

Standard Terms and Conditions
Purchase of Services – Medium Value/Risk

Contents

SECTION A - GENERAL PROVISIONS	1
1 Definitions and Interpretation	1
2 Contract Period.....	5
3 Contractor's Status	5
4 Notices.....	5
SECTION B – SUPPLY OF SERVICES.....	5
5 Specification	5
6 Provision and Removal of Equipment.....	5
7 Manner of Carrying Out the Services.....	6
8 Contractor's Staff.....	6
9 Contract Monitoring.....	7
10 Contract Performance.....	7
SECTION C - PAYMENT AND CONTRACT PRICE.....	8
11 Contract Price	8
12 Payment and VAT.....	8
13 Recovery of Sums Due	9
14 Form of Invoice	9
SECTION D - STATUTORY OBLIGATIONS AND REGULATIONS	10
15 Prevention of Corruption	10
16 Prevention of Fraud	10
17 Discrimination	10
18 The Contracts (Rights of Third Parties) Act 1999	11
19 Environmental Requirements.....	11
20 Health and Safety	11
21 Modern Slavery.....	12
22 Supply Chain	12
SECTION E - PROTECTION OF INFORMATION	13
23 Data Handling	13
24 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989	13
25 Publicity, Media and Official Enquiries	13
26 Intellectual Property Rights	14
27 Audit.....	14
28 Transparency.....	15
SECTION F - CONTROL OF THE CONTRACT	15
29 Transfer and Sub-Contracting.....	15
30 Waiver.....	15
31 Variation.....	15
32 Severability	15
33 Remedies in the event of inadequate performance.....	15

34	Remedies Cumulative.....	16
35	Entire Agreement.....	16
36	Counterparts	16
	SECTION G - LIABILITIES	16
37	Liability, Indemnity and Insurance.....	16
38	Warranties and Representations.....	18
	SECTION H - DEFAULT, DISRUPTION AND TERMINATION	19
39	Termination on insolvency and change of control.....	19
40	Termination on Default.....	20
41	Break	21
42	Consequences of Expiry or Termination.....	21
43	Disruption.....	22
44	Force Majeure.....	22
	SECTION I - DISPUTES AND LAW	22
45	Governing Law and Jurisdiction	22
46	Dispute Resolution.....	22
	SECTION J – EMPLOYEE LIABILITIES	24
47	TUPE	24
48	Pensions	27

**THIS CONTRACT WILL BE PUBLISHED IN ACCORDANCE WITH THE ELECTED LOCAL
POLICING BODIES (SPECIFIED INFORMATION) ORDER 2011 (AS AMENDED)**

SECTION A - GENERAL PROVISIONS

1 Definitions and Interpretation

- 1.1 In the Contract unless the context otherwise requires the following terms shall have the meanings given to them below:
- 1.1.1 "Administering Authority" means the relevant Administering Authority of the Fund for the purposes of the LGPS Regulations;
 - 1.1.2 "Approval" means the written consent of the Customer;
 - 1.1.3 "Commencement Date" means the date specified as such in Section 2 of the Contract Schedule;
 - 1.1.4 "Contract" means this written agreement between the Customer and the Contractor consisting of the Contract Schedule, these Terms and Conditions, the Schedules and all other documents attached to the Contract Schedule;
 - 1.1.5 "Contract Information" means the contents of the Contract, the contents of the Tender, information regarding the tender process for the Contract and information on the amounts paid to the Contractor under the Contract;
 - 1.1.6 "Contracting Authority" means any contracting authority as defined in Regulation 2 of the PCR;
 - 1.1.7 "Contractor" means the person, firm or company identified in Section 2 of the Contract Schedule;
 - 1.1.8 "Contractor's Final Staff List" means the list of all the Staff engaged (in whatever capacity) in or wholly or mainly assigned to the performance of the Services or any part of the Services at the End Date;
 - 1.1.9 "Contractor's Provisional Staff List" means a list prepared and updated by the Contractor of all the Staff engaged (in whatever capacity) in, or wholly or mainly assigned to, the performance of the Services or any part of the Services at the date of preparation of the list;
 - 1.1.10 "Contract Period" means the period of the Contract as specified in Section 2 of the Contract Schedule;
 - 1.1.11 "Contract Price" means the price (exclusive of any applicable VAT), payable to the Contractor by the Customer under the Contract, as set out in Schedule 2 (Pricing), for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause 12.12;
 - 1.1.12 "Contracts Finder" means the government's publishing portal for public sector procurement opportunities;
 - 1.1.13 "Customer" means the party identified in Section 2 of the Contract Schedule together with the Chief Officer(s) and/or the Policing Body(ies) of the relevant police force(s)/police force area(s) of that party;
 - 1.1.14 "Customer Contact" means the individual(s), whether a contract manager, category consultant or otherwise, who are to act for the Customer as the day to day point of contact for communications from the Contractor to the Customer in relation to the Contract, being the individual(s) identified in Section 2 of the Contract Schedule or otherwise notified to the Contractor from time to time;
 - 1.1.15 "Customer Material" has the meaning set out in clause 26.1;
 - 1.1.16 "Data Protection Law" means:
 - (a) the retained EU law version of the General Data Protection Regulation;
 - (b) the Data Protection Act 2018 to the extent that it relates to the processing of personal data and privacy; and
 - (c) any other applicable Law about the processing of personal data and privacy;
 - 1.1.17 "Default" means any breach of the obligations of a Party set out in the Contract (including fundamental breach or breach of a fundamental term) or any other default,

negligent act, negligent omission, negligence or negligent statement of the relevant Party (or, in the case of the Contractor, the Staff) in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other;

- 1.1.18 "End Date" means the date on which an Exit Employee becomes employed by the Customer or a Replacement Contractor or a sub-contractor thereof (as the case may be) by virtue of the TUPE Regulations;
- 1.1.19 "Entrance Employee" means any person whose contract of employment transfers under the TUPE Regulations to the Contractor or a Sub-contractor on the date of and by virtue of Service Commencement, being all those persons who are listed in Schedule 7 (Entrance Employees);
- 1.1.20 "Exit Employee" means any person:
 - (a) who is engaged in the performance of the Services when the Contractor or any Sub-contractor ceases for whatever reason, whether directly or indirectly, to provide the Services or any part of them; and
 - (b) whose contract of employment has effect by virtue of the TUPE Regulations as if originally made between such person and the Customer or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be);
- 1.1.21 "Fair Deal Employees" means those:
 - (a) Entrance Employees and/or
 - (b) employees who are not Entrance Employees but to whom the TUPE Regulations apply on the Relevant Transfer Date to transfer their employment to the Contractor (or a Sub-contractor),

who at the Relevant Transfer Date are or become entitled to New Fair Deal protection in respect of the LGPS;
- 1.1.22 "Force Majeure" means in relation to either Party any event which is beyond the reasonable control of that Party and which materially and adversely affects its ability to perform its obligations under the Contract;
- 1.1.23 "Fund" means the pension fund within the LGPS identified in Section 2 of the Contract Schedule;
- 1.1.24 "Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill, diligence, prudence and foresight which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in the same or a similar type of undertaking as the relevant Party under the same or similar circumstances, seeking in good faith to comply with its contractual and other obligations;
- 1.1.25 "Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off;
- 1.1.26 "Law" means any applicable UK law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- 1.1.27 "LGPS" means the Local Government Pension Scheme as governed by the LGPS Regulations;
- 1.1.28 "LGPS Admission Agreement" means an admission agreement (substantially in the form appended to the Contract at Annex A) within the meaning set out in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
- 1.1.29 "LGPS Admission Body" means an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
- 1.1.30 "LGPS Eligible Employees" means any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employee who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory

transfer of employment would have been entitled to be or become a member of, the LGPS;

- 1.1.31 "LGPS Regulations" means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS;
- 1.1.32 "New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for Staff Pensions: Staff Transfer from Central Government"* issued in October 2013 immediately prior to the Relevant Transfer Date;
- 1.1.33 "Outgoing Contractor" means any employer of the Entrance Employees immediately prior to the date of Service Commencement;
- 1.1.34 "Party" means the Customer and/or the Contractor (as the context requires);
- 1.1.35 "PCR" means the Public Contracts Regulations 2015;
- 1.1.36 "Premises" means the location(s) at which the Services are to be performed, as set out in the Specification;
- 1.1.37 "Receipt" means the physical or electronic arrival of the invoice at the address of the Customer detailed in Section 2 of the Contract Schedule or at any other address given by the Customer to the Contractor for the submission of invoices, provided that if any such invoice arrives on a day that is not a Working Day or after 5.00pm on a Working Day, then it shall not be deemed to have been received until 10.00am on the next following Working Day;
- 1.1.38 "Regulatory Body" means any government department or regulatory, statutory or other entity, committee, ombudsman or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of the Customer;
- 1.1.39 "Relevant Transfer" means a transfer of employment to which the TUPE Regulations applies;
- 1.1.40 "Relevant Transfer Date" means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place and shall include the date of Services Commencement, where appropriate;
- 1.1.41 "Replacement Contractor" means any third party supplier appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;
- 1.1.42 "Required Insurances" has the meaning given to that expression in clause 37.4;
- 1.1.43 "Services" means the services to be provided by the Contractor to the Customer as specified in the Specification (including any training, installation, commissioning or other support services relating to the performance of the Services);
- 1.1.44 "Services Commencement" means the commencement of the performance of the Services by the Contractor;
- 1.1.45 "Specification" means the description of the Services to be provided under the Contract as set out or referred to in Schedule 1 (Specification) including, where appropriate, the address or location of the Premises;
- 1.1.46 "Staff" means all employees, staff, workers, agents and consultants of the Contractor, and of any Sub-contractor or other third party with whom the Contractor contracts in order to perform the Services or any part of them, who are engaged in the performance of the Services from time to time;
- 1.1.47 "Staff Expenses" means any expenses in connection with the engagement of Staff, including wages and salaries, bonuses, commissions, expenses, sick pay, maternity pay, holiday pay (including accrued but unused holiday entitlement), income tax, national insurance contributions and contributions to occupational or personal pension schemes;
- 1.1.48 "Staffing Information" means in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Customer may reasonably request (subject to Data Protection Law), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
 - (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise and whether they have previously worked for a public sector organisation;
 - (c) the identity of their employer or relevant contracting party;
 - (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
 - (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
 - (f) details of other employment-related benefits including medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
 - (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
 - (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
 - (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals);
 - (j) any other "employee liability information" as such term is defined in Regulation 11 of the TUPE Regulations; and
 - (k) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and details of any current industrial disputes and claims for recognition by any trade union;
- 1.1.49 "Sub-contractor" means any sub-contractor or agent of the Contractor;
- 1.1.50 "Tender" means the document(s) submitted by the Contractor to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services;
- 1.1.51 "TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- 1.1.52 "VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- 1.1.53 "Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.2 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.5 reference to any document, shall be construed as referring to that document as it may from time to time be amended, modified, extended or replaced (whether before or after the date of the Contract);
 - 1.2.6 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and

- 1.2.8 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2 Contract Period

- 2.1 The Contract shall come into effect on the Commencement Date and shall remain in force throughout the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract or otherwise lawfully terminated or extended.

3 Contractor's Status

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

4 Notices

- 4.1 Except as otherwise expressly provided within the Contract, no notice or consent required or permitted to be given by one Party to the other Party shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 4.2 Any notice or consent which is to be given by either Party to the other Party shall only be valid if given by letter (sent by hand, first class post, recorded delivery or special delivery). Such letters shall be addressed to the other Party at the address for that Party set out in Section 2 of the Contract Schedule. Any such notice or consent shall be deemed to have been duly received:
- 4.2.1 if hand delivered, at the time of actual delivery; or
- 4.2.2 if dispatched by first class post, recorded delivery or special delivery, 2 Working Days after the day on which the relevant letter was posted to the correct address,
- provided in each case that if the deemed receipt time occurs either on a day that is not a Working Day or after 5.00pm on a Working Day, then the notice or consent in question shall not in fact be deemed to have been received until 10.00am on the next following Working Day (such times being local time at the address of the recipient).
- 4.3 Either Party may change its address for service by serving a notice in accordance with this clause 4.
- 4.4 At the same time as giving any notice or other communication to the Customer in accordance with clause 4.2, the Contractor shall provide a copy of the relevant notice or communication to the Customer Contact (or, where there is more than one, to each of them) using the email address(es) set out in Section 2 of the Contract Schedule or otherwise notified to the Contractor for these purposes from time to time.

SECTION B – SUPPLY OF SERVICES

5 Specification

- 5.1 In consideration of the payment of the Contract Price, the Contractor shall perform the Services during the Contract Period in accordance with the Customer's requirements as set out in the Specification and the provisions of the Contract.

6 Provision and Removal of Equipment

- 6.1 The Contractor shall provide (or procure the provision of) all the tools, plant, materials and equipment necessary for the performance of the Services. In the event that the Contractor or any of the Staff brings any tools, plant, materials or equipment onto the Premises it shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any tools, plant, materials or equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default.
- 6.2 The Contractor shall not deliver any tools, plant, materials or equipment nor begin any of the Services without obtaining prior Approval.
- 6.3 On completion of any specific element of the Services, on request and on termination or expiry of the Contract, the Contractor shall remove (at its own cost) its tools, plant, equipment and any unused materials from the Premises and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

7 Manner of Carrying Out the Services

- 7.1 Where applicable, the Contractor shall maintain accreditation with the relevant industry authorisation body.
- 7.2 If the Customer informs the Contractor in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Customer, the Contractor shall, at its own expense, re-schedule and re-perform the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

8 Contractor's Staff

- 8.1 The Contractor shall ensure that:
 - 8.1.1 all Staff performing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper performance of the Services; and
 - 8.1.2 it engages an adequate number of trained and competent Staff to perform the Services in accordance with the Contract and shall provide evidence of such competency if reasonably requested to do so by the Customer.
- 8.2 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 8.3 The Contractor shall ensure that the Staff accessing or admitted to the Premises, comply with:
 - 8.3.1 the Customer's rules, procedures, policies, regulations and requirements (including those relating to site security arrangements and standards of professional conduct) notified to the Contractor or the Staff from time to time; and
 - 8.3.2 all relevant professional conduct legislation, codes of practice and any other appropriate standards, policies, procedures and documentation relating to standards of professional conduct (including the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015) as may be in force from time to time.
- 8.4 The Customer may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises and/or direct the Contractor to end the involvement in the provision of the Services:
 - 8.4.1 any member of the Staff; or
 - 8.4.2 any person employed or engaged by any member of the Staff,
 - (a) whose admission or continued presence or involvement would, in the reasonable opinion of the Customer, be undesirable and/or represent a security risk; or
 - (b) the Customer reasonably believes does not have the required levels of training and expertise; or
 - (c) who is or has acted in any manner in breach of the provisions of clause 15 or clause 16; or
 - (d) whom the Customer can demonstrate has failed to comply with the rules, regulations, codes of conduct, policies or other requirements referred to in clause 8.3; or
 - (e) whom the Customer has other reasonable grounds for requiring their removal.
- 8.5 Following the removal of any Staff for any reason, the Contractor shall, at its own cost, ensure that such person is replaced promptly with another person with necessary training and skill to meet the requirements of the performance of the Services undertaken by the member of Staff removed.
- 8.6 Any access to, or occupation of, the Premises which the Customer may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Contractor shall cooperate (and ensure that the Staff cooperate) with such other persons working concurrently on the Premises as the Customer may reasonably request.

- 8.7 The Contractor acknowledges and agrees that the Customer is entitled to determine the appropriate lead investigator for any complaints or suspected misconduct of any member of Staff.
- 8.8 The Contractor acknowledges that the Customer shall be free to search any member of Staff on or entering the Premises and shall procure that the Staff cooperate fully with the Customer for these purposes. The Contractor shall also ensure that all of the Staff carry out their duties and act (while on the Premises or while performing the Services) in an orderly and appropriate manner, having regard to the nature of their duties and that they shall at all times be dressed appropriately in view of their job category and/or the Services they are to perform.
- 8.9 If and when requested by the Customer, the Contractor shall procure (in respect of the Staff) from each person identified by the request a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract.
- 8.10 The Contractor shall ensure that any Staff who work, or ordinarily work, in the UK are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.
- 8.11 The Contractor alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Staff. The Contractor assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

9 Contract Monitoring

- 9.1 For the duration of the Contract, the Parties shall meet at such intervals and in such places specified in Schedule 6 (Monitoring) or otherwise reasonably requested by the Customer, for the purpose of discussing the performance of the Services, whether the Customer's objectives are being met, whether any anticipated benefits/outcomes are being achieved, any lessons learned for future procurements and any other appropriate matters.
- 9.2 Without prejudice to any other provisions of the Contract, the Contractor shall provide such information (including the information set out in Schedule 6 (Monitoring)) in relation to the performance of its obligations and compliance with the Law required under the Contract (including information in respect of claims, progress against relevant timescales or milestones and information required by the Customer for the purposes of re-tendering the Services) as the Customer may reasonably request from time to time. The Contractor shall:
 - 9.2.1 provide such information in the format and within the timescales reasonably specified by the Customer;
 - 9.2.2 ensure that all such information is accurate and complete; and
 - 9.2.3 in respect of any information required by the Customer for re-tendering purposes, notify the Customer without delay of any changes to information previously provided to the Customer.

10 Contract Performance

- 10.1 The Contractor shall perform its obligations under the Contract:
 - 10.1.1 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - 10.1.2 in a timely, reliable and professional manner;
 - 10.1.3 in accordance with Good Industry Practice; and
 - 10.1.4 in compliance with all applicable Laws.
- 10.2 The Contractor acknowledges that the Customer relies on the skill and judgment of the Contractor in the performance of the Services and the performance of the Contractor's obligations under the Contract.
- 10.3 Throughout the Contract Period, the Contractor shall:
 - 10.3.1 have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to perform the Services;
 - 10.3.2 not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

SECTION C - PAYMENT AND CONTRACT PRICE

11 Contract Price

- 11.1 In consideration of the Contractor's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 12.
- 11.2 The Customer shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services provided in accordance with the Contract.

12 Payment and VAT

- 12.1 Unless otherwise specified in Schedule 2 (Pricing), the Contractor shall submit invoices for the Services monthly in arrears.
- 12.2 Unless otherwise specified in Schedule 2 (Pricing), the Customer shall pay all sums due to the Contractor within 30 days of Receipt of a valid undisputed invoice submitted in accordance with clause 12.1.
- 12.3 The Contractor shall ensure that each invoice contains the information set out in clause 14.
- 12.4 The Customer shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 12.5 Where the Contractor enters into a sub-contract with a Sub-contractor for the purpose of performing any of its obligations under the Contract, it shall ensure that provisions are included in such a sub-contract which requires:
 - 12.5.1 payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice; and
 - 12.5.2 the Contractor to consider and verify invoices and to raise queries on any disputed invoices in terms equivalent to those imposed on the Customer as set out in clauses 12.9 and 12.10; and
 - 12.5.3 the Sub-contractor to include, in any sub-contract which it in turn awards, suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 12.5.
- 12.6 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 12.7 The Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any liability (including any interest, penalties or costs incurred), which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 12.7 shall be paid by the Contractor to the Customer not less than 5 Working Days before the date upon which the VAT or other liability is payable by the Customer.
- 12.8 The Contractor shall not suspend the performance of the Services unless the Contractor is entitled to terminate the Contract under clause 40.2 for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at the statutory rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.9 The Customer shall consider and verify any invoices submitted for payment by the Contractor in a timely fashion and, subject to clause 12.10, the Customer acknowledges and agrees that any undue delay by it in considering or verifying any invoices pursuant to this clause 12.9 shall not be sufficient justification for regarding an invoice as invalid and/or disputed.
- 12.10 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due or any other inaccuracy which renders the invoice invalid (a "disputed invoice"):
 - 12.10.1 the Customer shall notify the Contractor in writing as soon as reasonably practicable;
 - 12.10.2 the Customer's failure to pay the disputed invoice shall not be deemed to be a Default of the Contract;
 - 12.10.3 to the extent such element is readily identifiable, the Customer shall pay any element of the disputed invoice which is not in dispute by its due date;
 - 12.10.4 once the dispute has been resolved, where either Party is required to make a

balancing payment, it shall do so within 5 Working Days and, where the Contractor is required to issue a credit note and/or fresh invoice, it shall do so within 5 Working Days.

12.11 Payment of any invoice in full or in part shall be without prejudice to any claims or rights of the Customer against the Contractor in respect of the provision of the Services.

12.12 The Contract Price shall only be adjusted to such extent and in such manner (if at all) as is specified in Schedule 2 (Pricing).

13 Recovery of Sums Due

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

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

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

13.4 Unless otherwise specified in the Contract, any sum payable by the Contractor to the Customer under the Contract or by either Party to the other under clause 13.2 shall be paid in cleared funds, within 5 Working Days of a demand for the same being notified by the recipient Party to the paying Party, to such bank or building society account as the recipient Party may from time to time direct.

14 Form of Invoice

14.1 Unless otherwise agreed in writing by the Customer, all invoices shall include the following information:

14.1.1 the Contract number and/or purchase order number (unless the Customer has confirmed in writing that such details are not required);

14.1.2 the specification number;

14.1.3 an invoice number;

14.1.4 the project number;

14.1.5 a detailed description of the Services provided;

14.1.6 where applicable, rate description (ie standard hours/time and a half/double time) and amount;

14.1.7 a detailed description of any recoverable expenses and the amounts of such;

14.1.8 the location, date or time period of performance of the Services;

14.1.9 the Contractor's VAT number;

14.1.10 the amount due exclusive of VAT, any other duty or any early settlement discount;

14.1.11 the VAT rate and VAT amount;

14.1.12 the amount of any other duty payable;

14.1.13 the amount of any early settlement discount to be deducted;

14.1.14 the amount due inclusive of VAT, any other duty and/or any early settlement discount;

14.1.15 the name of the Customer Contact;

14.1.16 the name of the person at the Customer with responsibility to authorise payment (if different to the Customer Contact);

14.1.17 details of the Contractor's BACS details or other method of payment;

14.1.18 the Contractor's contact details; and

14.1.19 the date of the invoice.

14.2 The Contractor shall ensure that each invoice is:

- 14.2.1 addressed to the Customer at the address set out in Section 2 of the Contract Schedule; and
- 14.2.2 supported by any other documentation reasonably requested by the Customer to substantiate the invoice.

SECTION D - STATUTORY OBLIGATIONS AND REGULATIONS

15 Prevention of Corruption

15.1 The Contractor or anyone associated with the Contractor shall not:

- 15.1.1 offer or give or agree to give, to the Customer or any other public body (or any person employed by or on behalf of the Customer or any other public body) any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Customer or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract; or
- 15.1.2 commit any offence under the Bribery Act 2010 or any other applicable Law creating offences in respect of bribery, corruption or fraudulent acts in relation to the Contract or any other contract with the Customer.

15.2 For the purpose of this clause 15, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes any Sub-contractor.

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

15.4 If the Contractor, any of the Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clause 15.1 or clause 15.3, the Customer may:

- 15.4.1 terminate the Contract immediately by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the performance of services in replacement for the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
- 15.4.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any Default of those clauses.

16 Prevention of Fraud

16.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by any of the Staff and/or within the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

16.2 The Contractor shall notify the Customer immediately if it has reason to suspect that any fraud in relation to any contract with the Customer has occurred or is occurring or is likely to occur.

16.3 If the Contractor or any of the Staff commits fraud in relation to the Contract or any other contract with the Customer, the Customer may:

- 16.3.1 terminate the Contract immediately by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the performance of services in replacement for the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
- 16.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any Default of this clause 16.

17 Discrimination

17.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998, the Disability

Discrimination Act 2005, the Equality Act 2010 or any other relevant Law relating to discrimination in employment or any equivalent law (including any equivalent legislation or regulation in force from time to time in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of the Staff).

- 17.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of clause 17.1 by all of the Staff engaged in the execution of the Contract.

18 The Contracts (Rights of Third Parties) Act 1999

- 18.1 Save as set out in clauses 47.16 and 48.7, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause 18.1 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- 18.2 No consent of the Replacement Contractor (or any sub-contractor of a Replacement Contractor) or of a Fair Deal Employee is necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of the Contract or any one or more clauses of it.

19 Environmental Requirements

- 19.1 The Contractor shall (and shall ensure that all of the Staff shall), when working on the Premises or any other premises in connection with the Contract, comply with all relevant environmental Law.
- 19.2 The Contractor shall perform its obligations under the Contract in accordance with the spirit and objectives of the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 19.3 In so far as the Contractor or any of the Staff dispose of any waste goods or other items (including electronic products) in the course of or in connection with the performance of the Contractor's obligations under the Contract, the Contractor shall ensure that those goods or other items are disposed of in an environmentally friendly manner and in accordance with all applicable Law, including (where applicable) the Environmental Protection Act 1990, the Environment Act 1995 and the Waste Electrical and Electronic Equipment Regulations 2013.
- 19.4 If and when requested to do so by the Customer at any time, the Contractor shall provide the Customer with such documents and/or permit representatives of the Customer to have such access to the Contractor's premises, systems, procedures and personnel as the Customer may reasonably require for the purposes of verifying compliance on the part of the Contractor with its obligations under this clause 19.

20 Health and Safety

- 20.1 The Contractor shall, and shall ensure that all of the Staff shall, when working on the Premises or any other premises in connection with the Contract comply with all applicable health and safety Law and with any appropriate standards, policies, procedures and documentation relating to health and safety notified to the Contractor by the Customer from time to time.
- 20.2 The Contractor shall provide applicable hazard information such as material safety data sheets and shall inform the Customer of all regulations, guidance and significant risks (statutory or otherwise) which the Contractor knows or believes to be associated with the performance of the Services and/or any combination of the Services with any other services.
- 20.3 In the event of any release or spillage of substances hazardous to the environment, the Contractor will notify the Customer and the appropriate statutory bodies immediately and ensure that all necessary remedial action is taken to protect the environment.
- 20.4 Notwithstanding clause 20.2, the Contractor shall, at the Customer's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Customer are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.
- 20.5 The Contractor shall notify the Customer of past enforcement action taken against the Contractor and provide such details of prosecutions, fines, accident history and frequency rate as may be considered necessary by the Customer.
- 20.6 The Contractor shall provide the Customer on request with a copy of its health and safety policy, risk assessments, method statements and safe systems and procedures.

Notwithstanding this, the Contractor shall ensure that the Staff comply at all times with the Customer's health and safety policies and procedures in place from time to time in so far as they relevant to the Contract.

- 20.7 The Contractor shall comply with any health and safety related conditions stipulated by the Customer from time to time. Such conditions override details contained in the Contractor's internal documentation.
- 20.8 The Contractor shall notify the Customer in writing without delay of all incidents, which either could have led, or did lead, to injury and/or damage. Where incidents are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 2013, the Contractor shall supply the Customer with a completed copy of all relevant forms and reports required to be submitted pursuant to those Regulations.
- 20.9 If and when requested to do so by the Customer at any time, the Contractor shall provide the Customer with such documents and/or permit representatives of the Customer to have such access to the Contractor's premises, systems, procedures and personnel as the Customer may reasonably require for the purposes of verifying compliance on the part of the Contractor with its obligations under this clause 20.

21 Modern Slavery

- 21.1 The Contractor undertakes, warrants and represents that:
 - 21.1.1 neither the Contractor nor any of its officers or Staff has:
 - (a) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - 21.1.2 it shall comply with the Modern Slavery Act 2015; and
 - 21.1.3 it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers or Staff have breached or potentially breached any of the Contractor's obligations under clause 21.1.1. Any notice under this clause 21.1.3 shall set out full details of the circumstances concerning the breach or potential breach of the Contractor's obligations.
- 21.2 Any breach of clause 21.1 by the Contractor shall be deemed a material breach of the Contract entitling the Customer to terminate the Contract pursuant to clause 40.1.3.
- 21.3 The Contractor shall ensure that any sub-contract which it enters into is in writing and includes an obligation on its sub-contractor to comply with the Modern Slavery Act 2015.
- 21.4 The Contractor shall, during the Contract Period and for a period of 6 years thereafter, maintain such records relating to the Services provided to the Customer under the Contract as may be necessary to trace the supply chain of such Services and to enable the Customer to determine the Contractor's compliance with this clause 21.
- 21.5 The Contractor shall prepare and deliver to the Customer on the anniversary of the Commencement Date in each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 21.6 The Contractor shall conduct a programme of regular training for its officers, Staff and other members of its supply chain to ensure compliance with the Modern Slavery Act 2015.
- 21.7 The Contractor shall keep a record of all training offered and completed under clause 21.6 and shall make a copy of such records available to the Customer on request.

22 Supply Chain

- 22.1 The Contractor shall:
 - 22.1.1 subject to clause 22.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
 - 22.1.2 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;

- 22.1.3 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 22.1.4 provide reports on the information at clause 22.1.3 to the Customer in the format and frequency as reasonably specified by the Customer; and
 - 22.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 22.2 Each advert referred to in clause 22.1.1 shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- 22.3 The obligation at clause 22.1.1 shall only apply in respect of subcontract opportunities arising after the contract award date.
- 22.4 Notwithstanding clause 22.1, the Customer may, by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

SECTION E - PROTECTION OF INFORMATION

23 Data Handling

- 23.1 The Contractor shall comply with its obligations as set out in Schedule 5 (Data Handling).
- 23.2 If requested to do so by the Customer, the Contractor shall procure that the Staff enter into a direct confidentiality agreement with the Customer on terms substantially similar to those set out in Schedule 5 (Data Handling).
- 23.3 Without prejudice to any other rights or remedies that the Customer may have, the Contractor acknowledges that a Default by the Contractor of Schedule 5 (Data Handling) is likely to cause irreparable and unquantifiable damage to the Customer and agrees that the Customer shall be entitled at its own discretion and without proof of special damages, to apply for and obtain the remedies of injunctive and/or other equitable relief for any threatened or actual Default by the Contractor of the provisions of Schedule 5 (Data Handling).
- 23.4 On award of the Contract and following award, if either Party proposes any change to the Services and/or to the way in which they are provided, prior to commencing the Services or implementing any change (as appropriate) the Parties shall undertake (and the Contractor shall fully support) a Data Protection Impact Assessment ("DPIA").
- 23.5 Following completion of the DPIA, if the Customer reasonably requests, the Contractor shall enter into a data processing contract with the Customer ("DPC") on reasonable terms (including terms materially similar to those set out in Schedule 5 (Data Handling)) and the Contractor shall not process any personal data for or on behalf of the Customer unless and until such a DPC is put in place and signed by both Parties.
- 23.6 The Parties agree that nothing in the Contract is intended to undermine, exclude or in any way limit the rights of Data Subjects (as defined in Data Protection Law) as set out in Data Protection Law against the Customer, the Contractor, any Sub-contractor or sub-processor.

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

- 24.1 The Contractor shall comply with, and shall ensure that the Staff comply with, the provisions of:
- 24.1.1 the Official Secrets Acts 1911 to 1989; and
 - 24.1.2 Section 182 of the Finance Act 1989.
- 24.2 In the event that the Contractor or any of the Staff fail to comply with clause 24.1, the Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor.

25 Publicity, Media and Official Enquiries

- 25.1 The Contractor shall not (and shall ensure that the Staff and the Contractor's professional advisers shall not) make any press announcement or publicise the Contract or any part thereof in any way, without prior Approval.
- 25.2 The Contractor shall not (and shall ensure that the Staff and the Contractor's professional advisers shall not) include in any published material the name, logo or style of the Customer; any Intellectual Property Rights associated therewith; nor any photograph or drawing depicting any officer of the Customer's police force without prior Approval.

26 Intellectual Property Rights

- 26.1 Intellectual Property Rights belonging to the Customer created prior to the beginning of the Contract Period shall continue to belong to the Customer and the Contractor shall be entitled to use any documentation, information, property (other than real property) or material ("Customer Material") provided by the Customer to the Contractor (or any of the Staff) only for purposes envisaged by or arising under the Contract.
- 26.2 The Contractor not be entitled to exercise any lien over any Customer Material in its possession but shall hold all such Customer Material in safe custody at its own risk and shall maintain the Customer Material in good condition until returned to the Customer (which the Contractor shall do immediately following a request to do so from the Customer) and shall not dispose of or use the Customer Material other than in accordance with the Customer's written instructions or authorisation. The Contractor irrevocably licences the Customer and its agents to enter any premises of the Contractor during normal working hours on reasonable notice to recover any Customer Material not returned by the Contractor following a request to do so.
- 26.3 Intellectual Property Rights in any deliverable created by the Contractor during the Contract Period in the performance of the Contract shall be the sole property of the Customer provided that the Contractor shall have free and unfettered access to and right to use such Intellectual Property Rights during the Contract Period for all purposes envisaged by or arising under the Contract.
- 26.4 Immediately upon request, the Contractor shall assign (or procure the assignment) in writing to the Customer (or to such other person(s) as the Customer shall direct) with full title guarantee title to and all rights and interests as it (or any Staff or any Sub-contractor) has or may acquire in any deliverables the sole property of the Customer pursuant to clause 26.3.
- 26.5 The Contractor shall obtain waivers of all moral rights in any deliverables that are transferred to the Customer pursuant to clause 26.3 and/or clause 26.4 to which any person is now or may at any future time be entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction.
- 26.6 The Contractor hereby grants (or (in the case of third party Intellectual Property Rights) shall procure that the third party grants) to the Customer an irrevocable, non-exclusive royalty-free licence to use, copy, modify, adapt, publish and create derivative works from, and for any purpose in connection with the Services (and/or related deliverables), all the Intellectual Property Rights (other than in respect of the Customer Material or deliverables, the Intellectual Property Rights of which are the sole property of the Customer pursuant to clause 26.1 and/or clause 26.3) which the Contractor, the Staff and/or the Sub-contractor(s) have used or supplied in connection with the Services (and/or related deliverables). Such licence shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods or services to the Customer.
- 26.7 For the avoidance of doubt, the licence in clause 26.6 extends to any officers, employees, agents or staff of the Customer or any Contracting Authority which is a member of any collaboration agreement with the Customer for the delivery of goods or services or sharing of data which in the ordinary course of business or operations incorporate or utilise the Services.
- 26.8 The Contractor warrants that the performance, receipt and use of the Services and any deliverables shall not infringe the Intellectual Property Rights of any third party and the Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, proceedings, actions, damages, costs, expenses and any other liabilities suffered or incurred by the Customer or for which the Customer may become liable arising directly or indirectly out of or in connection with any claim made against the Customer that the performance, receipt or use of the Services and/or any deliverables infringes the Intellectual Property Rights of a third party.

27 Audit

- 27.1 The Contractor shall keep and maintain (in accordance with Good Industry Practice), during the Contract Period and for a period of 6 years thereafter, full and accurate records of the Contract including the Services performed under it, all expenditure reimbursed by the Customer, and all payments made by the Customer.
- 27.2 The Contractor shall on request afford the Customer and/or any Regulatory Body including the National Audit Office (or any other applicable national audit body from time to time) and their respective representatives such access to those records as may be requested by the Customer in connection with the Contract.

28 Transparency

- 28.1 The Contractor acknowledges that the Customer is subject to the Elected Local Policing Bodies (Specified Information) Order 2011 and hereby gives its consent for the Customer to publish the Contract Information to the extent that the Customer is required to do so pursuant to that legislation or any other applicable Law.
- 28.2 The Customer may, in its sole discretion, redact all or part of the Contract Information prior to its publication in accordance with clause 28.1 and, in doing so, the Customer shall take account of the Freedom of Information Act 2000. The Customer may consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to this clause 28 but the Contractor acknowledges and agrees that the final decision regarding publication and/or redaction of the Contract Information shall be that of the Customer.

SECTION F - CONTROL OF THE CONTRACT

29 Transfer and Sub-Contracting

- 29.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval.
- 29.2 Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract and the Contractor shall be responsible for the acts and omissions of any Sub-contractor(s) as though they are its own.
- 29.3 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 29.3.1 any Contracting Authority; or
 - 29.3.2 any body which substantially performs the functions of the Customer; or
 - 29.3.3 any other third party provider or supplier of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 29.4 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

30 Waiver

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 4.
- 30.3 A waiver of any right or remedy arising from a Default of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent Default of the Contract.

31 Variation

- 31.1 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by an authorised representative of the Customer and by an authorised representative of the Contractor.

32 Severability

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

33 Remedies in the event of inadequate performance

- 33.1 If the Contractor fails to perform any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall be entitled to instruct the Contractor to remedy the failure, in which event the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other reasonable period of time as the Customer may direct.
- 33.2 Where the Contractor fails to perform the Services in accordance with the provisions of the

Contract and the failure is not remedied to the satisfaction of the Customer within 10 Working Days (or such other reasonable period specified by the Customer) following a written notice to the Contractor requesting the failure to be remedied, or where the Contractor persistently fails to comply with the terms of the Contract, it will be considered a material Default of the Contract.

- 33.3 In the event that the Customer is of the reasonable opinion that there has been a material Default of the Contract by the Contractor, then the Customer may, without prejudice to its rights under clause 40 or the provisions of clause 42, do any of the following:

33.3.1 without terminating the Contract, itself perform (or procure a third party to perform) replacement services for all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to perform all or such part of the Services in accordance with the Contract and for the avoidance of doubt, in such circumstances, the Customer shall have no liability to pay the Contract Price in respect of those Services where the Customer has performed (or procured a third party to perform) replacement services;

33.3.2 without terminating the whole of the Contract, terminate the Contract immediately by giving notice in writing to the Contractor in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself perform (or procure a third party to perform) replacement services for such part of the Services; and/or

33.3.3 terminate, in accordance with clause 40, the whole of the Contract.

- 33.4 Without prejudice to its right under clause 13, the Customer may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the performance of any replacement services by the Customer or a third party (including pursuant to clause 33.3) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services replaced and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

34 Remedies Cumulative

- 34.1 Except as otherwise expressly provided by the Contract, all rights and remedies available to either Party under the Contract or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right or remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

35 Entire Agreement

- 35.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contractor acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and in connection with the Contract does not have any remedy and waives all rights in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract, except that this clause 35.1 shall not exclude liability in respect of any fraudulent misrepresentation.

- 35.2 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of the Contract, the Schedules and any document(s) referred to in or attached to the Contract, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:

35.2.1 first priority, the clauses of the Contract;

35.2.2 second priority, the Schedules (including the Specification); and

35.2.3 third priority, any document(s) referred to in or attached to the Contract.

36 Counterparts

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

SECTION G - LIABILITIES

37 Liability, Indemnity and Insurance

- 37.1 Neither Party excludes or limits its liability to the other Party for or in respect of:

37.1.1 death or personal injury caused by its negligence or that of its employees, agents or

- sub-contractors; or
- 37.1.2 fraud or fraudulent misrepresentation by it or its employees; or
- 37.1.3 any liability arising under any indemnity provision in the Contract, save for the indemnity set out at clause 37.2; or
- 37.1.4 any other matter which, by Law, may not be excluded or limited.
- 37.2 Subject to clauses 37.3 and 37.4, the Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the performance, delayed performance or failure to perform the Services and/or the performance, delayed performance or non-performance by the Contractor of its other obligations under the Contract and/or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor or any of the Staff.
- 37.3 Subject always to clause 37.1, the liability of either Party for Defaults shall be subject to the following limits:
 - 37.3.1 the liability of either Party for any single Default resulting in loss of or damage to the property of the other Party shall not exceed £5,000,000 (five million pounds);
 - 37.3.2 the aggregate liability under the Contract of either Party for any and all Defaults (other than a Default covered by clause 37.3.1) shall not exceed an amount equal to 150% (one hundred and fifty per cent) of the total Contract Price (being the aggregate of all amounts already paid to the Contractor and all amounts payable over the balance of the Contract Period.
- 37.4 Without prejudice to its liability to indemnify the Customer under the Contract, the Contractor shall take out and maintain, or procure the taking out and maintenance of, a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract including death or personal injury, loss of or damage to property or any other loss (including any insurance specified in Section 2 of the Contract Schedule) together with any other insurances as may be required by Law (the "Required Insurances").
- 37.5 The Contractor shall ensure that the Required Insurances are taken out with insurers of good financial standing and of good repute in the United Kingdom insurance market and that the relevant policies are effective in each case not later than the date on which the relevant risk commences.
- 37.6 The Contractor shall not (and shall use all reasonable endeavours to procure that none of the Sub-contractors of any tier shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any policy in which the Contractor is an insured, a co-insured or additional insured person.
- 37.7 The Contractor shall in respect of the Required Insurances:
 - 37.7.1 provide for 5 Working Days' prior written notice of their cancellation or non-renewal to be given to the Customer. Failure to do so will be deemed to be a material Default of the Contract;
 - 37.7.2 insofar as they relate to damage to assets, cover the same for the full reinstatement or replacement value; and
 - 37.7.3 in respect of third party public and products liability insurance, procure that this shall contain an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer arising from death or bodily injury or third party property damage and for which the insured is legally liable in the provision of the Services and/or in connection with the Contract.
- 37.8 The Contractor shall provide on request by the Customer:
 - 37.8.1 evidence of the Required Insurances in a form satisfactory to the Customer;
 - 37.8.2 evidence in a form satisfactory to the Customer, that the premiums payable under the Required Insurances have been paid and that those insurances are in full force and effect and meet the insurance requirements of the Contractor in respect thereof,

provided that neither inspection, nor receipt of such evidence shall constitute acceptance by the Customer of the terms thereof, nor be a waiver of the Contractor's liability under the Contract.

- 37.9 The Contractor shall obtain renewal certificates or cover notes, in a form satisfactory to the Customer, in relation to any of the Required Insurances as and when requested and shall forward certified copies to the Customer as soon as possible but in any event no later than 10 Working Days following the request.
- 37.10 If the Contractor is in Default of clause 37.5 in respect of any Required Insurance, the Customer may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand, together with all expenses incurred in procuring such insurance.

38 Warranties and Representations

- 38.1 The Contractor warrants and represents that:

- 38.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to:
- (a) enter into and perform its obligations under the Contract;
 - (b) grant all the rights it purports to grant in accordance with the terms of the Contract; and
 - (c) perform the Services in accordance with the Contract;
- 38.1.2 the Contract is executed by a duly authorised representative of the Contractor;
- 38.1.3 in entering the Contract it has not committed any fraud;
- 38.1.4 it has not committed any offence under the Bribery Act 2010 or any other applicable Law creating offences in respect of bribery, corruption or fraudulent acts;
- 38.1.5 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract;
- 38.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 38.1.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 38.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 38.1.9 it has adequate resources to meet its obligations under the Contract in a timely and reliable manner;
- 38.1.10 the Staff shall:
- (a) have the relevant qualifications, experience and training for their role and will be competent to carry out the duties expected of persons acting in their or a similar capacity;
 - (b) be vetted and verified in accordance with the provisions of Schedule 5 (Data Handling) and Good Industry Practice;
 - (c) be entitled to work in the United Kingdom or (where applicable) any other country from which (or in which) the Services are to be performed;
 - (d) perform the Services in compliance with all applicable Law;
- 38.1.11 it owns or has obtained valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- 38.1.12 in the 3 years prior to the date of the Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (b) it has been in full compliance with all applicable securities and tax Law in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

38.2 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of Default of that provision by the Contractor.

SECTION H - DEFAULT, DISRUPTION AND TERMINATION

39 Termination on insolvency and change of control

39.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a body corporate (whether a limited company, a limited liability partnership or otherwise) and in respect of the Contractor:

- 39.1.1 a proposal is made for or it becomes the subject of a voluntary arrangement under the Insolvency Act 1986 or of any other composition scheme, restructuring plan or arrangement with, or assignment for the benefit of, its creditors (including any restructuring plan or scheme of arrangement under the Companies Act 2006); or
- 39.1.2 a shareholders' or members' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed or any other step is taken with a view to it being determined that it be wound-up (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation); or
- 39.1.3 a petition is presented for its winding up (which is not dismissed within 10 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to the Insolvency Act 1986; or
- 39.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business, assets or income; or
- 39.1.5 has a freezing order made against it; or
- 39.1.6 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; or
- 39.1.7 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 39.1.8 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 39.1.9 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 39.1.10 it is for any reason dissolved or struck-off the register of companies; or
- 39.1.11 any event similar to those listed in clauses 39.1.1 to 39.1.10 occurs under the law of any jurisdiction in which it is established.

39.2 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is an individual and:

- 39.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 39.2.2 a petition is presented and not dismissed within 10 Working Days or an order is made for the Contractor's bankruptcy; or
- 39.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 39.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 39.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not

- discharged within 10 Working Days; or
- 39.2.6 he dies or is unable to make decisions for himself within the meaning of section 3 of the Mental Capacity Act 2005; or
- 39.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 39.3 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a partnership and in respect of the Contractor:
 - 39.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme, arrangement with, or assignment for the benefit of, its creditors; or
 - 39.3.2 it is for any reason dissolved; or
 - 39.3.3 a petition is presented for its winding-up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - 39.3.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
 - 39.3.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986; or
 - 39.3.6 any of the following occurs in relation to any of its partners:
 - (a) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition, scheme or arrangement with, or assignment for the benefit of, his creditors; or
 - (b) a petition is presented for his bankruptcy; or
 - (c) a receiver, or similar officer is appointed over the whole or any part of his assets.
- 39.4 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("change of control"). The Customer may terminate the Contract with immediate effect by giving notice in writing within 6 months of:
 - 39.4.1 being notified that a change of control has occurred; or
 - 39.4.2 where no notification has been made, the date that the Customer becomes aware of the change of control,

but shall not be permitted to terminate where an Approval to the change of control was granted prior to that change occurring.

40 Termination on Default

- 40.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a Default and if:
 - 40.1.1 the Contractor has not remedied the Default to the reasonable satisfaction of the Customer within 10 Working Days (or such other reasonable period specified by the Customer) after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 40.1.2 the Default is not, in the reasonable opinion of the Customer, capable of remedy; or
 - 40.1.3 the Default, in the reasonable opinion of the Customer, is a material Default of the Contract; or
 - 40.1.4 the Default relates to a persistent or repeated breach of the Contract in such a manner as to reasonably justify the opinion that the Contractor's conduct is inconsistent with it having the intention or ability to perform its obligations in accordance with the terms of the Contract; or
 - 40.1.5 the Default relates to a failure to meet and/or rectify performance in respect of any particular delivery timescales, service levels or key performance indicators set out in the Specification and the failure in question is of a severity that permits the Customer by reference to other provisions of the Contract (whether in a Schedule or otherwise) to terminate the Contract.
- 40.2 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 45 Working Days of the date of such written notice, the Contractor may

terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights in accordance with clause 13.

41 Break

- 41.1 The Customer shall have the right to terminate the Contract at any time for any reason by giving to the Contractor not less than three months' prior written notice.
- 41.2 The Customer may terminate the Contract (at any time) immediately by giving written notice to the Contractor where:
- 41.2.1 the Contractor was, at the time of the date of the Contract, in one of the situations referred to in Regulation 57(1) of the PCR, including as a result of the application of Regulation 57(2);
 - 41.2.2 the Contractor was, at the time of the date of the Contract, in one of the situations referred to in Regulation 57(3) or 57(4) of the PCR which has not ceased to apply as a result of the application of Regulation 57(5);
 - 41.2.3 the Customer is notified (or has reasonable grounds to believe) that a claim or application has been or shall be made by a third party to a court of competent jurisdiction in UK:
 - (a) that the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the PCR;
 - (b) that the Contract has been subject to a substantial modification which should have required a new procurement procedure in accordance with Regulation 72(9) of the PCR; or
 - (c) requesting Judicial Review of the decision to award the Contract to the Contractor.

42 Consequences of Expiry or Termination

- 42.1 Where the Customer terminates the Contract in accordance with clauses 15, 16, 20, 24, 26, 33, 39, 40, 41.2.1, 41.2.2 or 43 and then makes other arrangements for the provision of replacement services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.
- 42.2 Where the Contract is terminated in accordance with any of the clauses referred to in clause 42.1, no further payments shall be payable by the Customer to the Contractor (for Services performed by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under that clause.
- 42.3 On the termination of the Contract for any reason or on expiry of the Contract Period, the Contractor shall:
- 42.3.1 immediately return to the Customer (in the format reasonably specified by the Customer) the Customer Material, any deliverables and all other material, information and documentation belonging to the Customer in its possession or in the possession or under the control of any Staff or Sub-contractors, which were obtained or produced in the course of performing the Services;
 - 42.3.2 refund to the Customer any amount which it may have paid in advance in respect of the Services not provided by the Contractor as a consequence of termination;
 - 42.3.3 promptly vacate the Premises leaving them clean and tidy;
 - 42.3.4 assist and cooperate with the Customer to ensure an orderly transition (to the Replacement Contractor) of the provision of the replacement services and/or the completion of any work in progress; and
 - 42.3.5 promptly provide all information (in the format reasonably specified by the Customer) concerning the performance of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Contractor to conduct due diligence.
- 42.4 If the Contractor fails to comply with clause 42.3.1, the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or

Sub-contractors where any such items may be held.

- 42.5 Where the Contract is terminated by the Customer in accordance with any of the clauses referred to in clause 42.1 or in accordance with clause 44.3, the Contractor shall provide all assistance and information referred to in clause 42.3.1 and clause 42.3.3 free of charge. Otherwise, the Customer shall pay the Contractor's reasonable costs of providing the assistance and information provided that the Contractor shall take all reasonable steps to mitigate such costs.
- 42.6 Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clauses 12, 13, 15, 16, 23, 24, 26, 27, 34, 37, 45, 46, 47 and this clause 42.
- 42.7 Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

43 Disruption

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

44 Force Majeure

- 44.1 Subject to compliance with clause 44.2, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money for services already performed) to the extent that such delay or failure is a result of Force Majeure.
- 44.2 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 44.1 it shall:
- 44.2.1 immediately notify the other Party by the most expeditious method then available;
 - 44.2.2 inform the other Party of the period for which it is estimated that such failure or delay shall continue;
 - 44.2.3 use its best endeavours, acting in accordance with Good Industry Practice, to resume performance of its obligations as quickly as possible and minimise the duration and impact of such failure or delay.
- 44.3 The Customer shall be entitled to terminate the Contract by written notice to the Contractor with immediate effect if:
- 44.3.1 the performance by the Contractor of some or all of its obligations under the Contract is prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively; or
 - 44.3.2 the Customer reasonably anticipates that the performance by the Contractor of some or all of its obligations under the Contract is likely to be prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively.
- 44.4 For the avoidance of doubt, the Customer shall not be required to pay the Contractor in respect of any period during which (and to the extent that) the Contractor is prevented or delayed in performing its obligations due to Force Majeure. In these circumstances, the Contract Price shall be adjusted and any necessary refund or credit effected in accordance with the Customer's reasonable instructions.

SECTION I - DISPUTES AND LAW

45 Governing Law and Jurisdiction

- 45.1 Subject to the provisions of clause 46, the Customer and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed by, and construed according to, English Law.

46 Dispute Resolution

- 46.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other Party of the dispute and such efforts shall involve the escalation of the dispute to the

- finance director (or equivalent) of each Party.
- 46.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 46.3 If the dispute cannot be resolved by the Parties pursuant to clause 46.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 46.5 unless:
- 46.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 46.3.2 the Contractor does not agree to mediation.
- 46.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 46.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 46.5.1 A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 46.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 46.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 46.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 46.5.5 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts, unless the dispute is referred to arbitration pursuant to the procedures set out in clause 46.6.
- 46.5.6 The costs of the Mediator and all other costs connected with the mediation shall be equally apportioned between the Parties or as may otherwise be directed by the Mediator.
- 46.5.7 Each party will bear its own costs and expenses of its preparation and participation in the mediation.
- 46.6 Subject to clause 46.2, the Parties shall not institute court proceedings until the procedures set out in clauses 46.1 and 46.3 have been completed save that:
- 46.6.1 the Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 46.7;
- 46.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have 15 Working Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 46.7;
- 46.6.3 the Contractor may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with clause 46.7, to which the Customer may consent as it sees fit.
- 46.7 In the event that any arbitration proceedings are commenced pursuant to clause 46.6:
- 46.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 46.7.2 the Customer shall give a written notice of arbitration to the Contractor (the

“Arbitration Notice”) stating:

- (a) that the dispute is referred to arbitration; and
- (b) providing details of the issues to be resolved;
- 46.7.3 the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 46.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 46.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- 46.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the Arbitration Notice being issued by the Customer in accordance with clause 46.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 46.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 46.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SECTION J – EMPLOYEE LIABILITIES

47 TUPE

- 47.1 The Parties acknowledge and agree that if Services Commencement gives rise to a relevant transfer within the meaning of the TUPE Regulations:
 - 47.1.1 the Contractor shall, and shall procure that any Sub-contractor shall, comply with such obligations as may arise under Regulation 13 of the TUPE Regulations to inform and (if appropriate) consult with employees and/or their appropriate representatives; and
 - 47.1.2 clauses 47.2 to 47.5 shall apply.
- 47.2 Subject to clauses 47.3 and 47.4, the Customer shall indemnify the Contractor in respect of any costs, expenses, liabilities, damages and losses (including legal costs) arising out of any claim, demand, action or proceeding which is made or brought against the Contractor at any time:
 - 47.2.1 by an Entrance Employee, to the extent that it relates to the period before the date of Service Commencement;
 - 47.2.2 in relation to a failure by any Outgoing Contractor to comply with its obligations under Regulation 13 of the TUPE Regulations; and/or
 - 47.2.3 by an employee or former employee of any Outgoing Contractor other than an Entrance Employee whose employment is deemed to transfer to the Contractor under the TUPE Regulations by virtue of Service Commencement.
- 47.3 The indemnities in clause 47.2 shall not apply to the extent that:
 - 47.3.1 any contract between the Customer and the Outgoing Contractor provides for the Outgoing Contractor to indemnify the Contractor in respect of any of the costs, expenses, liabilities, damages and losses covered by the indemnities set out in clause 47.2;
 - 47.3.2 the relevant indemnity in such contract is enforceable directly by the Contractor against the Outgoing Contractor pursuant to the Contract (Rights of Third Parties) Act 1999; and
 - 47.3.3 the Customer has provided to the Contractor a copy of the relevant clauses from such contract.
- 47.4 Subject always to clause 47.3, the indemnities in clause 47.2 shall only apply to the extent that the Customer recovers (in respect of the subject matter of such indemnities) such sum of money as may be required to satisfy such indemnities from any Outgoing Contractor under any indemnity or other legal entitlement it has against such Outgoing Contractor. The Customer shall use its reasonable endeavours to recover any such sums under such entitlement as is mentioned in this clause 47.4.
- 47.5 The Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, costs, expenses, damages, losses or other liabilities whatsoever and howsoever arising incurred or suffered by the Customer (whether directly or

indirectly under an indemnity given by the Customer or otherwise) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- 47.5.1 any failure by the Contractor or any Sub-contractor to comply with its obligations pursuant to the TUPE Regulations; and/or
 - 47.5.2 anything done or omitted to be done by the Contractor or any Sub-contractor in respect of any of the Entrance Employees whether before or after the date of Service Commencement.
- 47.6 The Parties acknowledge and agree that:
- 47.6.1 subsequent to the commencement of the Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of the Contract, or part of it, or otherwise) resulting in a transfer of the Services in whole or in part ("Exit Transfer"); and
 - 47.6.2 if an Exit Transfer is a relevant transfer for the purposes of the TUPE Regulations, then the Customer or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be) would inherit liabilities in respect of the Exit Employees.
- 47.7 The Contractor agrees that, subject to compliance with Data Protection Law:
- 47.7.1 within 15 Working Days of the earliest of:
 - (a) receipt or the giving of notice of early termination of the Contract or any part thereof;
 - (b) the date which is 12 months before the expiry of any fixed period for the duration of the Contract (whether an initial or any extended period);
 - (c) receipt by the Contractor of a written notice from the Customer given on or after the commencement by the Customer of a re-tendering exercise in respect of the provision of part or all of the Services or any similar services;it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List and updated Staffing Information when reasonably requested by the Customer or any Replacement Contractor;
 - 47.7.2 at least 20 Working Days prior to the End Date, the Contractor shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Staff named are Exit Employees;
 - 47.7.3 the Customer shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
 - 47.7.4 upon reasonable request by the Customer the Contractor shall provide the Customer or at the request of the Customer, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Customer reasonably requests.
- 47.8 The Contractor shall ensure that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information are true and accurate in all material respects.
- 47.9 Within 10 Working Days following the End Date, the Contractor shall, if so requested by the Customer, provide to the Customer or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Law) on the Contractor's Final Staff List who is an Exit Employee, their:
- 47.9.1 pay slip data for the most recent month;
 - 47.9.2 cumulative pay for tax and pension purposes;
 - 47.9.3 cumulative tax paid;
 - 47.9.4 tax code;
 - 47.9.5 voluntary deductions from pay; and

- 47.9.6 bank or building society account details for payroll purposes.
- 47.10 From the date of the earliest event referred to in clause 47.7.1 the Contractor shall not, and shall procure that each Sub-contractor shall not, without prior Approval assign any person to the performance of the Services (or the relevant part) which is the subject of an Exit Transfer who is not listed in the Contractor's Provisional Staff List and shall not without prior Approval (not to be unreasonably withheld or delayed):
 - 47.10.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
 - 47.10.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
 - 47.10.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
 - 47.10.4 introduce any new contractual or customary practice concerning the making of any lump sum payment or the giving of any benefit on the termination of employment of any employees listed on the Contractor's Provisional Staff List; or
 - 47.10.5 replace any of the Staff listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 47.11 The Contractor shall promptly notify the Customer or, at the direction of the Customer, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 47.12 In connection with a relevant transfer to which the TUPE Regulations apply, the Contractor shall, and shall procure that each Sub-contractor shall, perform and discharge all obligations in respect of all the Exit Employees and their representatives for its own account up to and including the End Date.
- 47.13 The Contractor shall indemnify and keep indemnified the Customer and any Replacement Contractor (and any sub-contractor of a Replacement Contractor) in full and hold them harmless on demand from and against any claims, costs, expenses, damages, losses or other liabilities whatsoever and howsoever arising, incurred or suffered by the Customer (whether directly or indirectly under an indemnity given by the Customer to a Replacement Contractor or otherwise) or any Replacement Contractor (or any sub-contractor thereof) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - 47.13.1 any act or omission by the Contractor or any Sub-contractors on or before the End Date or any other matter, event or circumstance occurring or having its origin before the End Date, which relates to an Exit Employee;
 - 47.13.2 any claim in respect of all emoluments and outgoings in relation to the Exit Employees (including all wages, holiday entitlement, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the End Date;
 - 47.13.3 any claim arising out of the provision of, or proposal by the Contractor or any Sub-contractor to offer any change to any benefit, term or condition or working condition of any Exit Employee where such offer or agreement is made on or before the End Date;
 - 47.13.4 any claim made by or in respect of any person who claims to be employed or to have been employed by the Contractor or any Sub-contractor, other than an Exit Employee, and for which it is alleged that the Customer or any Replacement Contractor (or any sub-contractor thereof) may be liable by virtue of the Contract and/or the TUPE Regulations;
 - 47.13.5 any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulations 11 or 13 of the TUPE Regulations, or in respect of an award of compensation under Regulation 15 of the TUPE Regulations except to the extent that the liability arises from the failure of the Customer or any Replacement Contractor (or any sub-contractor thereof) to comply with Regulation 13 of the TUPE Regulations;
 - 47.13.6 any statement communicated to or action done by the Contractor or any Sub-

contractor in respect of any Exit Employee on or before the End Date regarding the Exit Transfer which has not been agreed in advance with the Customer in writing.

- 47.14 All Staff Expenses which relate to any Exit Employee shall be apportioned on a time basis so that such part of such Staff Expenses which relates to any Exit Employee and is attributable to the period ending on the End Date shall be borne by the Contractor. Within 10 Working Days of the End Date, the Contractor shall account to the Customer or any Replacement Contractor for such Staff Expenses, including the cost of unused holiday entitlement accrued to the End Date. The Contractor shall indemnify and keep indemnified the Customer and any Replacement Contractor (or any sub-contractor thereof) in full and hold them harmless on demand from and against any liability arising because of any failure by the Contractor to fulfil its obligations in accordance with this clause 47.14.
- 47.15 The Contractor shall indemnify and keep indemnified the Customer, any Replacement Contractor and/or (as the case may be) any sub-contractor of a Replacement Contractor in full and hold them harmless on demand from and against any claims (including any claims under an indemnity given by the Customer to a Replacement Contractor or otherwise) arising from any act or omission of the Contractor (or any Sub-contractors) in relation to any other Staff who is not an Exit Employee during any period whether before, on or after the End Date.
- 47.16 The Parties agree that any Replacement Contractor and any sub-contractor of a Replacement Contractor shall be entitled to enforce the obligations owed to and the indemnities given to such Replacement Contractor or sub-contractor (as the case may be) under this clause 47 pursuant to the Contracts (Rights of Third Parties) Act 1999.

48 Pensions

- 48.1 The Contractor shall comply with any requirement notified to it by the Customer relating to pensions in respect of any Entrance Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 48.2 The Contractor shall comply with all statutory pension obligations in respect of all Entrance Employees.
- 48.3 Where the Contractor employs any LGPS Eligible Employees from a Relevant Transfer Date, the Contractor undertakes:
- 48.3.1 to become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which shall have effect from and including the Relevant Transfer Date;
 - 48.3.2 to ensure that the LGPS Admission Agreement ensures that all LGPS Eligible Employees who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. The Contractor shall ensure that any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so;
 - 48.3.3 to award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date;
 - 48.3.4 to provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement;
 - 48.3.5 not to automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS;
 - 48.3.6 to pay to the LGPS all such amounts as are due under the LGPS Admission Agreement and shall deduct and pay to the LGPS such employee contributions as are required;
 - 48.3.7 to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the LGPS, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation;

- 48.3.8 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this clause 48 without the consent in writing of the Customer (such consent not to be unreasonably withheld or delayed);
- 48.3.9 cooperate with the Customer and the Replacement Contractor to ensure an effective consultation process and smooth transfer in respect of Exit Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 48.3.10 not do anything which might adversely affect pension rights accrued by all and any Fair Deal Employees during the period from the date of the earliest event referred to in clause 47.7.1 and ending on the End Date;
- 48.3.11 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of the Contract (including without limitation identification of the Fair Deal Employees);
- 48.3.12 promptly provide to the Customer such documents and information mentioned in clause 48.3.11 which the Customer may reasonably request in advance of the expiry or termination of the Contract (including details of the extent to which any Exit Employee qualifies for membership of the LGPS); and
- 48.3.13 fully co-operate with the reasonable requests of the Contractor relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-contractor in the provision of the Services on the expiry or termination of the Contract.
- 48.4 The Customer shall have a right to set off against any payments due to the Contractor under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor (or from any relevant Sub-contractor) under the LGPS Admission Agreement and shall pay such amount to the relevant Fund.
- 48.5 The Contractor shall indemnify and keep indemnified the Customer, any Replacement Contractor and/or any sub-contractor of a Replacement Contractor in full and hold them harmless on demand from and against all and any claims, costs, expenses, damages, losses or other liabilities whatsoever and howsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Contractor of this clause 48 and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993).
- 48.6 The Contractor shall indemnify and keep indemnified the Customer, any Replacement Contractor and/or any sub-contractor of a Replacement Contractor from and against Contractor in full and hold them harmless on demand from and against all and any claims, costs, expenses, damages, losses or other liabilities suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Contractor and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which:
 - 48.6.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the Contract; o
 - 48.6.2 arise out of the failure of the Contractor and/or any relevant Sub-contractor to comply with the provisions of this clause 48 before the date of termination or expiry of the Contract.
- 48.7 The Parties agree that any Fair Deal Employee shall be entitled to enforce any obligation owed to him or her or it by the Contractor under this clause 48 pursuant to the Contracts (Rights of Third Parties) Act 1999. Further, the Contractor shall ensure that any sub-contract shall include similar provisions to those set out in this clause 48 to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her by the Sub-contractor.
- 48.8 Save on expiry or termination of the Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the TUPE Regulations) the Contractor shall and shall procure that any relevant Sub-Contractor shall:

- 48.8.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
- 48.8.2 procure that the employer to which the Fair Deal Employees are transferred (the "New Employer") complies with the provisions of this clause 48 provided that references to the "Contractor" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

Annex A

DATED

20

(1) [NAME OF LOCAL AUTHORITY]

AND

(2) [NAME OF SERVICE PROVIDER]

AND

(3) [NAME OF PUBLIC SECTOR EMPLOYER]

TRANSFeree ADMISSION AGREEMENT

ADMISSION AGREEMENT

THIS AGREEMENT is made on [insert date]

BETWEEN THE FOLLOWING PARTIES:

(1) [NAME OF LOCAL AUTHORITY] of [(ADDRESS) (the "Authority")];

(2) [NAME OF SERVICE PROVIDER] [(Company number: [.....])] whose registered office is at [ADDRESS] (the "Admission Body"); and

(3) [NAME OF PUBLIC SECTOR EMPLOYER] of [ADDRESS] (the "Scheme Employer").

BACKGROUND The Authority is the Administering Authority of the Scheme in accordance with the Regulations.

- (B) The Scheme Employer is a scheme employer within the meaning of the Regulations.
- (C) The Admission Body is an admission body within paragraph 1(d) of Part 3 of Schedule 2 to the Regulations.
- (D) The Admission Body wishes to admit certain employees of the Admission Body to participate in the benefits of the Scheme which is a superannuation fund maintained by the Authority.
- (E) Under the powers contained in the Regulations, the terms and conditions of such admission have been agreed between the parties to this Agreement, as set out in this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement,

- 1.1.1 unless the context otherwise requires, expressions defined in the Regulations and used in this Agreement shall have the meaning set out in the Regulations;
- 1.1.2 words denoting the masculine gender include the feminine gender;
- 1.1.3 words in the singular include the plural and vice versa;
- 1.1.4 reference to a numbered clause is to a clause of this Agreement;
- 1.1.5 the Schedule to this Agreement forms part of this Agreement;
- 1.1.6 reference to any Act of Parliament shall include reference to any subordinate legislation passed under that Act;
- 1.1.7 reference to any legislative instrument shall be construed as a reference to that instrument as amended, consolidated or re-enacted;
- 1.1.8 the headings and sub-headings are for ease of reference only and do not form part of this Agreement; and
- 1.1.9 the following words and expressions have the meanings set out below:

Contract: a contract dated [insert date] between the Admission Body and the Scheme Employer under which the Admission Body provides [describe the services] to the Scheme Employer;

Contract Start Date: the date on which the Contract takes effect;

Employee: an employee of the Scheme Employer listed in Schedule 1 to this Agreement admitted to the Scheme under Clause 2.1 or Clause 2.2;

Insolvency: in relation to the Admission Body, any legal proceedings being taken for its winding-up, dissolution or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any of its revenues or assets;

Premature Termination: the premature termination of the Admission Body by reason of Insolvency;

Registration: registration of a pension scheme under Chapter 2 of Part 4 of the Finance Act 2004;

Regulations: the Local Government Pension Scheme Regulations 2013;

Scheme: the [NAME OF LOCAL AUTHORITY] Local Government Pension Fund;

Secretary of State: the Secretary of State for Communities and Local Government;

Services: the services which are to be provided by the Admission Body under the Contract;

Transfer Date: [DATE];

Transferee Admission Body: a transferee admission body within Paragraph 1(d) of Part 3 of Schedule 2 to the Regulations.

2 ADMISSION AND CONTINUED ADMISSION OF EMPLOYEES

- 2.1 Subject to Clause 2.3, the Authority agrees to the continued participation in the Scheme of every Employee:
- 2.1.1 who was employed by the Scheme Employer on the Transfer Date; and
 - 2.1.2 who was a member of the Scheme at the Transfer Date.
- 2.2 Subject to Clause 2.3, the Authority agrees to admit to participation in the Scheme any Employee who is not referred to in Clause 2.1:
- 2.2.1 who was employed by the Scheme Employer on the Transfer Date;
 - 2.2.2 who was entitled to be a member of the Scheme on the Transfer Date;
 - 2.2.3 who was not a member of the Scheme on the Transfer Date; and
- if such Employee confirms that he wishes to become a member of the Scheme. For the purposes of Regulation 3(3) of the Regulations, such an Employee shall only be treated as being eligible for active membership of the Scheme when he confirms he wishes to become a member of the Scheme.
- 2.3 Clauses 2.1 and 2.2 are subject to the following provisions:
- 2.3.1 Benefits in respect of the participation of an Employee in the Scheme will only accrue to the extent permitted by the Regulations.
 - 2.3.2 Employees of the Admission Body who otherwise come within this Clause 2 shall only be admitted to (or, as the case may be, allowed to continue in) membership of the Scheme, if they are eligible to be members of the Scheme in accordance with the Regulations.
 - 2.3.3 A person may not be a member of the Scheme if he is a member of another Occupational Pension Scheme (within the meaning of section 1 of the Pension Schemes Act 1993) if such membership would affect the Registration of the Scheme.
 - 2.3.4 A person to whom Clause 2.1 applies shall be admitted from the Transfer Date from the Transfer Date.
- 2.4 The Admission Body must as soon as reasonably practicable notify the Authority in writing of the occurrence of any of the following events:
- 2.4.1 if a person who becomes or remains a member of the Scheme by virtue of Clauses 2.1 to 2.3 ceases to be employed by the Admission Body;
 - 2.4.2 if a person who is a member of the Scheme employed by the Admission Body increases or decreases:
 - (a) the number of hours per week; or
 - (b) the proportion of his working week,in respect of which he is engaged;
 - 2.4.3 any transfer (whether under the Transfer of Undertakings (Protection of Employment) Regulations 2006 or otherwise) of any individual admitted to the Scheme under Clauses 2.1 and 2.2 from the employment of the Admission Body to the employment of any other body.
- 2.5 A person who is a member of the Scheme by virtue of this Agreement will be treated as leaving the Scheme if he ceases to be employed by the Admission Body.
- 2.6 An Employee's active membership of the Scheme will cease under this Agreement if he ceases to be employed in connection with the provision of the Services.
- 2.7 The Admission Body warrants and represents to the Authority that every Employee is employed in connection with the provision of the Services.
- 2.8 In the case of a person who first becomes a member of the Scheme on or after [INSERT

TRANSFER DATE], any period of membership in the employment of the Admission Body shall not be aggregated with any other period of membership for the purpose of calculating his retirement grant if it would affect the Registration of the Scheme.

3 ADMISSION OF ADMISSION BODY

The Authority admits the Admission Body to the Scheme as a Transferee Admission Body.

4 ADMISSION BODY OBLIGATIONS

- 4.1 The Admission Body must pay to the Authority, in accordance with the Regulations, all contributions and payments which the Admission Body, as an employing authority, may from time to time be required by or under the Regulations and the Admission Body shall observe and perform all its duties and obligations as an employing authority under and in accordance with the Regulations.
- 4.2 The Admission Body must pay to the Authority all contributions and payments due under the Regulations including, for the avoidance of doubt:
 - 4.2.1 any contributions due to be paid under the Regulations after the Admission Body has ceased to be a Transferee Admission Body;
 - 4.2.2 the cost of any action taken or omitted to be taken by the Admission Body which materially affects the benefits under the Scheme of any of its Employees;
 - 4.2.3 any interest payable under the Regulations; and
 - 4.2.4 any contributions due to be paid by the Employees admitted to the Scheme under Clause 2.1 or Clause 2.2.
- 4.3 The Admission Body undertakes to indemnify the Authority against any costs and liabilities which it may incur (whether directly or as a result of a loss or cost to the members of the Scheme) arising out of or in connection with:
 - 4.3.1 non-payment by the Admission Body of any contributions due to the Scheme;
 - 4.3.2 any material breach by the Admission Body of the Regulations or this Agreement; or
 - 4.3.3 benefits accrued under the Scheme in respect of the Employees from the commencement of their employment with the Authority to the end of this Agreement and only to the extent that such benefits are aggregated in accordance with regulation 22(8) of the Regulations and that benefits accrued as at the Transfer Date shall be calculated as per Clause 12.
- 4.4 Where the Admission Body certifies that:
 - 4.4.1 an employee who is aged 55 or more is retiring by reason of redundancy or in the interest of efficiency; or
 - 4.4.2 an employee is voluntarily retiring with the Admission Body's consent on or after age 55 but before age 60; or
 - 4.4.3 the deferred benefit of a former employee is brought into payment with the Admission Body's consent on or after age 55 but before age 60,

the Admission Body shall pay to the Authority the amount as notified to them in writing by the Authority as representing the cost to the Scheme caused by the immediate payment of benefits. Payment must be made within 30 days of receiving written notification of this amount from the Authority.
- 4.5 Any payment due from the Admission Body under Clause 4.1 shall be calculated on the assumption that, as at the Transfer Date, any liabilities relating to the Scheme membership prior to the Transfer Date of the Employees are 100% funded (as determined by an actuary appointed by the Authority in accordance with the ongoing funding model as described in the fund's Funding Strategy Statement in place as at the Transfer Date (updated to the date of this Agreement as necessary)). Where any additional funding (as certified by an actuary appointed by the Authority) is necessary, this shall be deducted from the Scheme Employer's notional allocation of assets within the fund. For the avoidance of doubt, 100% funded shall mean that the Admission Body shall be notionally allocated at the Transfer Date an amount of assets within the fund equal to the value placed on the liabilities as at the Transfer Date as determined by an actuary appointed by the Authority.

5 RIGHT OF SET-OFF

- 5.1 The parties agree that the Scheme Employer may seek to set off against any payments due to the Admission Body from the Scheme Employer an amount equal to any overdue employer and employee contributions and other payments (including interest payable under the Regulations) due from the Admission Body as an employing authority.
- 5.2 Where the Scheme Employer exercises the right of set-off under Clause 5.1 it shall promptly pay to the Authority the amount withheld and such payment shall be treated as discharging (to that extent) the amount due from the Admission Body as described in Clause 5.1.
- 5.3 The Admission Body and the Scheme Employer agree that the right of set-off in Clause 5.1 shall be valid and enforceable by the Authority notwithstanding any provision to the contrary in the Contract.

6 ADMISSION BODY'S UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

- 6.1 The Admission Body undertakes to adopt the practices and procedures relating to the operation of the Scheme as set out in the Regulations and as set out in any employer's guide published by the Authority and provided to the Admission Body from time to time or contained in any other instructions lawfully given by the Authority in writing.
- 6.2 The Admission Body undertakes to the Authority that it will not do anything to prejudice the Registration of the Scheme.
- 6.3 The Admission Body undertakes that it will promptly notify the Authority in writing of:
 - 6.3.1 any material change in the terms and conditions of employment which will or might affect entitlement to benefits under the Scheme for its Employees who are members of the Scheme; and
 - 6.3.2 any terminations of employment of its employees who are or have been members of the Scheme by virtue of redundancy or in the interests of efficiency; and
 - 6.3.3 each occasion when it exercises a discretion under the Regulations and the manner in which it exercises that discretion.
- 6.4 The Admission Body undertakes to notify the Authority (and to provide a copy of such notification to the Scheme Employer) of any matter which may affect its participation in the Scheme and to give immediate notice of any actual or proposed change in its status which may give rise to a termination, including (without prejudice to the generality of this clause) any actual or proposed takeover, reconstruction, amalgamation, liquidation or receivership of the Admission Body or any material change in the nature of its business or constitution and will promptly pay to the Authority such costs as the Authority may reasonably require as a result of such a change in status.
- 6.5 The Admission Body shall, to the satisfaction of the Authority and Scheme Employer keep under assessment the level of risk arising on Premature Termination. The Admission Body warrants and covenants that, if requested in writing by the Scheme Employer, it will promptly procure and put in place an indemnity or bond to meet the level of risk assessed from time to time by the Authority, taking actuarial advice arising on Premature Termination and that it will keep in place such indemnity or bond with a person or firm described in paragraph 7 of Part 3 of Schedule 2 to the Regulations until the Authority certifies in writing that there are no sums due under this Agreement or the Regulations. The Admission Body will be liable for the costs of the actuary (appointed by the Authority) of carrying out the assessments referred to in this Clause 6.5.

7 PERIODIC VALUATIONS

- 7.1 The Authority may periodically obtain from an actuary a certificate specifying, in the case of the Admission Body, the percentage or amount by which, in the actuary's opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced. This is with a view to ensuring that, as far as is reasonably possible, the value of the assets of the Scheme in respect of the Employees under this Agreement is neither materially more or materially less than the anticipated liabilities of the Scheme in respect of the Employees at the date the Best Value Arrangement or this Agreement is due to end.
- 7.2 When this Agreement is terminated, the Authority must obtain:
 - 7.2.1 an actuarial valuation as at the termination date of the liabilities of the Scheme in respect of Employees, under this Agreement, of the Admission Body; and
 - 7.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Admission Body.

8 TERMINATION

- 8.1 The Admission Body will cease to be a Transferee Admission Body and this Agreement will terminate on the occurrence of the first of the following events:
- 8.1.1 the completion of three months' written notice given by the Admission Body to the Authority that it wishes to cease to be a Transferee Admission Body and the Authority agrees to that cessation; or
 - 8.1.2 the completion of three months' written notice given by the Authority to terminate this Agreement; or
 - 8.1.3 the Insolvency of the Admission Body; or
 - 8.1.4 the withdrawal of the approval by the Commissioners of HM Revenue & Customs to the participation of the Admission Body in the Scheme; or
 - 8.1.5 the Admission Body ceasing to be a Transferee Admission Body.
- 8.2 The Authority may terminate this Agreement immediately by notification in writing to the Admission Body on the occurrence of the first of the following events:
- 8.2.1 a material breach by the Admission Body of any of its obligations under this Agreement or under the Regulations if that breach is incapable of remedy or is capable of remedy but has not been remedied within a reasonable time (being not less than 30 days) after the Admission Body has been notified of the breach;
 - 8.2.2 a failure by the Admission Body to pay any sums due to the Scheme within a reasonable period (being not less than 30 days) after receipt of a notice from the Authority requiring it to do so.
- 8.3 The Admission Body must notify the Authority immediately if:
- 8.3.1 it wishes to cease to be a Transferee Admission Body for the purposes of the Regulations; or
 - 8.3.2 it is aware that it will cease to be a Transferee Admission Body under the Regulations.
- 8.4 If the Admission Body ceases to be a Transferee Admission Body under Clause 8.1 or Clause 8.2, its Employees shall immediately cease to be members of the Scheme.
- 8.5 On the event of termination of this Agreement, the Authority will obtain an actuarial valuation of liabilities of the fund in respect of current and former employees of the Admission Body and notify the Admission Body of revised contributions due from it.
- 8.6 Where, for any reason, it is not possible to obtain revised contributions from the Admission Body or from an insurer or any person providing an indemnity or bond on behalf of the Admission Body, the Authority may require such revised contributions to be paid by the Scheme Employer and the Scheme Employer will make such contributions.
- 8.7 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

9 NOTICES AND INFORMATION

- 9.1 The Authority will promptly inform the Secretary of State of the date of this Agreement and the name of the Admission Body.
- 9.2 The Authority and the Scheme Employer undertake to make available a copy of this Agreement for public inspection at their respective headquarters' offices.

10 DISPUTES

- 10.1 Any question which may arise between any party relating to the construction of this Agreement or to the rights and obligations thereunder of any party shall be determined by the Secretary of State PROVIDED THAT Employees of the Admission Body who are Scheme members by virtue of this Agreement must use the internal dispute resolution procedure established in respect of the Scheme.

11 AMENDMENTS

- 11.1 The Authority, the Scheme Employer and the Admission Body may, with the agreement of the other parties, amend this Agreement in writing provided that:
- 11.1.1 the amendment is not such that it would or might breach the Regulations or any

requirement of law as it applies to the Scheme; and

11.1.2 the amendment would not prejudice the Registration of the Scheme.

12 FUNDING OF THE SCHEME

12.1 Without prejudice to any powers set out in the Regulations, the Authority may require reviews of the funding of the Scheme in relation to the employers participating in the Scheme and in each case the Authority may, after considering actuarial advice, adjust the contributions due by the Admission Body as it may deem reasonably necessary.

13 RIGHTS OF THIRD PARTIES

13.1 Nothing in this Agreement creates rights under the Contracts (Rights of Third Parties) Act 1999 in favour of any person other than the parties to this Agreement.

14 COUNTERPARTS

14.1 This Agreement may be issued in counterparts each of which when executed and delivered shall be an original and all the counterparts together shall constitute one and the same instrument.

**[INSERT EXECUTION PROVISIONS – NB CONSIDER IF SHOULD BE A DEED OR AGREEMENT
AND AMEND THROUGHOUT ACCORDINGLY]**

SCHEDULE 1
The Employees
[TO BE COMPLETED]

Name	NI Number	Sex	DOB