsible for, and shall release and indemnify the Authority or any Authority Related Party, on demand from and against all liability for Losses arising from third party actions, claims or demands brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Agreement to the extent that there are no other remedies available to the Authority under this Agreement.
  1. *Contractor not Responsible*

The Contractor shall not be responsible or be obliged to indemnify the Authority:

* + 1. for any matter referred to in clause ‎20.1 (*Contractor’s Indemnity*) that arises as a direct result of the Contractor acting on a written notice issued by the Authority;
    2. for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement; or
    3. in respect of any claim under this Agreement (other than any in respect of death or personal injury caused by its negligence, or fraud or fraudulent misrepresentation, where no limit shall apply) to the extent that, when taken together with any other claims made under this Agreement, the aggregate amount claimed exceeds the relevant amounts specified in the Required Insurances (and where no relevant amount is specified, the aggregate amount in respect of those claims exceeds [*amount to be inserted for uninsured losses*])
  1. *Limitation of Indemnity*

An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.

* 1. *Notification of Claims*

Where either Party (**the “Indemnified Party”**) wishes to make a claim under this Agreement against the other (**the “Indemnifying Party”**) in relation to a claim made against it by a third party (**a “Third Party Claim”**), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

* 1. *Conduct of Claims*

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

* 1. *Costs of Claims*

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

* 1. *Mitigation*

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

1. **INSURANCE**
   1. The Contractor shall during the Agreement Term take out and maintain or procure the maintenance of the Required Insurances with a reputable insurance company and in accordance with Good Industry Practice.
   2. The Contractor shall note the interest of the Authority on each policy of Required Insurance referred to at paragraph ‎1 of ‎Schedule 7 (*Required Insurances*).
   3. The Contractor shall not do, or omit to do, anything that may result in any of the Required Insurances becoming void, voidable or unenforceable, or which would entitle any insurer to refuse to pay any claim under the Required Insurances.
   4. The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this clause ‎21 including but not limited to the name of the insurer and premium paid.
   5. If the Contractor is in breach of this clause ‎21, the Authority may pay any premium required to keep such Required Insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
   6. The Contractor shall give the Authority notification within ten (10) Days after any claim on any of the Required Insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.
   7. Failure to comply with the Required Insurance provisions of this Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Agreement.
   8. The Contractor shall inform the Authority of any material changes in the Required Insurances.
   9. The insurance premiums in respect of the Required Insurances shall be the responsibility of the Contractor.
2. **FORCE MAJEURE**
   1. On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
   2. As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
   3. If no such terms are agreed on or before the date falling sixty (60) Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Agreement for a further period of more than twenty (20) Days, then either Party may terminate this Agreement by giving written notice to the other Party.
   4. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
   5. No Party shall be entitled to bring a claim or exercise a contractual or common law right for a breach of obligations under this Agreement by the other Party, or shall incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.
3. **BRIBERY, CORRUPT, GIFTS AND FRAUD**
   1. The Contractor:
      1. shall not, and shall procure that any Contractor Related Party shall not, in connection with this Agreement commit a Prohibited Act;
      2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.
   2. The Contractor shall:
      1. if requested, provide the Authority with any reasonable assistance, at the Authority’s reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
      2. within ten (10) Days of the Commencement Date, and annually thereafter on request from the Authority, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this clause by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.
   3. The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any personnel or any Subcontractor from committing a Prohibited Act and shall enforce it where appropriate.
   4. If any breach of clause ‎23.1.1 is suspected or known, the Contractor must notify the Authority immediately.
   5. If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause ‎23.1.1, the Contractor must respond promptly to the Authority’s enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for one year following the expiry or termination of this Agreement.
   6. The Authority may terminate this Agreement by written notice with immediate effect if the Contractor or any Contractor Related Party (in all cases whether or not acting with the Contractor’s knowledge) breaches clause ‎23.1.1. In determining whether to exercise the right of termination under this clause ‎23.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Subcontractor or supplier not acting independently of the Contractor. The expression “not acting independently of” (when used in relation to the Contractor or a Subcontractor) means and shall be construed as acting with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the Subcontractor (as the case may be), or in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.
   7. Any notice of termination under clause ‎23.6 must specify:
      1. the nature of the Prohibited Act;
      2. the identity of the party whom the Authority believes has committed the Prohibited Act; and
      3. the date on which this Agreement will terminate.
   8. Any dispute relating to the interpretation of clause ‎23 or the amount or value of any gift, consideration or commission, shall be determined by the Authority and its decision shall be final and conclusive.
   9. Any termination under clause ‎23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.
4. **DEFAULT**
   1. *Performance Improvement Plan*
      1. If during the Operational Period there is a Service Failure or Negative Outcomes Assessment then the Contractor shall:
         1. notify the Authority promptly upon becoming aware of such Service Failure or Negative Outcomes Assessment; and
         2. provide the Authority as soon as reasonably practicable and in any event within twenty (20) Days with a draft Performance Improvement Plan.
      2. The Authority shall (acting reasonably) either approve the draft Performance Improvement Plan within twenty (20) Days of receipt or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Authority and the Contractor shall meet to discuss the Authority’s concerns. The Contractor shall submit a revised Performance Improvement Plan to the Authority for approval within ten (10) Days of the meeting, which the Authority shall (acting reasonably) either approve or reject within ten (10) Days of receipt. If the Contractor does not receive notice from the Authority that it does not accept the draft Performance Improvement Plan within the twenty (20) Day time period or if applicable the further ten (10) Day time period, the Contractor’s draft Performance Improvement Plan shall be deemed to be agreed.
      3. Once agreed, the Contractor shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.
      4. If a Performance Improvement Plan cannot be agreed, then either Party may escalate the matter for resolution in accordance with the Dispute Resolution Procedure to resolve any disagreement over the terms of the Performance Improvement Plan or any disagreement over whether the Service Failure or a Negative Outcomes Assessment is one which is capable of being addressed through a Performance Improvement Plan.
   2. *Termination on Contractor Default*
   3. Subject to clause ‎24.4 (*Rectification*), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.
   4. *Rectification*
      1. If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.
      2. The Termination Notice must specify:
         1. the type and nature of Contractor Default that has occurred, giving reasonable details; and
         2. that in the case of any Contractor Default falling within limbs (e), (f) and (g) of the definition of Contractor Default this Agreement will terminate on the Day falling forty (40) Days after the date the Contractor receives the Termination Notice, unless the Contractor rectifies the Contractor Default within forty (40) Days after the date the Contractor receives the Termination Notice; or
         3. that in the case of any other Contractor Default (not being limbs (e), (f) or (g)), this Agreement will terminate on the date falling forty (40) Days after the date the Contractor receives the Termination Notice.
      3. If the Contractor rectifies the Contractor Default within the time period specified in the Termination Notice, the Termination Notice will be deemed to be revoked and this Agreement will continue.
      4. If in the case of a Contractor Default falling within limbs (e) (f) or (g) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice, the Authority may give notice stating that this Agreement will terminate on the date falling five (5) Days after the date of service of such notice.
   5. *Authority Default*
      1. If an Authority Default has occurred and is continuing and the Contractor wishes to terminate this Agreement, it must serve a termination notice on the Authority.
      2. The termination notice must specify the Authority Default which has occurred entitling it to terminate.
      3. This Agreement shall terminate on the Day falling forty (40) Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within twenty (20) Days of receipt of the termination notice.
   6. *Payment on Authority Default*
      1. On termination of this Agreement pursuant to clause **‎**24.5 (*Authority Default*), the Authority shall pay the Authority Default Termination Sum to the Contractor within twenty (20) Days of the Termination Date.
      2. Any and all sums irrevocably paid by the Authority to the Contractor under clause ‎24.6.1 or clause ‎24.6.2 shall be in full and final settlement of each Party’s rights and claims against the other for breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise, but without prejudice to:
         1. any antecedent liability of the Contractor to the Authority which the Authority has been unable to set off pursuant to this Agreement;
         2. any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum; and
         3. any liabilities arising in respect of any breach by either Party of their obligations under clause ‎25 (*Continuing Obligations on Termination*) which arise or continue after the Termination Date to the extent not taken into account in the calculation of the Authority Default Termination Sum or other payment of compensation on termination pursuant to this Agreement.
   7. *Voluntary Termination*
      1. Either Party may terminate this Agreement by service of not less than six (6) months’ written notice upon the other provided no such notice may be served in the eighteen (18) months immediately following the Services Commencement Date.
      2. Where the Authority serves a termination notice pursuant to this clause ‎24.7, it shall pay the Authority Default Termination Sum on the date this Agreement terminates pursuant to that notice.
      3. Where the Contractor serves a termination notice pursuant to this clause ‎24.7, the Contractor shall be entitled to receive payments in respect of Outcomes achieved after the date of termination that relate directly to the delivery of the Services prior to that date but (subject to clause ‎25.1) not otherwise.
5. **CONTINUING OBLIGATIONS ON TERMINATION**

Save as otherwise expressly provided in this Agreement, and notwithstanding the provisions of clause ‎24.6.2:

* 1. termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
  2. termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause ‎16 (*Authority Obligations*) (to the extent necessary to enable the Contractor to submit accurate information and invoices for payment pursuant to clause ‎13.12 of this Agreement), clause ‎13 (*Payment Provisions*), clause ‎16 (*Freedom of Information*), clause ‎17 (*Confidentiality*), clause ‎19 (*Intellectual Property*), clause ‎20 (*Indemnities*), clause ‎21 (*Insurance*), clause ‎24.54 (*Authority Default*), clause ‎26 (*Transition to Another Contractor*), clause ‎27 (*TUPE and Employees*), clause ‎28 (*Pensions*), clause ‎29 (*Dispute Resolution Procedure*), clause ‎36 (*Notices*) and clause 38 (*Law and Jurisdiction*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

1. **TRANSITION TO ANOTHER CONTRACTOR**
   1. *Duty to Co-operate*

During the final six (6) months of the Operational Period (where this expires by effluxion of time) or during the period of any Termination Notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to the Authority or any Future Service Provider, and for the purposes of this clause ‎26 the meaning of the term “co-operate” shall include:

* + 1. liaising with the Authority and/or any Future Service Provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Authority or to such Future Service Provider;
    2. subject always to the Contractor’s obligations under the 1998 Data Protection Act, providing to the Authority and/or to any Future Service Provider all and any information concerning the Services which is reasonably required for the efficient transfer of responsibility for their performance but information which is commercially sensitive to the Contractor shall not be provided (and for the purposes of this clause ‎26.1.2, “commercially sensitive” shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor but shall not include any information referred to in clause ‎27 (*TUPE and Employees*));
    3. performing its obligations as set out in the Demobilisation Plan.
  1. *Transfer of Responsibility*

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a Future Service Provider or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Operational Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

1. **TUPE AND EMPLOYEES**
   1. *No Employee Transfer*
      1. The Authority and the Contractor agree that there are no individuals presently employed whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Subcontractor of) any of the Services in accordance with this Agreement and in accordance with TUPE, have effect after the Services Commencement Date (or at any other time) as if originally made between those persons and the Contractor and/or relevant Subcontractor.
      2. If it is subsequently agreed or determined that there are persons presently employed whose contracts of employment do have effect after the Services Commencement Date as if originally made between those persons and the Contractor and/or relevant Subcontractor (**the “Transferring Staff”**) then:
         1. the Authority shall or shall procure that any Current Employer within ten (10) Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Current Employer to some or all of the Transferring Staff;
         2. the Contractor shall procure that no person to whom any Current Employer has offered a position in accordance with clause ‎27.1.2‎(a) shall be dismissed by reason of redundancy until the period for acceptance of the Current Employer’s offer has expired and the person in question has not accepted the Current Employer’s offer;
         3. subject to clauses ‎27.1.2‎(a) and ‎27.1.2‎(b), the Contractor or any Subcontractor shall be entitled to dismiss any or all of the Transferring Staff by reason of redundancy or for some other substantial reason provided that the Contractor shall use and shall procure that any Subcontractor shall carry out in the required manner any obligation to consult with the Transferring Staff or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the Transferring Staff or their dismissal.
      3. The Authority shall indemnify the Contractor against:
         1. any costs referred to in clause ‎27.1.2(c) reasonably incurred by the Contractor (or by a relevant Subcontractor and for which the Contractor is responsible); and
         2. any Losses incurred by the Contractor or any relevant Subcontractor in connection with any claim or demand by any Transferring Staff arising out of the employment of any Transferring Staff. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Staff prior to the Services Commencement Date (except where such act, fault or omission arises as a result of the Contractor or any relevant Subcontractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Services Commencement Date.
   2. *Compliance with Legislation and Authorities’ Policies*
      1. The Contractor shall comply and shall procure that each Subcontractor and all persons employed or engaged by a Subcontractor in connection with the provision of any Service shall comply at all times with Legislation, including on health and safety at work and on anti-discrimination and equal opportunities.
      2. The Contractor shall procure that each Subcontractor takes all reasonable steps to procure that all persons including any employed or engaged by a Subcontractor in connection with the provision of any Service shall, so far as applicable, comply with the Authority Policies as regards health and safety at work and with those relating to anti-discrimination and equal opportunities.
   3. *Contractor Indemnities*
      1. The Contractor shall indemnify and keep indemnified in full the Authority and, at the Authority’s request, each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement (a **“Future Service Provider”**) against:
         1. claims in respect of all emoluments and all other contractual or statutory payments unpaid by the Contractor or a Subcontractor to any person entitled to such payments from the Contractor or a Subcontractor who is or has been employed or engaged by the Contractor or any Subcontractor in connection with the provision of any of the Services which relate to any period of employment or engagement with the Contractor or any Subcontractor on or after the Service Transfer Date but prior to the date of expiry or termination of this Agreement, and all income tax and pension and national insurance contributions payable thereon; and
         2. insofar as clause ‎27.3.1‎(a) does not apply, all Direct Losses incurred by the Authority as a result of any claim against the Authority and/or the Current Employer in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of TUPE or of the provisions of this clause ‎27) by the Contractor or any Subcontractor in connection with the provision of any of the Services, where such claim arises as a result of any act or omission of the Contractor or the Subcontractor occurring after the Service Transfer Date and before the expiry or termination of this Agreement,

but the indemnities in clauses ‎27.3.1‎(a) and ‎27.3.1‎(b) shall not apply to the extent that the claim arises from a wrongful act or omission of the Current Employer or the Authority.

* 1. *Retendering*
     1. Subject always to the Contractor’s obligations under the 1998 Act, the Contractor shall (and shall procure that any subcontractor shall) within the period of twelve (12) months immediately preceding the Operational Period End Date or following the service of a Termination Notice or as a consequence of the Authority notifying the Contractor of its intention to retender this Agreement:
        1. on receiving a written request from the Authority provide in respect of any person engaged or employed by the Contractor or any Subcontractor in the provision of the Services (**the “Assigned Employees”**) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters[[1]](#footnote-1) affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Subcontractor as the case may be until immediately before the Termination Date or the Operational Period End Date (as appropriate), would be Transferring Employees (**the “Retendering Information”**);
        2. provide the Retendering Information promptly and at no cost to the Authority;
        3. notify the Authority in writing of any material changes to the Retendering Information promptly as and when such changes arise;
        4. be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in accordance with the Demobilisation Plan, the ordinary course of business and with the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed);
        5. be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed); and
        6. be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services other than in accordance with the Demobilisation Plan or with the Authority’s prior written consent (such consent not be unreasonably withheld or delayed).
     2. The Contractor shall indemnify and shall keep indemnified in full the Authority and at the Authority’s request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Subcontractor failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply to the extent that such information was originally provided to the Contractor or Subcontractor by the Authority and was materially inaccurate or incomplete when originally provided.
  2. *Expiry, Termination or a Transfer Change*
     1. On the expiry or earlier termination of this Agreement, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the law at the Operational Period End Date or the Termination Date as the case may be and this clause is without prejudice to such determination.
     2. For the purposes of this clause ‎27 **“Transferring Employees”** shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the Operational Period End Date or the Termination Date whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Agreement for whatever reason (such date being termed the “**Service Transfer Date”**), the provisions of this clause ‎27.5.2 will apply:
        1. the Contractor shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Contractor or the Subcontractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Contractor or Subcontractors up to the Service Transfer Date are satisfied;
        2. the Authority shall ensure or shall procure that all wages, salaries and other benefits of the Transferring Employees (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees on and after the Service Transfer Date are satisfied;
        3. without prejudice to clause ‎27.5.2‎(a), the Contractor shall:

remain (and procure that Subcontractors shall remain) (as relevant) responsible for all the Contractor’s or Subcontractor’s employees (other than the Transferring Employees) on or after the Operational Period End Date or the Termination Date and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever from or connected with any failure by the Contractor (or any relevant Subcontractor) to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise (save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider) whether arising before on or after the Service Transfer Date by or on behalf of any of the Contractor’s or Subcontractor’s employees who do not constitute the Transferring Employees; and

in respect of those employees who constitute Transferring Employees the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period after the Service Transfer Date but on or before the Service Transfer Date (whether any such claim, attributable to the period up to and on the Service Transfer Date, arises before, on or after the Service Transfer Date) where such claim arises out of any act, fault or omission of the Contractor and/or any Subcontractor including but not limited to any failure by the Contractor or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider.

* + 1. The Authority shall be entitled to assign the benefit of the indemnities set out in clause ‎27.5.2 to any Future Service Provider.
    2. The Authority shall indemnify the Contractor (for itself and for the benefit of each relevant Subcontractor) in respect of those employees who constitute Transferring Employees against all Direct Losses incurred by the Contractor or any relevant Subcontractor in connection with or as a result of any failure by the Authority or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant Subcontractor.
  1. *Subcontractor*s

In the event that the Contractor enters into any subcontract in connection with this Agreement, it shall impose obligations on its Subcontractors in the same terms as those imposed on it pursuant to this clause ‎27 and shall procure that the Subcontractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Subcontractor’s failure to comply with such terms.

* 1. *Conduct of Claims*

Clause ‎20.5 of this Agreement shall apply where any claim is made in respect of the indemnities given under this clause ‎27.

1. **PENSIONS**
   1. *No Employee Transfer*

The Authority and the Contractor agree that there are no individuals presently employed by the Current Employer who are, or who are eligible to be, prior to the Commencement Date, members of the Local Government Pension Scheme whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Subcontractor of) any of the Services in accordance with this Agreement and in accordance with TUPE, have effect after the Services Commencement Date (or at any other time) as if originally made between those persons and the Contractor and/or relevant Subcontractor.

* 1. *Co-operation on Expiry or Termination*

On the termination or expiry of this Agreement (for whatever reason) for a reasonable period both before and after such termination or expiry, the Contractor undertakes to co-operate fully with the Authority (and any successor that provides to the Authority services in the nature of any of or any part of the Services) in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any employee transferring to such successor are provided with pension benefits which are broadly similar to or better than those with which they were provided under this Agreement.

1. **DISPUTE RESOLUTION PROCEDURE**
   1. Any dispute or difference arising out of or in connection with this Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause ‎29.
   2. The Parties shall each use reasonable endeavours to resolve a dispute by means of a prompt, bona fide discussion at a managerial level appropriate to the dispute in question.
   3. In the event that a dispute is not resolved within five (5) Days of it having been referred to a managerial level for discussion then any Party may refer it to the Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within ten (10) Days thereafter or such longer period as the Parties may agree.
   4. If the dispute is not resolved within ten (10) Days of escalation of the dispute in accordance with clauses ‎29.2 or ‎29.3, the Parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.
   5. If the Parties cannot agree on a mediator, the Parties shall appoint a mediator nominated by CEDR.
   6. The Parties shall use their reasonable endeavours to conclude the mediation within twenty (20) Days of referral of the dispute to mediation.
   7. If:
      1. any Party is dissatisfied with or otherwise wishes to challenge the mediator’s decision; or
      2. all Parties agree then any Party may, within twenty (20) Days of the conclusion of the mediation, notify the other Party of its intention to refer the dispute to litigation and for such purposes the Parties agree that the courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.
   8. Where any Dispute is referred to litigation pursuant to clause ‎29.7, the courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations or the mediator and, where appropriate, to order financial compensation to be paid by one Party to the other.
   9. The Parties shall continue to comply with, observe and perform all of their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect to every recommendation of the mediator and the courts delivered under this clause, provided that the Contractor shall not be obliged to accept new referrals from the date on which a dispute has been formally notified by one Party to the other where the dispute has arisen in respect of a breach of the Authority’s Obligations under this Agreement. For the avoidance of doubt the Contractor shall at all times continue to provide the Services in relation to referrals that are already receiving the Services irrespective of the subject matter of the dispute.
2. **ASSIGNMENT AND SUB-CONTRACTING**
   1. The Contractor shall not assign all or any benefit, right or interest under this Agreement.
   2. Save to the Initial Subcontractors (and subject to clause ‎30.4 below), the Contractor shall not subcontract any of the Services, in whole or in part, or replace the Initial Subcontractors except with the prior written consent of the Authority. The Authority shall not withhold or delay its consent to any subcontracting conducted in accordance with this clause ‎30. By entering into this Agreement the Authority approves the Initial Subcontractors.
   3. Notwithstanding any subcontracting permitted under this Agreement, the Contractor shall remain responsible for the acts and omissions of its Subcontractors as though they were its own.
   4. Notwithstanding clause ‎30.2, where the Tender Submission indicates that delivery of the Services will involve engagement of Specialist Subcontractors, the Contractor shall use its best endeavours to engage such subcontractors to provide not less than the proportion of the Services indicated in the Tender Submission in accordance with the terms of this clause ‎30.
   5. Other than in relation to the Initial Subcontractors, where the Contractor did not specify in the Tender Submission how it may use Subcontractors to deliver the Services, but intends to enter into a subcontract in connection with this Agreement, the Contractor shall, if reasonably possible, ensure:
      1. that at least one potential Subcontractor with an operational or administrative location in the area of the Authority is invited to tender for such subcontract on the same terms as all the other parties invited to tender and that such invitation is made in the same manner as the invitation(s) to all other parties; and
      2. that social, economic and environmental considerations are taken into account in selecting the subcontractor;
   6. In all circumstances where the Contractor is subcontracting any part or all of the Services, it shall act in good faith and in a fair and reasonable manner and a manner consistent with how it has committed to act with the Authority pursuant to clauses ‎2 and ‎8 of this Agreement. In particular (and without prejudice to the foregoing) it shall ensure that any subcontract contains terms which:
      1. allocate risks fairly and appropriately as between the Contractor and the subcontractor, having regard to the respective abilities of the parties to manage and bear the relevant risks taking into account, inter alia, the services each are providing under the subcontract and the resources each has at their disposal;
      2. do not make payment to a Specialist Subcontractor conditional upon achievement of the Outcomes or the receipt of payment by the Contractor from the Authority;
      3. require the Contractor to pay all sums due thereunder to the Subcontractor within a specified period from the date of receipt of a valid invoice as defined by the terms of the subcontract not to exceed twenty (20) Days;
      4. allow for performance monitoring management and review consistent with the provisions of this Agreement;
      5. relate to data monitoring and audit consistent with the provisions of this Agreement;
      6. oblige the Subcontractor to take out and maintain the relevant Required Subcontractor Insurances;
      7. impose equivalent obligations on the Subcontractor to those contained in clauses ‎27 and ‎28 regarding TUPE and Pensions mutatis mutandis; and
      8. require any Principal Subcontractor to enter into a Deed of Assurance.
   7. Within twenty (20) Days of the respective appointment, the Contractor shall procure the provision of a Deed of Assurance in favour of the Authority from any Principal Subcontractor who has not been appointed at the time of this Agreement substantially in the form set out in ‎Schedule 3 (*Deed of Assurance*).
   8. The Contractor shall on request provide a copy of any subcontracts awarded in accordance with this clause within five (5) Days of request.
   9. The Authority shall be entitled to:
      1. assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any contracting authority (as defined in Regulation 3(1) of the Public Contracts Regulations 2006); or
      2. transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or relevant part of the Authority’s statutory functions.
3. **CHANGE IN OWNERSHIP**
   1. *Restricted Share Transfer*
      1. A Change in Ownership may only occur to a Suitable Third Party.
      2. A Change in Ownership may only occur with the prior written consent of the Authority.
      3. The Authority shall not withhold or delay its consent to a Change in Ownership save where:
         1. (in the case of the Contractor being majority owned by the Investor) the Change in Ownership (either individually or cumulatively when taken into account with previous Changes in Ownership) amounts to a change in control of the Contractor compared to the position at the date of this Agreement;
         2. (in the case of the Contractor being majority owned by Sub-contractors) the Change In Ownership is to a party that does not comprise either an Investor or Sub-contractor, or is to such a party but amounts to a change in control of the Contractor compared to the position at the date of this Agreement;
         3. (in the case of the Contractor being majority owned by parties that are neither Investor nor Sub-contractors) it is a transfer of shares in the Contractor that are not listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) where the Change in Ownership (either individually or cumulatively when taken into account with previous Changes in Ownership) amounts to a change in control of the Contractor compared to the position at the date of this Agreement.
   2. *Notification*

The Contractor shall provide the Authority with at least ten (10) Days’ prior written notice of any Change in Ownership.

1. **ENTIRE AGREEMENT**

The Parties acknowledge that this Agreement sets forth the entire agreement between them with respect to the provision of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties.

1. **NO PARTNERSHIP OR AGENCY**
   1. Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Authority and the Contractor or the Sponsor [and the Authority and the Agent].
   2. Save as expressly provided otherwise in this Agreement, the Contractor and the Sponsor shall not be, or be deemed to be, an agent of the Authority and the Contractor and the Sponsor shall not hold themselves out as having authority or power to bind the Authority in any way.
2. **NO WAIVER**
   1. Failure by any Party at any time or for any period to enforce any one or more of the provisions of this Agreement or to require performance by any Party of any of the provisions of this Agreement shall not:
      1. constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement; nor
      2. affect the validity of the Agreement or any part thereof or the right of the Parties to enforce any provision in accordance with its terms.
   2. No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause ‎36 (*Notices*).
3. **SEVERANCE**
   1. Each provision of this Agreement is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.
   2. If any provision of this Agreement is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Agreement would not negate the commercial intent and purpose of the Parties under this Agreement.
   3. If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Agreement.
4. **NOTICES**
   1. Any notice required by this Agreement to be given by any Party to any other Party shall be in writing and shall be served personally, by fax or by sending the same by registered post or recorded delivery to the following:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Contractor** | **Authority** |  |
| **Address:** |  |  |  |
| **For the attention of:** |  |  |  |
| **Tel:** |  |  |  |
| **Fax:** |  |  |  |
| **Email:** |  |  |  |

* 1. Any notice served personally will be deemed to have been served on the Day of delivery, any notice sent by post will be deemed to have been served forty-eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty-four (24) hours after it was despatched.

1. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded.

1. **LAW AND JURISDICTION**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the Parties have executed this Agreement as a deed and delivered it on the date first written.

Execution by the **AUTHORITY**

The common seal of

***[NAME]***

was hereunto affixed in the presence of:

Attesting Officer

Execution by the **CONTRACTOR**

Signed as a deed on behalf of

***[NAME]***

acting by:

……………………………………………..

Director

……………………………………………..

Director

1. **Authority Requirements and Obligations**

* 1. **Services Specification**

* 1. **Authority Policies**

* 1. **Authority Obligations**

* 1. **Authority Mobilisation Obligations**

1. **Payment Schedule**

**Basis of Payment**

1. **Deed of Assurance**

**DATED 20**

**[SUB CONTRACTOR] (1)**

**[AUTHORITY] (2)**

**[CONTRACTOR] (3)**

**DUTY OF CARE DEED**

**relating to**

**THIS DEED OF ASSURANCE** is made on the day of                                20

**BETWEEN:**

1. **[SUB CONTRACTOR]** (Company No. ) whose registered office is at (the **Sub Contractor**)
2. **[AUTHORITY]** of                   (the **Authority**), (which expression includes its permitted successors in title and assigns); and
3. **[CONTRACTOR]** (Company No. ) whose registered office is at (the **Contractor**)

**BACKGROUND**

(A) By a services agreement dated [ ] (the Services Agreement) the Authority has appointed the Contractor to carry out the services set out in that agreement in order to deliver the Outcomes.

(B) The Sub Contractor has been appointed by the Contractor under a contract dated [           ] (the Sub Contract) to carry out the Services.

(C) The Sub Contractor is obliged under the Sub Contract to give a warranty in this form in favour of the Authority.

(D) The Sub Contractor and the Contractor have agreed to execute this Deed in favour of the Authority.

* + 1. **DEFINITIONS AND INTERPRETATIONS**

Unless expressly defined otherwise in this Deed any defined term in this Deed shall have the same meaning given to such term in the Sub Contract.

|  |  |
| --- | --- |
| **“Intellectual Property Rights”** | any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attaching thereto which is created, brought into existence, acquired, used or intended to be used by the Sub Contractor for the purpose of carrying out the Services; |
| **“Lender(s)”** | means any organisation providing funding to the Contractor in connection with the Services Agreement; |
|  |  |

* + 1. **OPERATIVE PROVISIONS**

In consideration of the payment of one pound (£1.00) by the Authority to the Sub Contractor, receipt of which the Sub Contractor acknowledges:

* + 1. **WARRANTY**
       1. The Sub Contractor warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Sub Contract in accordance with and to the standard required by the Sub Contract, provided always that the Sub Contractor has no liability hereunder which is greater or of a longer duration than that it owes to the Contractor under the Sub Contract.
       2. The Sub Contractor shall have no liability under clauses ‎3.1 and ‎11 of this Deed that is greater or of longer duration than it would have had, and shall be entitled in any proceedings by the Authority to rely on any limitation in the Sub Contract and to raise equivalent rights in defence of liability as it would have against the Contractor under the Sub Contract.
       3. Notwithstanding anything in this Deed and not withstanding any payments which may be made by the Authority to the Sub Contractor, the Authority and the Sub Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authority has given written notice to the Sub Contractor pursuant to clause ‎7.1 or clause ‎7.3.
    2. **INTELLECTUAL PROPERTY**

The Sub Contractor shall comply with the obligations in the Sub Contract relating to Intellectual Property Rights.

* + 1. **ASSIGNMENT**

The benefit of and the rights of the Authority under this Deed shall not be exercised during the subsistence of the Services Agreement. They may be assigned without the consent of the Sub Contractor on two (2) occasions only and the Authority will notify the Sub Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

* + 1. **AUTHORITY'S REMEDIES**

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Sub Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

* + 1. **STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY**
       1. The Sub Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Sub Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) Days’ prior written notice specifying the Sub Contractor's ground for terminating or treating as terminated or repudiated the Sub Contract or its employment under it or discontinuing or suspending its performance of it and stating the amount (if any) of monies outstanding under the Sub Contract. Within such period of notice:
          1. the Authority may give written notice to the Sub Contractor that the Authority will become the client under the Sub Contract to the exclusion of the Contractor. On receipt of such notice, the Sub Contractor will admit that the Authority as its client under the Sub Contract and the Sub Contract will be and remain in full force and effect notwithstanding any of the said grounds;
          2. if the Authority has given notice under clause ‎7.1‎(a) or under clause ‎7.3, the Authority shall accept liability for the Contractor's obligations under the Sub Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Sub Contractor that properly has been included in the Sub Contractor's specified grounds pursuant to clause ‎7.1 (and which has been notified to the Authority) and which is capable of remedy; and
          3. if the Authority has given such notice under clause ‎7.1‎(a) or under clause ‎7.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Sub Contractor under the Sub Contract accruing due after the service of the Sub Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub Contract.
       2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Sub Contractor, the Sub Contractor will not be under any duty to obey any direction or instruction from the Authority unless and until the Authority has given notice under clauses ‎7.1‎(a) and ‎7.3.
       3. The Sub Contractor further covenants with the Authority that if the employment of the Contractor under the Services Agreement is terminated or if the Services Agreement is terminated by the Authority the Sub Contractor, if requested by the Authority by notice in writing and subject to clause ‎7.1‎(b) and clause ‎7.1‎(c), will accept the instructions of the Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Sub Contract and will if so requested in writing enter into a novation agreement in the form set out in Appendix 1 to this Deed whereby the Authority is substituted for the Contractor under the Sub Contract.
       4. If the Sub Contractor is requested to enter into a novation agreement pursuant to clause ‎7.3, the Contractor agrees to enter into the same at the request of the Authority.
       5. Where the Sub Contractor has given rights in relation to the Sub Contract similar to those contained in this clause to the Lender then if both the Authority and the Lender serve notice under clause ‎7.1‎(a) or clause ‎7.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.
       6. The Contractor acknowledges that the Sub Contractor will be entitled to rely on a notice given to the Sub Contractor by the Authority under clause ‎7.3 as conclusive evidence that the Contractor’s employment under the Services Agreement has been terminated or that the Services Agreement has been terminated by the Authority.
       7. The Authority may by notice in writing to the Sub Contractor appoint another person to exercise its rights under this clause ‎7 subject to the Authority remaining liable to the Sub Contractor as guarantor for its appointee in respect of its obligations under this Deed.
    2. **LIMITATION**

Without prejudice to the provisions of clause ‎7.1, the Authority shall not be entitled to take any action or proceedings against the Sub Contractor pursuant to this Deed unless and until the Services Agreement has been terminated.

* + 1. **INDEPENDENT ENQUIRY CLAUSE**

The liability of the Sub Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Authority nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Authority of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Authority in respect of the Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Authority provided always that nothing in this clause shall modify or affect any rights which the Sub Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

* + 1. **NO VARIATION TO SUB CONTRACT WITHOUT AUTHORITY'S CONSENT**

The Contractor and the Sub Contractor undertake with the Authority not to vary or depart from the terms and conditions of the Sub Contract without the prior written consent of the Authority (such consent to be sought in accordance with the Services Agreement), and agree that no such variation or departure made without such consent shall be binding upon the Authority, or affect or prejudice the Authority's rights hereunder, or under the Sub Contract or in any other way.

* + 1. **SEVERABILITY**

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

* + 1. **WAIVER** 
       1. No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
       2. No waiver under clause ‎12.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.
    2. **THE CONTRACTOR'S INCLUSION AS PARTY**

The Contractor has agreed to be a party to this Deed for the purpose of clause **‎**8 and for acknowledging that the Sub Contractor shall not be in breach of the Sub Contract by complying with the obligations imposed on it by this Deed.

* + 1. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

* + 1. **GOVERNING LAW AND JURISDICTION**

This Deed and all non-contractual obligations in connection with this Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

* + 1. **THIRD PARTY RIGHTS**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

* + 1. **NOTICES**

Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Day and otherwise on the next Day.

**IN WITNESS** whereof this document is executed by the parties as a Deed and delivered on the date stated at the beginning of this Deed

**EXECUTED** as a Deed

by the **SUB CONTRACTOR**

acting by two of its directors or a

director and its secretary:

……………………………….

Director

………………………………..

Director/Secretary

**EXECUTED AS A DEED**

by the **Authority**

acting by two authorised signatories:

…………………………………

Authorised Signatory

…………………………………

Authorised Signatory

**EXECUTED** as a Deed by

**[CONTRACTOR]**

acting by two of its directors or a

director and its secretary:

…………………………………

Director

…………………………………

Director/Secretary

**Appendix 1**

**Form of Deed of Novation**

**THIS DEED** is made on 20

**BETWEEN:**

(1) **[CONTRACTOR'S SUB CONTRACTOR]** (Company No. ) whose registered office is at (the **Sub Contractor**);

(2) **[AUTHORITY]** of (the **Authority**), which expression includes its permitted successors in title and assigns); and

(3) **CONTRACTOR** (Company No. ) whose registered office is at (the **Contractor**).

**WHEREAS**

(A) By a services agreement dated [ ] (the **Services Agreement**) the Authority has appointed the Contractor to carry out the services set out in that agreement in order to deliver the Outcomes.

(B) The Sub Contractor has been appointed by the Contractor under a contract dated [           ] (the **Sub Contract**) to carry out the Services (as defined in the Sub Contract).

(C) The Services Agreement has been terminated by the Authority.

(D) The parties have agreed to novate the Sub Contract to the Authority on the terms set out below.

**IT IS AGREED**

* + 1. **Novation of Sub Contract**

The Sub Contract is hereby novated from the Contractor and the Sub Contractor to the Authority and the Sub Contractor.

* + 1. **Release of the Contractor**

The Contractor shall no longer owe any duty or obligation to the Sub Contractor under or in respect of the Sub Contract whether by virtue of its terms or by virtue of any breach or otherwise.

* + 1. **Release of the Sub Contractor**

The Sub Contractor shall no longer owe any duty or obligation to the Contractor under or in respect of the Sub Contract whether by virtue of its terms or by virtue of any breach or otherwise.

* + 1. **Binding of the Sub Contractor to the Authority**
       1. The Sub Contractor binds itself to the Authority in the terms of the Sub Contract as if the Authority were and always had been named in the Sub Contract in place of the Contractor.
       2. The Sub Contractor warrants to the Authority that prior to the date of this Deed it has performed and that it will continue to perform its duties and obligations as required by and in accordance with the terms of the Sub Contract.
       3. The Authority shall not be precluded from recovering any losses incurred by the Authority or the Contractor resulting from any breach of clause ‎4.2 by reason that (if it be the case) the acts or omissions causing such breach occurred before this Deed took effect, or that the Contractor will not incur or has not or would not have incurred any such losses. No waiver by the Contractor, either express or implied, will affect the Sub Contractor's liability to the Authority pursuant to this clause.
    2. **Binding of the Authority to the Sub Contractor**

The Authority binds itself to the Sub Contractor in the terms of the Sub Contract as if the Authority were and always had been named in the Sub Contract in place of the Contractor and as if all acts and omissions of the Contractor (including any wrongful acts or omissions) under and in respect of the Sub Contract were the acts and omissions of the Authority.

* + 1. **Vesting of remedies in the Authority**

All rights of action and remedies vested in the Contractor against the Sub Contractor under and in respect of the Sub Contract shall hereupon vest in the Authority.

* + 1. **Vesting of remedies against the Authority**

All rights of action and remedies vested in the Sub Contractor against the Contractor under and in respect of the Sub Contract shall hereinafter lie against the Authority.

* + 1. **Affirmation of Sub Contract**

Subject to the terms of this Deed the Sub Contract shall remain in full force and effect.

* + 1. **Third Party Rights**

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

* + 1. **Governing Law and Interpretation**

This Deed and all non-contractual obligations in connection with this Deed shall be governed by and construed in all respects in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed.

**IN WITNESS** of which this document is executed as a deed and is delivered on the date first set out above

**EXECUTED AS A DEED**

by the Sub Contractor acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

**EXECUTED AS A DEED**

by the Contractor acting by

a Director and its Secretary/two Directors:

Director

Director/Secretary

**EXECUTED AS A DEED**

by the Authority acting by

two authorised signatories:

Authorised Signatory

Authorised Signatory

1. **Data Sharing Policy**

The Contractor and the Subcontractor shall comply with the following policies in delivering the Services so far as they are relevant.

*Indicative content:*

* + 1. **Data Security Policy**
    2. **Data Security Procedure**
    3. **Information Sharing Policy**

1. **Mobilisation and Demobilisation Plans**
   1. **Mobilisation Plan**
   2. **Demobilisation Plan**

1. **Change Procedure**
   * 1. **Principles**
        1. Each of the Contractor and the Authority may at any time request a change to this Agreement in accordance with the procedure set out in paragraph ‎2 below.
        2. The obligations of the Parties shall not be effected until a change note in the form attached to this ‎Schedule 6 has been signed by the authorised signatory of the Contractor and the Authority.
        3. The Authority shall not be responsible for the cost of any work undertaken or goods or materials ordered by the Contractor or its Subcontractors relating to a change which has not been authorised in advance by an Authorised Change Note.
     2. **Procedure**
        1. The Authority and the Contractor shall discuss any changes proposed by a Party to this Agreement and such discussion shall result in:
           1. a decision not to proceed further; or
           2. a written request for a change by the Authority; or
           3. a recommendation for a change by the Contractor.
        2. Each Proposed Change Note shall contain details of the change including, where applicable:
           1. the title of the change;
           2. the originator and the date of the request or recommendation for the change;
           3. the reason for the change;
           4. full details of the change including any specifications;
           5. the price, if any, of the change;
           6. a timetable for implementation together with any proposals for acceptance of the change;
           7. a schedule of payments, if applicable;
           8. the impact, if any, of the change on other aspects of the Agreement;
           9. the date of expiry of validity of the Proposed Change Note; and
           10. provision for signature by the Authority if the change is agreed.
        3. Where a written request for a change is received from the Authority, the Contractor shall within the period of the validity of the Proposed Change Note, evaluate the Proposed Change Note and, as appropriate:
           1. sign the Proposed Change Note to indicate acceptance of it;
           2. request further information from the Authority in which case the Authority shall provide such information as soon as reasonably practicable and in any event within five (5) Days. The request for information and the information once provided shall be deemed to be part of the Proposed Change Note, and the Contractor may approve or reject the Proposed Change Note upon receipt of the new information; or
           3. notify the Authority of the rejection of the Proposed Change Note.
        4. For each Proposed Change Note submitted to the Authority, the Authority shall, within the period of the validity of the Proposed Change Note, evaluate the Proposed Change Note and, as appropriate:
           1. sign the Proposed Change Note to indicate acceptance of it;
           2. request further information from the Contractor in which case the Contractor shall provide such information as soon as reasonably practicable and in any event within five (5) Days. The request for information and the information once provided shall be deemed to be part of the Proposed Change Note, and the Authority may approve or reject the Proposed Change Note upon receipt of the new information; or
           3. notify the Contractor of the rejection of the Proposed Change Note.
        5. A Proposed Change Note signed by both Parties shall constitute an Authorised Change Note and shall effect a variation to this Agreement in accordance with the terms of clause ‎14 of this Agreement.
     3. **Authorised Signatories**
        1. The authorised signatory for the Authority will be the Authority’s Authorised Representative in the absence of any written notification to the contrary from the Authority to the Contractor.
        2. The authorised signatory for the Contractor shall be deemed to be the Contractor’s Authorised Representative or a duly authorised Director of the Contractor in the absence of any written notification to the contrary from the Contractor to the Authority.

**Change Note**

**Ref No:**

**Date:**

**Title of Change:**

**Details of Change:**

**Reasons for Change:**

**Impact of Change:**

**Timetable:**

**Price:**

**Contractor: Signed:**

**Authority Response: Accept/Reject Signed:**

**Note:** The format of the Change Note may vary from time to time in circumstances where additional information is deemed necessary by the Authority or the Contractor in order to accurately reflect the nature of the change.

1. **Required Insurances**

*Levels of cover to be reviewed on project by project basis*

* + 1. **The Contractor Insurances**

The Contractor shall procure and maintain the following insurances (Contractor Insurances):

* + - 1. professional indemnity insurance to provide an indemnity of not less than two (2) million pounds (£2,000,000) in respect of any one claim or series of claims arising out of one incident;
      2. employer’s liability insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident; and
      3. third party public liability to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident.
    1. **The Subcontractor Insurances**

The Contractor shall ensure that Subcontractors shall procure and maintain the following Insurances (Subcontractor Insurances):

* + - 1. professional indemnity insurance to provide an indemnity of not less than five (5) million pounds (£5,000,000) in respect of any one claim or series of claims arising out of one incident;
      2. employer’s liability insurance to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident; and
      3. third party public liability to provide an indemnity of not less than ten (10) million pounds (£10,000,000) in respect of any one claim or series of claims arising out of one incident.

Any other insurances that may be required by law.

1. **Management Information**

In accordance with clause ‎12 of the Agreement and in addition to the other provisions of this Agreement the Contractor shall comply with the following specific management Reporting Requirements:

It is required that at specified intervals the following reports are produced subject to the necessary source data being available:

**Monthly**

**Quarterly**

**Annually**

1. **Commercially Sensitive Information**

* 1. **Commercially Sensitive Contractual Provisions**

|  |  |  |
| --- | --- | --- |
| **Contractual Provision** | **Time Period** | **Reason for Confidentiality** |
|  |  |  |
|  |  |  |

* 1. **Commercially Sensitive Material**

|  |  |  |
| --- | --- | --- |
| **Material** | **Time Period** | **Reason for Confidentiality** |
|  |  |  |
|  |  |  |

1. **The Caldicott Principles**
   * 1. The purpose must be justified. Every proposed use or transfer of personal data within or from the organisation should be clearly defined and scrutinised, with continuing uses regularly reviewed by an appropriate guardian.
     2. Personal data must not be used unless it is absolutely necessary. Personal data should not be used unless there is no alternative.
     3. The minimum necessary personal data information is to be used. Where use of personal data is considered essential, each individual item of information should be justified with the aim of reducing identifiability.
     4. Access to personal data should be on a strict need to know basis. Only those individuals who need access to personal data should have access to it, and they should only have access to the data that they need to see.
     5. Everyone should be aware of their responsibilities. Those handling personal data – both frontline and support staff – must be aware of their responsibilities and obligations to respect personal confidentiality.
     6. All persons handling personal data must understand and comply with the law. Every use of personal data information must be lawful.

1. The list would normally show - Staff ref no; DoB; Age; Job Title; Start Date; Continuous Service Date – length of reckonable service; Contracted hours; Sex (M/F); Site; Department; NI letter (A or D); Scale and point; Salary; Superannuation (including contribution rates, length of reckonable pensionable service, etc.); and Allow/deduction code. **N.B.** This is not necessarily an exhaustive list. [↑](#footnote-ref-1)