

The Pensions Regulator

CONTRACT FOR SERVICES

Authority:	THE PENSIONS REGULATOR of Napier House, Trafalgar Place, Brighton, Sussex, BN1 4DW
Contractor:	[INSERT COMPANY NAME] (a company registered in England, Company No [insert number]) whose registered office is at [insert registered address]
Contract reference number:	[insert reference]

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (the “**Schedules**”) which both the Authority and the Contractor undertake to observe in the performance of this Contract. The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.

The Contractor shall supply to the Authority, and the Authority shall acquire and pay for, the Services described in Schedule 1 on the terms of this Contract.

Terms defined on the front page of this Contract or in any Schedule shall (unless the context requires otherwise) have the same meaning throughout the Contract.

Schedules

Schedule 1	Services
Schedule 2	Delivery Plan
Schedule 3	Pricing
Schedule 4	Contract Terms and Conditions
Schedule 5	[Service Levels] OR [Not used]
Schedule 6	[Contract Management] OR [Not used]
Schedule 7	Change Control
Schedule 8	Key Personnel
Schedule 9	[Performance Bond] OR [Not used]
Schedule 10	[Form of Parent Guarantee] OR [Not used]
Schedule 11	[Health & Safety] OR [Not used]

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Schedule 12	[Sub-Contractors] OR [Not used]
Schedule 13	[Commercially Sensitive Information] OR [Not used]
Schedule 14	TUPE

If there is any conflict between the provisions of the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) Schedule 4 (Contract Terms and Conditions);
- (b) Schedule 1 (Services);
- (c) Schedule 2 (Delivery Plan); and
- (d) any other Schedule.

IN WITNESS whereof the parties or their duly authorised representatives have entered into this Contract on the date set out above.

Signed by the duly authorised representative of THE PENSIONS REGULATOR

Name: Signature:

Position: Date:

Signed by the duly authorised representative of [CONTRACTOR]

Name: Signature:

Position: Date:

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Schedule 1

Services

[to be inserted]

Personal Data processing

[This section will be included if the contract involves the processing of Personal Data]

1. The Services require the processing of Personal Data as detailed in Table 1 below.
2. The Authority may issue further written instructions with respect to processing by the Contractor and any such further instructions shall be incorporated into Table 1 as necessary.

Table 1

Description	Details
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Categories of Data Subject	[Examples include: Staff (including volunteers, agents and temporary workers), customers/clients, suppliers, members of the public, users of a particular website etc]
Duration of the processing	[clearly set out the duration of the processing including dates]
Type of Personal Data	[examples here include: name, date of birth, NI number, telephone number, email address, pay,

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	images etc]
Plan for return and destruction of the Personal Data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it will be returned or destroyed]

Personal Data shared as Joint Data Controllers

[This section will be included if the contract involves the sharing of Personal Data by the parties as Data Controllers]

1. The Services require the sharing of Personal Data for the purposes as detailed in Table 2 below.
2. The Authority may issue further written instructions with respect to the Shared Personal Data and any such further instructions shall be incorporated into Table 2 as necessary.

Table 2

Type of Personal Data	Purpose for which Shared Personal Data can be used.
[examples here include: name, date of birth, NI number, telephone number, email address, pay, images etc]	[Please be as specific as possible, but make sure that you cover all intended purposes.]

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Schedule 2

Delivery Plan

[to be inserted]

SAMPLE

Schedule 3

Pricing

Contract pricing

[This schedule will be populated with the successful Contractor's pricing submission upon contract award.]

Potential Providers should submit pricing excluding VAT in the Commercial Envelope in the format requested.

The price shall be indicated exclusive of VAT]

Expenses policy

The price shall be inclusive of all out of pocket expenses, including telecommunication, copying, printing, photography, materials, report preparation and publication, presentation materials, travel, subsistence and accommodation. All out of pocket expenses shall be charged in line with the Regulator's expenses policy as follows;

- All claims must be accompanied by all receipts showing the items purchased.
- Credit card receipts are not acceptable.
- The expenses shall be capped at the maximum amount specified below for the duration of the contract.
- The expenses shall be paid at the following rates in line with the regulators expenses policy below.
- The Contractor will ensure where VAT is invoiced on expenses it is applied to the net value of the expense, not the gross value.

Day subsistence

This is claimable in the following circumstances:

The Authority will pay day subsistence when the Contractor works away (more than five miles) from home and the office for four or more hours in a day.

The allowances claimable are detailed below:

Allowance	Amount (inc VAT)	Reason
Breakfast	Up to £5	Left home before 7am to work away from office
Lunch	Up to £5.00	
Evening Meal	Up to £10.00	Not able to return home by 8pm but are not staying at a hotel

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Night subsistence

Allowance	Amount (inc VAT)	
Hotel	Up to £85.00 Up to £130.00	Outside London Inner London Claimable when needing to leave home before 7am or returning later than 8pm
Lodging allowance	£31.00	Payable when away from office or home for 30 or more consecutive night
Evening meal	Up to £25.00	This includes small tip and VAT but no alcohol
Incidental expenses	£5.00	Newspapers and personal telephone calls

Public transport

Allowance	
Taxis	Repayable only in the following circumstances 1) You are required to leave home before 7am when working away from the office; 2) You will be returning home after 9pm after working away from the office.
Rail	Standard class travel is the normal rate claimable. First class travel is not permitted
Car Travel	Mileage rate of 25p per mile
Air	Permissible only where it would be more economical because of savings on cost.

Expenses Cap in relation to Contract Price

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Expenses Cap	[%] of Contract Price or fixed amount.	
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SAMPLE

Schedule 4

Terms and Conditions

1. Interpretation

1.1 In this Contract, unless the context requires otherwise, the following words and expressions, and rules of interpretation shall apply.

1.2 Definitions

‘Applicable Law’ means any applicable law, statute, bye-law, statutory instrument, regulation, order, regulatory policy, statutory code, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation, notice of any regulatory body or any binding judge-made law.

‘Authority Data’ means information (including Restricted Information) and any Personal Data for which the Authority is the Data Controller, and data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embedded in any electronic, magnetic, optical or tangible media, and which :

(i) is supplied to the Contractor by or on behalf of the Authority; or

(ii) the Contractor is required to generate, process, store or transmit pursuant to this Contract.

‘Authority Representative’ means the person identified as such in Schedule 8 (Key Personnel) or any replacement person appointed by the Authority pursuant to clause 9 of Schedule 4 (Terms and Conditions) being the person responsible for managing the Authority’s overall relationship with the Contractor.

‘Authority Services Manager’ means the person identified as such in Schedule 8 (Key Personnel) or any replacement person appointed by the Authority pursuant to clause 9 of Schedule 4, being responsible for managing the Services on behalf of the Authority.

‘Change’ means any change to this agreement including to any of the Services.

‘Change Control Note’ means the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure

‘Change Control Procedure’ means the procedure for changing this agreement, as set out in Schedule 7 (Change Control)

‘Change Request’ means a written request (in the case of the Authority) or a recommendation (in the case of the Contractor) for a Change which is submitted by one party to the other pursuant to the Change Control Procedure

‘Charges’ means the charges, fees and any other sums payable by the Authority to the Contractor as set out in, or calculated in accordance with, Schedule 3 (Pricing).

‘Commercially Sensitive Information’ shall mean the Confidential Information listed in Schedule 13 (Commercially Sensitive Information) which the Contractor has indicated to the Authority

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that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.

‘Confidential Information’ shall mean any commercial, technical, financial and other information of whatever nature and in whatever form whether written, oral, visual, recorded, graphical, electronic or otherwise, of either party including information and documentation in or relating to pricing, business procedures, know-how and trade secrets whether such content and information is disclosed or supplied by either party or their directors, employees, representatives, officers, agents or advisors to the other (whether before or after the date of this Contract) or which directly or indirectly comes to the attention of the other party in connection with the Contract and/or the Services, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as ‘confidential’ or which ought to reasonably be considered to be confidential).

‘Contractor Personnel’ means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

‘Contractor Services Manager’ means the person identified as such in Schedule 8 (Key Personnel) or any replacement person appointed by the Contractor pursuant to clause 9 of Schedule 4, being responsible for managing the Services on behalf of the Authority.

‘Contractor Representative’ means the person identified as such in Schedule 8 (Key Personnel) or any replacement person appointed by the Contractor pursuant to clause 9 of Schedule 4 being the person responsible for managing the Contractor’s overall relationship with the Contractor.

‘Contractor’s Tender’ means the bid submitted by the Contractor to the Authority in response to the invitation to treat, or request for a proposal or quote published by the Authority in relation to the Services.

‘Data’ shall have the meaning given to it in the Data Protection Legislation.

‘Data Controller’ shall have the meaning given to it in the Data Protection Legislation.

‘Data Loss Event’ means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

‘Data Processor’ shall have the meaning given to it in the Data Protection Legislation.

‘Data Protection Impact Assessment’ means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

‘Data Protection Legislation’ means in relation to any Personal Data (including Sensitive Personal Data) which is Processed in the performance of this Contract:

- a) Until 25 May 2018 the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC,

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- b) On and from 25th May 2018 the General Data Protection Regulation (EU) 2016/679 (**GDPR**); and
- c) the Regulation of Investigatory Powers Act 2000 and the Data Retention and Investigatory Powers Act 2014, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 the Law Enforcement Directive (Directive (EU) 2016/680 (**LED**); and

in each case together with all laws implementing the same and all applicable or equivalent laws and regulations relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Supervisory Authority and any equivalent or superseding laws implemented following the United Kingdom's exit from the European Union.

'Data Subject' shall have the meaning given to it in the Data Protection Legislation.

'Data Subject Access Request' means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

'Delivery Plan' means the delivery plan detailed in Schedule 2 (Delivery Plan) (if any)

'EEA' means the European Economic Area

'GDPR' has the meaning given to it in the Data Protection Legislation;

'Environmental Information Regulations' shall mean the Environment Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

'Force Majeure' means any event or occurrence which is outside the reasonable control of the party concerned and which is not attributable to any act or failure to take preventative action by that party, including act of God, fire, flood, violent storm, war, revolution or acts of terrorism, but excluding:

- strikes, lock outs or other industrial action whether of the affected party's own employees or others; or
- the failure by any Sub-Contractor or agent to perform its obligations under any sub-contract or contract; or
- the failure of supplies of power or other goods and services.

'Intellectual Property Rights' means any patents, utility models, rights to inventions, registered designs, copyright and related rights, moral rights, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or

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industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

‘Law’ means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

‘Personal Data’ shall have the meaning given to it in the Data Protection Legislation.

‘Pre-existing IPR’ means any Intellectual Property Rights, other than Project IPR, which are used in performing the Services.

‘Permitted Recipients’ means the parties to this Contract, the employees of each party, and any third parties engaged to perform obligations in connection with this Contract

‘Personal Data Breach’ shall have the meaning given to it in the Data Protection Legislation

Pre-existing IPR’ means any Intellectual Property Rights, other than Project IPR, which are used in performing the Services

‘Premises’ shall mean Napier House, Trafalgar Place, Brighton, BN1 4DW.

‘Process’ shall have the meaning given to it in the Data Processing Legislation.

Protective Measures’ means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

‘Project IPR’ means any and all Intellectual Property Rights that arise or are obtained or developed by the Contractor, or by a Sub-Contractor on behalf of the Contractor, in the course of performing, or in connection with, the Services.

‘Relevant Transfer’ means a relevant transfer for the purposes of TUPE.

‘Replacement Contractor’ shall mean any third party service provider appointed by the Authority to supply any services which are substantially similar to or the same as any of the Services in succession to the Contractor.

‘Request for Information’ means a request for information (as defined in Section 8 of the FoIA) relating to or connected with the Contract or the Authority more generally or any apparent request for such information under the FoIA or the Environmental Information Regulations.

‘Shared Personal Data’ means the Personal Data to be shared between the parties as joint Data Controllers under clause 19 (Data protection) of this Contract.

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‘Service Specification’ means the service specification for the Services set out in Schedule 1 (Services).

‘Services’ means all services (including the provision of any goods, materials or articles) which the Contractor is required to provide under the Contract as described in the Service Specification.

‘Service Levels’ means the levels of service set out in Schedule 5 (Service Levels)

‘Standard Contractual Clauses’ means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in decision 2010/87/EU, or any set of clauses approved by the European Commission or a Supervisory Authority which subsequently amends, replaces or supersedes these;

‘Supervisory Authority’ means:

- a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and
- b) any similar regulatory responsible for the enforcement of Data Protection Legislation

‘Sub-Contractor’ shall mean any contractor, supplier, service provider, consultant and the like engaged by the Contractor to provide Services or part thereof.

‘Sub-Processor’ means any third party appointed to Process any Personal Data on behalf of the Contractor related to this Contract.

‘Transparency Obligations’ means any obligation or obligations placed on the Authority by the Government to publish details of contracts entered into including details of the Charges payable under such contracts.

‘TUPE’ means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

‘VAT’ means value added tax imposed in any member state of the European Union pursuant to Council Directive (EC) 2006/112 on the common system of value added tax, and national legislation implementing that Directive or any predecessor to it, or to that Directive, or any similar tax which may be substituted for or levied in addition to it or any value added, sales, turnover or similar tax imposed in any country that is not a member of the European Union

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

- 1.3 Headings and use of bold type face shall not affect the interpretation of the Contract.
- 1.4 References to any enactment shall include references to such enactment as it may, after the date of this Contract, from time to time be amended, supplemented or re-enacted.
- 1.5 A reference to a clause, sub-clause, paragraph or sub-paragraph is, unless indicated to the contrary, a reference to a clause, sub-clause, paragraph or sub-paragraph of this Contract.
- 1.6 References to the word ‘include’ or ‘including’ are to be construed without limitation.
- 1.7 References to the singular include the plural unless the context requires otherwise.

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1.8 Any reference to the masculine gender includes the feminine and neuter genders where appropriate.

2. Commencement Date and Contract Period

2.1 The Contract shall come into force on **[insert date]** (the 'Commencement Date') and unless terminated earlier in accordance with its terms shall continue in full force and effect until **[insert date]** (the 'Contract Period').

2.2 The Authority shall have the option to extend the Contract Period for a period or periods not exceeding in aggregate **[insert duration]** (each an 'Extension Period') by serving on the Contractor notice of its desire to do so not less than one (1) month prior to the expiry of the Contract Period, and in such event the Charges payable during the relevant Extension Period shall be the relevant Charges adjusted in accordance with clause 6 (Price Variation) of this Schedule 4 (Terms and Conditions) (with all other provisions of this Contract remaining the same unless the parties agree otherwise).

2.3 Notwithstanding anything to the contrary elsewhere in this Contract, the Authority shall be entitled to terminate this Contract by serving not less than **[insert number of days]** days' written notice on the Contractor.

3. Due diligence and Contractor's warranty

3.1 The Contractor acknowledges and confirms that:

- a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- b) it has received all information requested by it from the Authority pursuant to clause 3.1a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to clause 3.1b);
- d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- e) it has entered into this agreement in reliance on its own due diligence.

3.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Contractor by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

3.3 The Contractor:

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- a) as at the Commencement Date, warrants and represents that all information contained in the Contractor's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and
 - b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
- 3.4 The Contractor shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Contractor in accordance with clause 3.3a) save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Authority and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 3.5 Nothing in this clause 3 (Due diligence and Contractor's warranty) shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation
- 4. Performance and obligations of the Contractor**
- 4.1 The Contractor shall provide the Services to the Authority from the Commencement Date in accordance with:
- a) the Service Specification and the terms of the Contract;
 - b) the Authority's policies as set out in the Schedules to the Contract or otherwise notified to the Contractor from time to time;
 - c) all Applicable Law; and
 - d) the Delivery Plan (if any).
- 4.2 The Contractor shall perform the Services at the Premises and any such other locations as may be agreed between the parties in writing.
- 4.3 Unless otherwise specified in the Contract, the Contractor undertakes that the design, workmanship and materials used will be fit to achieve the purpose for which the Services are required, either as specified by the Authority expressly in the Contract or as may be implied from the Contract.
- 4.4 The Contractor shall exercise all reasonable skill, care and diligence in the performance and discharge of the Services.
- 4.5 The Contractor shall provide all supervision, labour, materials, transport, plant, tools, equipment and facilities necessary to perform the Services in accordance with the Contract.

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- 4.6 The Contractor shall proceed with the carrying out of the Services regularly, diligently and shall meet any dates related to the performance of the Services (or any part of the Services) included in the Contract.
- 4.7 The Contractor shall ensure that the Services meet or exceed the Service Levels at all times.
- 4.8 If the Contractor fails to provide the Services or any part of the Services, the Authority may, without prejudice to its other rights and at no additional cost to the Authority, require the Contractor to re-perform the applicable Services.

5. Acceptance of Services

- 5.1 The Authority shall carry out such examination or tests of the Services as the Authority may reasonably consider appropriate in order to satisfy itself that the Services have been performed to the standards or performance requirements specified in the Contract. If no such standards or performance requirements are so specified, the Authority shall nevertheless be entitled to inspect or examine the Services to satisfy itself that the same have been performed in accordance with the Contract.
- 5.2 Such tests or examination shall be carried out by the Authority on within a reasonable time after the Services have been performed.
- 5.3 All such examination or tests shall be carried out with regard to the general good practice in the industry concerned.
- 5.4 If the Services satisfy such tests or examination, then the Authority will accept the Services.
- 5.5 If the Services do not satisfy such tests or examination, then the Authority may reject the Services and require that the Contractor carry out such further improvements as may be necessary so that the Services achieve the required standard or performance requirements, or if none are specified, are performed to the Authority's reasonable satisfaction. Once the Contractor has carried out such improvements and advised the Authority accordingly, the Authority will then at the Contractor's cost repeat the tests or examination, and if the Services then satisfy the tests or examination or are otherwise in accordance with the Contract, the Authority will accept them.
- 5.6 If the Services do not satisfy the repeat tests or examination, then the Authority may terminate the contract forthwith.

6. Payment

- 6.1 Subject to the remainder of this clause 6 (Payment), the Authority shall pay the Charges in respect of Services which have been completed in accordance with this Contract and accepted by the Authority within thirty (30) days after the receipt by the Authority of a valid invoice, which the Contractor was entitled to submit under this clause 6 (Payment) for such Charges.
- 6.2 The Contractor shall be entitled to submit invoices for provision of the Services monthly in arrears. The Contractor shall submit clearly labelled invoices with the relevant purchase order reference, other relevant information (including any timesheets or other information

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required by the Authority to justify the Charges invoiced) and clearly addressed to the Authority's Finance team to aid the invoice matching and payment process. Failure to do so may result in late payment for which the Authority will not be held liable.

- 6.3 The Contractor shall ensure that VAT, where applicable, shall be shown separately on all invoices submitted pursuant to the Contract as a strictly net extra charge to make each such invoice a valid tax invoice for VAT purposes.
- 6.4 In addition to the Charges, and subject to any expenses cap detailed in Schedule 3 (Pricing), the Authority shall reimburse the Contractor for reasonable expenses incurred by the Contractor in the course of performing the Services in accordance with the expenses policy set out Schedule 3, provided that:
- a) expenses shall not be invoiced separately but shall instead be shown as a separate item as part of the invoice submitted to the Authority for payment within 6 months after the date of the relevant receipt; and
 - b) the Contractor has furnished the Authority with reasonable supporting documentation in relation to the relevant expense. The Contractor shall be solely responsible for maintaining adequate records of expenses incurred.
- 6.5 The Authority shall be entitled to deduct from any payment otherwise due to the Contractor any sum that is due to the Authority under this Contract.
- 6.6 The Authority shall consider and verify a Contractor invoice in a timely fashion and in the event that the Authority disputes any part of an invoice, the Authority shall pay the undisputed amount inclusive of VAT. Both parties shall make every effort to resolve any such disputes and the Authority shall pay any balance as soon as is practicably possible following the resolution of the relevant dispute.
- 6.7 Where the Authority fails to comply with clause 6.6 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 6.1 after a reasonable time has passed.
- 6.8 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- a) Provisions having the same effect as this clause 6 (Payment) of this Contract; and
 - b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as this clause 6 (Payment) of this Contract.
- 6.9 In this clause 6 (Payment), "Sub-Contract" includes a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

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7. Price Variation

- 7.1 The Charges shall not be increased throughout the first twelve (12) months beginning on the Commencement Date.
- 7.2 The Charges may be reviewed annually on each anniversary of the Commencement Date throughout the Contract Period solely for the purpose of maintaining 'cost neutral' status (subject to clause 7.3), and any request for cost increase will be rejected unless exceptional evidence can be advanced by the Contractor, which the Authority may review at its discretion.
- 7.3 If, during the Contract Period, the Contractor makes a general price decrease, or, because of any fall in the cost of labour, materials, fuel or transport, the cost to the Contractor of delivering the Services reduces, the Contractor shall offer the Authority a proportionate decrease in the Charges with effect from the next anniversary of the Commencement Date.
- 7.4 Any change to the Charges as described in clauses 7.2 or 7.3 shall be implemented through the Change Control Procedure unless otherwise agreed in a written document signed by both the Contractor's Representative and the Authority Representative.

8. Contractor's staff

- 8.1 The Contractor must employ sufficient staff to ensure that the Services are provided in accordance with the Service Specification at all times. The Contractor must ensure that a sufficient reserve of staff is available to provide the Services during planned and unplanned staff absences.
- 8.2 The Contractor must employ for the purposes of this Contract only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed and carries out the Services with regard to (and in compliance with):
- a) the task that person has to perform;
 - b) all relevant provisions of the Contract;
 - c) all relevant rules, policies, procedures and standards of the Authority;
 - d) fire risks and fire precautions;
 - e) the need to observe the highest standards of hygiene, courtesy and consideration; and
 - f) the requirements of the Health and Safety at Work Act 1974 and other relevant legislation and codes of practice.
- 8.3 The Contractor must provide all of its staff attending the Premises with a form of identity acceptable to the Authority and must ensure that they display that identity on their clothing at all times when they are on the Premises.
- 8.4 The Contractor must ensure that its staff do not smoke on the Premises.

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- 8.5 The Contractor shall ensure that at all times when employees of the Contractor are present on the Premises they have present a competent supervisor and any instructions given by the Authority to that supervisor shall be considered as given to the Contractor.
- 8.6 The Contractor shall comply with any staff vetting procedures notified in writing to the Contractor by the Authority in respect of all Contractor personnel employed or engaged in the provision of the Services. Where Contractor personnel employed or engaged in the provision of the Services have not been vetted to the standard set out in such staff vetting procedures, the Authority may require that such personnel immediately cease providing the Services or any part thereof.
- 8.7 The Contractor shall ensure that no person who discloses that he has a conviction (other than motoring offences), or who is found by the Contractor to have any convictions (other than motoring offences) whether as a result of a police check or through the Disclosure and Barring Service (formerly known as the Criminal Records Bureau) procedures or otherwise, is employed or engaged in the provision of any part of the Services without the Authority's prior and express written consent.
- 8.8 If the Contractor uses persons other than its employees to perform the Services, the Contractor shall be fully responsible for the work performed by such persons and the provisions of the Contract shall apply to such persons as if they were members of the Contractor's staff.

9. Key Personnel

- 9.1 Each party shall appoint the persons named as such in Schedule 8 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people, including the Authority Representative, Authority Services Manager, Contractor Representative and Contractor Services Manager, who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role that has been allocated to the applicable Key Personnel.
- 9.2 The Authority shall not be liable for any instructions issued to the Contractor by any person other than the Authority Representative or Authority Services Manager
- 9.3 The Contractor shall not remove or replace any of the Key Personnel unless:
- a) requested to do so by the Authority; or
 - b) the person is on long-term sick leave; or
 - c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction; or
 - d) the person resigns from their employment with the Contractor; or
 - e) the Contractor obtains the prior written consent of the Authority.

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- 9.4 The Contractor shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified or in any case, within 2 working days of identification. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within seven (7) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 9.5 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than fourteen (14) Business Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced. A temporary replacement shall be identified with immediate effect from the Contractor or the Authority becoming aware of the role becoming vacant.
- 10. Access for the Contractor**
- 10.1 The Authority shall give the Contractor access to the Premises for the purpose of carrying out the Services at such times as may be specified in the Contract or, if not so specified, as may reasonably be required by the Contractor to carry out the Services in accordance with the Contract.
- 10.2 While on the Premises, the Contractor shall comply strictly with all applicable statutory enactments and regulations, the Authority's applicable policies and procedures (copies of which are set out in the Schedules to this Contract or available to the Contractor on request) and instructions from the Authority.
- 10.3 The Authority shall have the right to require the Contractor to remove immediately from the Premises any employee or Sub-Contractor who has:
- a) failed to comply with any of the applicable enactment's, regulations, policies, procedures or instructions; or
 - b) in the sole opinion of the Authority has not conducted himself appropriately or been negligent or incompetent,
- without thereby incurring any responsibility to the Contractor for any additional costs or time.
- 10.4 The Contractor shall be solely responsible for the suitability and safety of any equipment or tools used by the Contractor's staff and shall not use any equipment or tools, which may be unsuitable, unsafe, or likely to cause damage. The Authority may inspect any such equipment or tools at any time and may require the Contractor to remove from the Premises, any equipment or tools which in the sole opinion of the Authority are unsuitable, unsafe, or likely to cause damage and replace the same, without incurring any responsibility to the Contractor for additional cost or time.

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- 10.5 The Contractor shall be responsible for the obtaining of any wayleaves, permissions, approvals and licences as required for any installation works to take place in locations outside of the Premises.
- 10.6 Without relieving the Contractor of its duty to deliver the Services, the Authority reserves the right to refuse any employee or Sub-Contractor of the Contractor access to the Premises where, in the Authority's absolute discretion, such person's behaviour is unacceptable or they have not satisfied or been subject to the relevant checks referred to in clause 8 (Contractors Staff).
- 10.7 Unless otherwise provided for, the Contractor shall not deliver any items to the Premises or remove any items belonging to the Authority from the Premises without having first obtained written permission from the Authority. The Contractor shall maintain written records of all items so delivered or removed.
- 10.8 With effect from the Commencement Date, the Contractor shall be deemed to have inspected the Premises and to have satisfied itself of the conditions and all circumstances affecting the Premises and the carrying out of the Services. Accordingly, the Contractor shall not be entitled to bring any claim for additional payment or an extension of time for performance of the Services on the grounds of any matter relating to the Premises or as to the circumstances or conditions under which the Services are to be provided, except where such matter, circumstance or condition has arisen after the Commencement Date and could not have been reasonably foreseen by the Contractor.
- 11. Health and safety**
- 11.1 The Contractor represents and warrants to the Authority that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of any equipment to be used in the performance of the Services to ensure that such equipment is designed and constructed as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Authority adequate information about the use for which such equipment has been designed and has been tested and about any conditions necessary to ensure that when put to use such equipment will be safe and without risk to the health or safety of any individual.
- 11.2 The Contractor shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and of any other acts, regulations, orders or rules of law pertaining to health and safety.
- 11.3 The Contractor shall forthwith nominate a person to be responsible for health and safety matters relating to the Contract. Whilst on the Premises, the Contractor shall ensure that its employees and Sub-Contractors comply with Schedule 11 (Health and Safety), the Authority's general statement of safety policy, and with the lawful requirements of the Authority's health and safety representative.
- 11.4 The Authority shall be able to suspend the provision of the Services or part thereof in the event of non-compliance by the Contractor with this clause 11 (Health and Safety). The Contractor shall not resume provision of the Services or such part until the Authority is satisfied that the non-compliance has been rectified.

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11.5 The Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this clause 11 (Health and Safety).

12. Change Control and Contract Variation

12.1 Any requirement for a Change shall be subject to the Change Control Procedure.

12.2 No variation, alteration or addition to or omission from this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. Contract Management

13.1 The Contractor shall provide management reports in the form and at the intervals set out in Schedule 6 (Contract Management)

13.2 The relevant Key Personnel shall meet in accordance with the details set out in Schedule 6 and the Contractor shall, at each meeting, present its previously circulated management reports including financial reports where requested by the Authority in the format set out in Schedule 6.

13.3 The Contractor shall provide an initial response by email to all queries raised by the Authority within one (1) Working Day.

14. Sub-contracting and assignment

14.1 Neither party shall assign any of its obligations under the Contract without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

14.2 The Contractor shall not charge, pledge, transfer or sub-contract any part of the Contract without the prior written consent of the Authority, other than for the purchase of standard materials or for items the manufacturer or supplier of which is named in Schedule 12 (Sub-Contractors) of the Contract.

14.3 The Contractor shall be as fully responsible for the acts and defaults of any Sub-Contractor as if they were the Contractor's own.

15. Passing of property and risk

15.1 The title in any goods delivered by the Contractor to the Authority as part of the Services shall pass to the Authority on delivery of the goods to the Premises.

15.2 Unless otherwise provided for in the Contract the risk in any goods which are to be delivered by the Contractor to the Authority shall pass to the Authority on acceptance by the Authority of such goods.

15.3 Where goods belonging to the Authority are to be sent to the Contractor for overhaul, repair or cleaning, such goods shall be at the risk of the Contractor from the time that they are handed over to the Contractor at the Premises until they have been delivered back to the

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Premises to the reasonable satisfaction of the Authority. The title in such goods shall at all times remain with the Authority and the Contractor shall clearly mark such goods as belonging to the Authority and keep them separate from all other goods in the Contractor's possession.

- 15.4 The Contractor shall be strictly responsible for the care of any goods belonging to the Authority whilst the Contractor is carrying out work on such goods on the Premises and such obligation of care shall include the leaving of such goods in a safe and proper condition when the Contractor ceases such work.

16. Intellectual property rights

- 16.1 Where any Intellectual Property Rights owned or licensed by the Authority are required to be used in connection with the provision of the Services, the Contractor acknowledges that it shall have no right to use the same except to the extent necessary for the provision of the Services and subject to such consents and restrictions as may be specified by the Authority.
- 16.2 The Contractor hereby grants to the Authority a perpetual, irrevocable, royalty-free, non-exclusive licence of any and all Pre-existing IPR subsisting in any materials delivered to the Authority in the performance of the Services (the '**Deliverables**') for the purposes of receiving and using, and to the extent necessary to receive and use, the Services in accordance with the Contract.
- 16.3 The Contractor hereby assigns (with full title guarantee) to the Authority ownership of any and all Project IPR, and shall procure the waiver in favour of the Authority of all moral rights relating to the Project IPR. The Contractor undertakes at the Authority's request and expense to execute all deeds and documents which may reasonably be required to vest such rights in the Authority and to give effect to this clause 16 (Intellectual Property Rights)
- 16.4 The Contractor warrants that it has in place contractual arrangements with all members of the Contractor's staff and its Sub-Contractors assigning to the Contractor their Intellectual Property Rights and waiving their moral rights (if any) in the Deliverables such that the Contractor can enter into the assignments, licences and waivers set out in this clause 16 (Intellectual Property Rights).
- 16.5 The Contractor warrants that the provision of the Services does not and will not infringe any third party's Intellectual Property Rights and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 16 (Intellectual Property Rights), except where any such claim arises from:
- a) items or materials supplied by the Authority; or
 - b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

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- 16.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 16.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor shall:
- a) consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - b) take due and proper account of the interests of the Authority; and
 - c) not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 16.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 16.5(a) or (b).
- 16.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract, or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
 - b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 16.10 If the Contractor is unable to comply with either clause 16.9 (a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification under this clause 16 (Intellectual Property Rights), the Authority may terminate the Contract with immediate effect by notice in writing.
- 16.11 The Contractor warrants that the Charges include any payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of performing the Contract.
- 16.12 The provisions of this clause 16 (Intellectual Property Rights) shall apply during the Contract Period and after its expiry or termination howsoever arising.

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17. Data quality

17.1 The Contractor shall ensure the information it provides to the Authority from its own sources is accurate and shall use all reasonable endeavours to ensure the information it provides to the Authority from third parties is accurate.

18. Confidentiality

18.1 Any party receiving Confidential Information from the other (**‘Receiving Party’**) shall (except as may be subsequently agreed in writing by the party disclosing the Confidential Information (**‘Disclosing Party’**)) at any time after the Commencement Date:

- a) keep all Confidential Information of the Disclosing Party strictly confidential and not disclose any part of it to any other person without the Disclosing Party’s prior written consent and then only under conditions of confidentiality no less onerous than those contained in the Contract;
- b) act in good faith at all times in relation to the Disclosing Party’s Confidential Information, and will not use any of the Disclosing Party’s Confidential Information for any purpose other than the performance of the Contract;
- c) use the same degree of care to protect the Disclosing Party’s Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care;
- d) only disclose the Disclosing Party’s Confidential Information to its professional advisers, its officers and employees who have a need to have access to the Disclosing Party’s Confidential Information for the performance of their work with respect to the Contract, and who are bound by a written agreement or professional obligation to protect the confidentiality of the Disclosing Party’s Confidential Information provided that the Receiving Party shall retain full liability for any act or omission of any person to whom Confidential Information is disclosed under this clause 18.1 which would constitute a breach by that person of the terms of the Contract had such person been a party to it; and
- e) promptly advise the Disclosing Party of any unauthorised use or disclosure of the Disclosing Party’s Confidential Information of which it becomes aware.

18.2 The restrictions set out in clause 18.1 shall not apply with respect to Confidential Information which:

- a) is known to the Receiving Party before disclosure directly or indirectly by the Disclosing Party, and is not subject to any obligation of confidentiality;
- b) is or becomes publicly known through no act or default on the part of the Receiving Party;
- c) is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of a duty of confidence; or
- d) is independently developed by the employees, agents or sub-contractors of the Receiving Party without access to the Disclosing Party’s Confidential Information.

18.3 The restrictions in this clause 18 (Confidentiality):

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- a) shall not prevent the publication by the Authority of information about this Contract in order to comply with the Transparency Obligations;
 - b) do not apply to the extent (and only to the extent) that any Confidential Information is required to be disclosed by the Receiving Party by any law or regulation, judicial or governmental request or order provided that in such a case and to the extent the Receiving Party is permitted by law:
 - c) the Receiving Party must inform the Disclosing Party, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the Confidential Information required to be disclosed; and
 - d) the Receiving Party must take all reasonable steps to minimise the disclosure required of the Disclosing Party's Confidential Information and, where possible, ensure the continued confidentiality of the Confidential Information disclosed.
- 18.4 All Confidential Information shall remain the property of the Disclosing Party, and (subject to clause 16 (Intellectual Property Rights) the Receiving Party shall not acquire any Intellectual Property Rights or other rights in the Disclosing Party's Confidential Information by virtue of the Contract, except for the right to use it in accordance with the terms of this Contract.
- 18.5 The parties acknowledge that the Authority is subject to the FoIA and, notwithstanding anything to the contrary in the Contract, may be obliged to disclose any information (including Confidential Information) which it holds in response to a request received under that Act and such disclosure shall in no circumstances be deemed to be a breach of the Contract.
- 18.6 Nothing in this clause 18 (Confidentiality) shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Contractor to any other contracting authority (as defined in the Public Contracts Regulations 2014), provided that the Authority has required that such information is treated as confidential by such contracting authorities and their employees, including requiring employees to enter into a confidentiality agreement prior to disclosure of the Confidential Information, whereupon the Authority shall have no further liability for breach of confidentiality in respect of such contracting authorities. All contracting authorities in receipt of such Confidential Information shall be considered as parties to this Contract within Section 1 of the Contracts (Rights of Third Parties) Act 1999 for the purpose only of being entitled to further disclose the Confidential Information to other contracting authorities on such terms.
- 18.7 Nothing in this clause 18 (Confidentiality) shall prevent the Contractor or the Authority from using data processing techniques, ideas and know-how gained during the performance of this Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Authority or the Contractor of any Intellectual Property Rights.

19. Data Protection

- 19.1 To the extent that in relation to the delivery of the Services the Authority is the Data Controller and that the Contractor is the Data Processor, the only Processing that the Contractor is authorised to do is as listed in Table 1 in Schedule 1 or as otherwise instructed by the Authority and may not be determined by the Contractor.

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- 19.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation
- 19.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
- a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of the Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Personal Data.
- 19.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- a) Process the Personal Data only in accordance with the instructions of the Authority, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before Processing the Personal Data unless notification is prohibited by Law;
 - b) Ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - nature of the data to be protected;
 - harm that might result from a Data Loss Event;
 - state of technological development; and
 - cost of implementing any measures.
 - c) Ensure that:
 - The Contractor Personnel do not Process Personal Data except in accordance with this Contract;
 - It takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data including making sure that they:
 - A. Are aware of and comply with the Contractors duties under this clause 19 (Data Protection);
 - B. Are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
 - C. Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to a third party unless

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directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

D. Have undergone adequate training in the use, care, protection and handling of Personal Data.

- d) Not transfer Personal Data outside of the EEA unless the prior written consent of the Authority has been obtained (unless the transfer is required by EU or member state law to which the Contractor is subject, and if this is the case then the Contractor shall inform the Authority of that legal requirement before Processing that Personal Data, unless that law prohibits such information being provided on important grounds of public interest) and the following conditions are fulfilled:
- The Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - The Data Subject has enforceable rights and effective legal remedies;
 - The Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - The Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data.
- e) Subject to any alternative notification by the Authority pursuant to clause 27 (Consequences of Termination), delete or return Personal Data in accordance with the Personal Data processing plan in Table 1 of Schedule 1 (Services).

19.5 The Contractor shall notify the Authority without undue delay upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach (except where statutory guidance indicates that a Personal Data Breach is not required to be notified by a Data Processor to a Data Controller), providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the GDPR. Such notification shall as a minimum:

- a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
- b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
- c) describe the likely consequences of the Personal Data Breach; and
- d) describe the measures taken or proposed to be taken to address the Personal Data Breach,

19.6 The Contractor shall notify the Authority (within five (5) Working Days) if it receives:

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- a) a request from a Data Subject to have access to that person's Personal Data;
 - b) a request to rectify any inaccurate Personal Data;
 - c) a request to have any Personal Data erased;
 - d) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any third party;
 - e) an objection to any processing of Personal Data;
 - f) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
 - g) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - h) a request from a third party for disclosure of Personal Data processed under this Contract where compliance with such request is required or purported to be required by Law.
- 19.7 The Contractor's obligation to notify under clauses 19.5 and 19.6 shall include the provision of further information to the Authority in phases, as such information becomes available.
- 19.8 The Contractor shall provide the Authority with full cooperation and assistance in relation to any complaint or request made in relation to either party's obligations under the Data Protection Legislation and any complaint, communication or request made under clause 19.7 (and so far as possible within the timescales reasonably required by the Authority), including by promptly :
- a) providing the Authority with full details of the complaint, communication or request;
 - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - c) providing the Authority with any Personal Data it holds in relation to a Data Subject;
 - d) implementing such technical and organisational measures as may be reasonably required by the Authority to allow the Authority to respond effectively to relevant complaints, communications or requests;
 - e) providing the Authority, on its request, with:
 - any information requested by the Authority;
 - assistance as required by the Authority following any Data Loss Event; and
 - assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioners Office.
- 19.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 19 (Data Protection).

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- 19.10 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 19.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 19.12 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor must:
- a) notify the Authority of the intended Sub-Processor and processing;
 - b) obtain the written consent of the Authority;
 - c) enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 19 (Data Protection) such that they apply to the Sub-Processor; and
 - d) provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.
- 19.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 19.14 The Authority may, at any time on not less than 30 Working Day's notice, revise this clause 19 (Data Protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 19.15 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Day's notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 19.16 The Contractor shall comply with all obligations it has under the GDPR, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR; and report any suspected non-compliance or actual non-compliance of this clause 19 (Data Protection) to the Authority within two (2) Working Days of becoming aware of such non-compliance.
- 19.17 To the extent that the Services involve the sharing of personal data between the parties as Data Controllers, the provisions in 19.18 to 19.21 shall apply.
- 19.18 Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the purposes listed in Table 2 in Schedule 1 or as otherwise agreed between the parties (the Agreed Purposes).
- 19.19 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 19.20 Each party shall:

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- a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- b) give full information to any Data Subject whose Personal Data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- c) process the Shared Personal Data only for the Agreed Purposes;
- d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- g) not transfer any personal data outside the EEA unless the transferor:
- h) comply with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
- i) ensure that:
 - the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR;
 - there are appropriate safeguards in place pursuant to Article 46 GDPR; or
 - one of the derogations for specific situations in Article 49 GDPR applies to the transfer

19.21 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular in relation to the Shared Data, each party shall:

- a) consult with the other party about any notices given to Data Subjects about the management of the Shared Personal Data;
- b) promptly inform the other party about the receipt of any Data Subject access request;
- c) provide the other party with reasonable assistance in complying with any Data Subject Access Request;
- d) not disclose or release any Shared Personal Data in response to a Data Subject access request without first consulting the other party wherever possible;
- e) assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data

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Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Personal Data;
- h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from transfers of Personal Data;
- i) maintain complete and accurate records and information to demonstrate its compliance with this clause 19 (Data Protection) and allow for audits by the other party or the other party's designated auditor; and
- j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

19.22 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying party under this clause shall be subject to the limits set out in Clause 23 (Liability).

20. Information security

- 20.1 The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor's systems. The Contractor also acknowledges the confidentiality of Authority Data and shall ensure that no Authority Data is copied to media, including laptops, CD, DVD, USBs, external hard drives or email, other than is necessary under the Contract.
- 20.2 The Contractor shall at all times ensure that the level of security employed in the provision of the Services is in accordance with good industry practice and appropriate to prevent:
 - a) loss of integrity of Authority Data;

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- b) loss of confidentiality of Authority Data;
- c) unauthorised access to, use of, or interference with Authority Data by any person or organisation;
- d) unauthorised access to remote access connections used by the Contractor in the provision of the Services; and
- e) use of the Contractor's services by any third party in order to gain unauthorised access to any computer resource or Authority Data.

20.3 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

20.4 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and where such corruption, loss or degradation is due to the failure of the Contractor to comply with this clause 20 (Information Security) inform the Authority of the remedial action the Contractor proposes to take.

20.5 Breach of security

- a) Either party shall notify the other immediately upon becoming aware of any breach of the security of the Authority Data including any actual, potential or attempted breach, or threat to, such security.
- b) Upon becoming aware of any of the circumstances referred to in clause 20.5(a), the Contractor shall:
 - immediately take all reasonable steps necessary to prevent an equivalent breach in the future. Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract, then the Contractor shall be entitled to refer the matter to the procedure (if any) set out in Schedule 7 (Change Control); and
 - as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

21. Freedom of Information Act 2000 (FoIA) and Environmental Information Regulations (EIA)

21.1 The Contractor acknowledges that the Authority is subject to the requirements of the FoIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.

21.2 The Contractor shall and shall procure that its Sub-Contractors shall:

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- a) transfer all Requests for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days after receiving a Request for Information;
- b) provide the Authority with a copy of all information in its possession or power relating to the relevant Request for Information in the form that the Authority requires within five (5) Working Days after receiving the relevant Request for Information (or such other period as the Authority may specify); and
- c) provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in Section 10 of the FoIA or Regulation 5 of the Environmental Information Regulations.

21.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other information:

- a) is exempt from disclosure in accordance with the provisions of the FoIA or the Environmental Information Regulations; or
- b) is to be disclosed in response to a Request for Information.

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

21.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' code of practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FoIA or the Environmental Information Regulations to disclose information:

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

21.5 The Contractor shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

21.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 18.5.

22. Indemnity

22.1 Subject to clause 23 (Liability) the Contractor shall indemnify and keep indemnified the Authority against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

- a) any loss or damage to property (whether real or personal); and
- b) any injury to any person, including injury resulting in death

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in any way arising out of the provision of the Services by the Contractor, its employees or Sub-Contractors except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Authority, its employees or agents (not being the Contractor or employed by the Contractor).

23. Liability

- 23.1 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 23.2 Subject to clause 23.4, and without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority, the Contractor shall be liable for the following types of loss, damage, cost or expense flowing from an act or default of the Contractor which shall be regarded as direct and shall be recoverable by the Authority:
- a) the additional operational and/or administrative costs and expenses arising from any material breach of the Contract;
 - b) the cost of procuring, implementing and operating any alternative or replacement services to the Services in the event of a material breach of the Contract; and
 - c) any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Laws.
- 23.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 23.4 Subject to clause 23.6 the Contractor's aggregate liability under this Contract whether arising in tort (including negligence), breach of contract or otherwise:
- a) is unlimited in respect of:
 - the Contractor's wilful default;
 - any breach of clause 11 (Health and Safety), clause 16 (Intellectual Property), clause 19.5 (Data Protection), clause 37 (Anti Corruption), clause 40 (Official Secrets Act) and Schedule 14 (TUPE), and the indemnities given by the Contractor in clause 11 (Health and Safety) 16 (intellectual Property), clause 19 (Data Protection) and Schedule 14 (TUPE).
 - b) In respect of all other claims, losses or damages, whether arising in tort (including negligence), breach of contract or otherwise in connection with this Contract, shall in no event exceed [125% of the contract value – this is the minimum liability cap that the Authority will accept and subject to a risk assessment by the Authority can be increased at the discretion of the Authority].
- 23.5 Subject to clause 23.6 the maximum aggregate liability of the Authority under the Contract, whether arising in tort (including negligence), breach of contract or otherwise in connection with this Contract, shall in no event exceed [125% of the contract value – this is the

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maximum liability cap that the Authority will accept and subject to a risk assessment can be reduced to 100% at the discretion of the Authority].

- 23.6 Notwithstanding any other provision of this Contractor neither party limits or excludes its liability for:
- a) fraud or fraudulent misrepresentation;
 - b) death or personal injury caused by negligence;
 - c) breach of any obligation as to title implied by statute; or
 - d) any other act or omission, liability for which may not be limited under any applicable law.

24. Insurance

- 24.1 The Contractor shall throughout the Contract Period maintain the following insurances with a reputable insurance company:
- a) Public liability insurance against all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than [£insert figure sufficient to cover potential liability] in respect of any one incident;
 - b) professional indemnity insurance under which the cover is not less than [£ insert figure to cover potential liability] in respect of any one incident and shall maintain such cover for six (6) years after the end of the Contract for all claims to which this clause applies.
 - c) [any other insurance requirements].
- 24.2 The Contractor shall upon request made from time to time produce to the Authority documentary evidence that the insurances required by clauses 24.1(a) and 24.1(b) [and 24.1(c)] are properly maintained.
- 24.3 The Contractor shall also maintain Employer's Liability Insurance in accordance with the Employers Liability (Compulsory Insurance) Act 1969 and such insurance policy (ies) shall incorporate a waiver of subrogation rights against the Authority.

25. Default by Contractor

- 25.1 If the Contractor is in breach of any of its material obligations under the Contract [which for the purposes of this clause 25 (Default) shall include more than [x] number of Service Level Failures], the Authority shall be entitled to give the Contractor notice in writing to remedy such breach (Default Notice).
- 25.2 The Authority shall specify in the Default Notice a period for compliance with the notice and in doing so shall have regard to the nature of the breach Default Notice.

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- 25.3 If the Contractor fails to comply with a Default Notice within the time specified by the Authority, or such longer period as the Authority, at its discretion, may subsequently allow in writing, the Authority shall be entitled forthwith to terminate the Contract and either carry out the Services itself at the Contractor's risk, or procure or employ others to carry out the Services that the Contractor has not performed at the Contractor's risk and cost.
- 25.4 Upon such termination, the Authority shall be under no obligation to pay the Contractor any further sums until the whole of the Services, which were to have been provided by the Contractor under the Contract, have been completed. Upon such completion the Authority shall pay to the Contractor, or be entitled to recover from the Contractor, the difference between the sums due to the Contractor for the Services performed by the Contractor in accordance with the Contract up to the date of termination, and the costs incurred by the Authority in the completion of the Services, together with the direct damages suffered by the Authority arising out of the Contractor's default.

26. Termination

- 26.1 Without prejudice to any other provisions of this Contract, this Contract may be terminated:
- a) immediately pursuant to clause 25.3;
 - b) immediately upon notice by either party if the other party becomes bankrupt or makes any composition or arrangement with his creditors or has a proposal in respect of his company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or has an application made under the Insolvency Act 1986 in respect of his company to the court for the appointment of an administrator or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking is duly appointed or has an administrative receiver, as defined in the Insolvency Act 1986 appointed or possession is taken by or on behalf of any creditor of any property the subject of a charge;
 - c) under clause 16.10;
 - d) under clause 40.2;
 - e) under clause 46.2;
 - f) under clause 48.2;
 - g) for any breach by the Contractor of clause 49 or if the Contractor otherwise fails to comply with The Pensions Act 2004; or
 - h) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply

27. Consequences of termination

- 27.1 The expiry or termination of this Contract shall be without prejudice to any rights or remedies available to, or any obligations or liabilities accrued to, either party at the effective date of termination.

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- 27.2 Upon termination of this Contract for any reason, subject to the provisions of Clause 25 (Default by the Contractor) the Contractor will be paid the Charges and expenses in accordance with this Contract on a proportional basis for Services properly performed up to and including the effective date of termination.
- 27.3 Upon expiry or termination:
- a) where any Charges have been paid for Services not properly performed prior to the effective date of such expiry or termination, the Contractor shall repay to the Authority an amount equal to the sum of such Charges and any duties or taxes paid by the Authority to the Contractor in respect of such Charges;
 - b) the Contractor shall deliver to the Authority all materials developed in performance of the Services then in the Provider's possession or control whatever their state of development at that time, and all materials and information reasonably required by the Authority to complete any partially completed materials and continue delivery of the Services itself or through another third party.
- 27.4 Unless otherwise notified in writing by the Authority prior to the expiry or termination of this Contract, or as otherwise agreed in the Data Processing Table in Schedule 1 (Services) the Contractor shall on expiry or termination delete from its records and dispose of any and all remaining materials and property belonging or relating to the Authority, including all Authority Data, Personal Data and Confidential Information, and all copies of the same, then in its possession, custody or control, and shall certify in writing to the Authority that this has been done, provided that the Contractor shall be entitled to retain one copy of any such information if and solely to the extent required for the purposes of satisfying any of its audit and regulatory requirements.
- 27.5 Provisions of the Contract which are either expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.
- 28. Costs**
- 28.1 Each party shall bear its own costs with regard to the finalisation of this Contract prior to its execution.
- 29. Severance of terms**
- 29.1 If any provision contained in this Contract is held by any competent authority to be invalid or unenforceable in whole or in part, it shall insofar as it is severable from the remainder of the Contract, be deemed to be omitted from the Contract and the validity of the other provisions contained in this Contract and the remainder of the provision in question shall not be affected thereby.
- 30. Entire agreement**
- 30.1 This Contract contains or expressly refers to the entire agreement between the parties with respect to the subject matter hereof and expressly excludes any warranty, condition or

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other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties, and each party acknowledges and confirms that it does not enter into this Contract in reliance on any representation warranty or other undertaking not fully reflected in the terms of this Contract.

31. Disputes

- 31.1 The parties each agree that they will attempt in good faith to resolve any claim or dispute arising out of or in connection with the Contract promptly through negotiations between their respective senior executives and management. If the parties are unable to resolve the dispute or claim in accordance with this clause 31.1, either party may commence proceedings in accordance with clause 47.
- 31.2 Nothing in this clause 31 (Disputes) shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

32. Contracts (Rights of Third Parties) Act 1999

- 32.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. For the avoidance of doubt the consent of any person other than the Authority (or the Contractor, as the case may be) is not required to vary or terminate this Contract.
- 32.2 Except as provided in clause 32.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause 32.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

33. Non-discrimination

- 33.1 The Contractor shall:
- a) comply with and maintain policies to ensure that it and its Sub-Contractors comply with their and the Authority's statutory obligations under the Equality Act 2010, and not unlawfully discriminate against any person in decisions to recruit, train, promote, discipline, or dismiss or in the provision of the Services (whether in relation to marital status, colour, race, gender, religious belief, sexual orientation, nationality (including citizenship), on the grounds of their disability or otherwise);
 - b) comply with the Authority's reasonable requirements from time to time in relation to the elimination of unlawful discrimination and promotion of equality, opportunity and good relations between persons of different racial groups to the extent necessary to ensure compliance with the provisions of the Equality Act 2010;
 - c) provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with this clause 33 (Non-discrimination)

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including, if requested, recruitment advertisements or other literature and details monitoring applicants and employees;

- d) exercise its duty under the Equality Act 2010 to make reasonable adjustments as defined and described in that Act;
- e) observe, as far as is reasonably practicable, the Equality and Human Rights Commission's Codes of Practice published from time to time during the Contract Period (or any codes published by any body that replaces the Equality and Human Rights Commission);
- f) take all reasonable steps to procure the observance of the provisions of clause 33.1 in the provision of the Services by all employees, agents and consultants of the Contractor and its Sub-Contractors.

33.2 In the event of any finding of unlawful sex, racial or disability discrimination being made against the Contractor or its Sub-Contractors during the Contract Period by any court or tribunal, or of an adverse finding in any formal investigation (in the case of sex and racial discrimination only) by the Equality and Human Rights Commission over the same period, the Contractor shall inform the Authority of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.

34. Human rights

34.1 The Contractor shall comply with the Human Rights Act 1998 and any regulations or code of practice made thereunder and in carrying out such obligations shall act as though the statutory provisions relating to public authorities under the Human Rights Act 1998 and any regulations or code of practice made thereunder applied to the Contractor and shall indemnify the Authority in respect of all actions, claims, liabilities and demands suffered or incurred by the Authority arising out of any breach by the Contractor of this clause.

35. Environmental impact

35.1 The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.

35.2 The Contractor shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this clause 35 (Environmental impact) by the Contractor.

36. Publicity

36.1 Except to the extent that it is already in the public domain as a result of the Transparency Obligations, the Contractor shall not advertise or publicly announce that it is supplying the

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Services or undertaking work for the Authority without the prior consent of the Authority, such consent not to be unreasonably withheld.

37. Anti-corruption and collusion

- 37.1 The Contractor undertakes and warrants that neither it nor the Contractor's staff, employees or Sub-Contractors have offered, given or agreed to give, nor shall offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the obtaining of the Contract or the execution of the Contractor's obligations under this Contract or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to the Contract.
- 37.2 The Contractor warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.
- 37.3 The Contractor warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party relating to its pricing under this Contract and further warrants and undertakes that it has complied, and will at all times comply, with the provisions of the Competition Act 1998 (or equivalent anti-trust legislation or regulations applicable in the countries in which the Contractor operates or is to provide the Services) in connection with this Contract and the provision of the Services. Nothing under this clause 37.3 is intended to prevent the Contractor from discussing the terms of the Contract and the Contractor's pricing with the Contractor's professional advisors.

38. Agency

- 38.1 The Contractor is not and shall in no circumstances hold itself out as being the agent of the Authority, otherwise in circumstances expressly permitted by the Contract.

39. Whistle-blowing

- 39.1 The Contractor confirms that the Head of Complaints and Information Disclosure (contacted via: staffwhistleblowing@thepensionsregulator.gov.uk) to the Authority is authorised as a person to whom the Contractor's staff may make a qualifying disclosure under the Public Interests Disclosure Act 1998 and declare that any of its staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment. The Contractor further declares that any provision in an agreement purporting to preclude a member of its staff from making a protected disclosure is void.

40. Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

- 40.1 To the extent such legislation is applicable to the Contractor, the Contractor shall comply with, and shall ensure that persons employed by the Contractor comply with, the provisions of:
- a) The Official Secrets Acts 1911 to 1989; and

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b) Section 182 of the Finance Act 1989.

40.2 In the event that the Contractor or persons employed by the Contractor fail to comply with this clause 40 (Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989), the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

41. Virus protection

41.1 The Contractor shall maintain throughout the Contract Period fully operational, effective, appropriate and up-to-date virus protection measures to minimise the risk of infections, loss or damage to any of the Authority's data (including the Authority Data). The Contractor shall also take all reasonable steps to minimise the risks of propagation and onward transmission of any virus. Such steps shall include regular and appropriate awareness programmes for the Contractor's staff on virus protection measures. The Contractor shall provide the Authority (upon demand) with written details of such virus protection measures that the Contractor has in place.

41.2 The Contractor shall notify the Authority immediately of:

- a) any virus infections that occur in any locations where the Authority's data is processed/stored;
- b) the damage caused to the Authority's data; and
- c) the actions that have been taken to eradicate the virus.

42. Waiver

42.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

42.2 A waiver of any default under the Contract shall not constitute a waiver of any subsequent default.

43. Counterparts

43.1 This Contract may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.

44. Audit access

44.1 The Contractor shall keep or cause to be kept full and accurate records of the Services performed under the Contract (including records in relation to the payment of the Charges) for seven (7) years after completion of the Services.

44.2 The Contractor shall grant to the Authority, any statutory auditors of the Authority and their respective authorised agents ('**Auditors**') the right of reasonable access to the records

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referred to in clause 44.1 and/or any premises of the Contractor and shall provide all reasonable assistance to the Authority and the Auditors at all times during and after the Contract Period for the purposes of enabling the Authority and the Auditors to carry out an audit of the Contractor's compliance with this Contract including all activities, charges, performance, security and integrity in connection therewith. Subject to clause 44.4, the Contractor shall be repaid any reasonable expenses incurred in giving any such reasonable assistance.

- 44.3 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the Contractor or any third party the Authority and their respective authorised agents shall have the right of immediate access to the records and/or any Contractor's premises described in clauses 44.1 and/or 44.2 and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract Period and at any time thereafter.
- 44.4 If any audit or investigation pursuant to this clause 44 (Audit access) reveals that the Authority has been overcharged or has made an overpayment in connection with the Contract, the Contractor shall reimburse the Authority the amount of the overcharge or overpayment within 14 days, and shall reimburse the Authority for the reasonable costs incurred by the Authority and the Auditors in respect of the relevant audit or investigation. For the avoidance of doubt, the Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this clause 44 in the event that the relevant audit or investigation reveals no fraudulent activity or other impropriety by the Contractor, its employees, agents or Sub-Contractors.

45. Transfer of Undertakings (Protection of Employment) (TUPE)

- 45.1 The provisions of Schedule 14 (TUPE) shall apply in relation to the obligations of the parties arising from TUPE.

46. Force Majeure

- 46.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract for so long as and to the extent that such performance is rendered impossible by an event of Force Majeure, provided that:
- a) the Contractor shall use its best endeavours to fulfil its obligations under the Contract; and
 - b) the party affected by the Force Majeure event shall as soon as reasonably practicable serve notice on the other party specifying the circumstances of the Force Majeure event.
- 46.2 If the Force Majeure event is such as to prevent or substantially delay the future performance of the Contract the Authority may terminate the Contract by written notice to the Contractor but shall pay the Contractor such reasonable sum agreed between the parties in respect only of the expenditure actually incurred and commitments entered into by the Contractor in the performance of the Contract up to the date of the Force Majeure event which have not been covered by the payments already made to the Contractor.

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47. Governing Law and Jurisdiction

47.1 This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law and the parties hereby irrevocably submits to the jurisdiction of the English courts to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Contract or its subject matter.

48. Conflicts of interest

48.1 The Contractor shall disclose to the Authority Representative any actual or potential conflict of interest arising from the Contractor's provision of the Services as soon as is reasonably practical after becoming aware that such actual or potential conflict exists.

48.2 Should the parties be unable to either remove any conflict of interest notified under clause 48.1 or clause 48.3 and/or to alleviate its effect, the Authority shall have the right to terminate the Contract upon giving notice to the Contractor.

48.3 The Contractor shall immediately notify the Authority's representative of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the Contractor (including its reputation and standing) and/or the Authority of which it is aware or anticipates may justify the Authority taking action to protect its interests.

49. The Pensions Act 2004– Section 82 Restricted information

49.1 In this clause 'Restricted Information' means 'restricted information' as defined section 82(4) of the Pensions Act 2004 (the 2004 Act).

49.2 To facilitate the discharge by the Contractor of its obligations under the Contract, and in the exercise of its statutory functions as set out in the 2004 Act, the Authority may disclose Restricted Information to the Contractor.

49.3 Where the Authority discloses Restricted Information to the Contractor in accordance with this clause, then, in relation to that Restricted Information:

- a) for the purposes of section 82 (1) (b), of the 2004 Act, the Contractor will be a 'person who receives information' from the Regulator, whether directly or indirectly;
- b) the Contractor notes the provisions relating to the disclosure of Restricted Information contained in section 82 of the 2004 Act, in particular section 82(5) and (6); and
- c) the Contractor will be liable for any breach of section 82 of the 2004 Act in relation to that Restricted Information resulting from its acts or omissions or the acts or omissions of any sub-contractors.

49.4 A disclosure of Restricted Information by the Contractor in breach of section 82 of the 2004 Act will be a material breach of the Contract and the Authority will be entitled to terminate the Contract forthwith.

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50. Transparency and Information

- 50.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions for the FoIA, the content of the Contract is not Confidential Information.
- 50.2 The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FoIA.
- 50.3 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FoIA redacted), including from time to time agreed changes to the contract, to the general public.
- 50.4 The Authority may consult with the Contractor to inform its decision regarding any exemptions and redactions but the Authority shall have the final decision in its absolute discretion to determine the extent to which the terms of the Contract as published under clause 50.1.
- 50.5 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract in accordance with this clause 50(Transparency and Information).
- 50.6 In addition to its obligations pursuant to the FOIA, the Authority is subject to control and reporting within Government. In particular, it reports to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement, including ensuring value for money and related aspects of good procurement practice.
- 50.7 For these purposes, the Authority may disclose within Government any of the Contractor's documentation/information (including any that the Contractor considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. The information will not be disclosed outside Government. Contractors taking part in this competition consent to these terms as part of the competition process

51. Performance bond

- 51.1 [Not applicable] or
- 51.2 On the execution of the Contract, the Contractor shall at its own expense provide a bond from a bank or insurance company approved by the Authority for a sum equal to 100% of the estimated annual Charges payable under the Contract to guarantee the due performance of the Contractor's obligations under the Contract and for the payment by the Contractor to the Authority of all sums due hereunder.
- 51.3 The Contractor shall ensure that such bond remains in force throughout the Contract Period and satisfies any additional requirements set out in Schedule 10 (Performance Bond).

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52. Parent Guarantee

[Not applicable] OR

52.1 [On / Within **[insert number]** Working Days following] the Commencement Date, the Contractor shall procure that **[insert the name, address and company number of guarantor]** (the “**Guarantor**”) shall:

- a) execute and deliver to the Authority the deed of guarantee in favour of the Authority in the form set out in Schedule 11 (the “**Guarantee**”); and
- b) deliver to the Authority a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.]

53. Notices

53.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one party to the other shall have any validity under the Contract unless made in writing by or on behalf of the party concerned.

53.2 Any notice which is to be given by either party to the other shall be given by letter (sent by hand, pre-paid first class post, or recorded delivery), or by facsimile transmission or electronic mail. Such letters shall be addressed to the other party in the manner referred to in clause 53.3 below.

53.3 A notice is deemed to have been received:

- a) if delivered by hand, at the time of delivery;
- b) in the case of pre-paid first class post, or recorded delivery or courier, 48 hours from the time of posting;
- c) if sent by facsimile, 4 hours from the time of sending;
- d) if sent by electronic mail, 4 hours from the time of sending provided no “out of office auto-reply” is received by the sender within one hour of transmission of the notice; or
- e) in each case sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail (other than by way of an “out of office auto-reply”).

53.4 If deemed receipt under clause 53.3 is not within the hours of 09:00 to 17:00 on a Working Day, the notice will be deemed to be received at 09:00 on the first subsequent Working Day. To prove service of notice, it is sufficient to prove that the envelope containing the notice was properly addressed and posted or handed to the courier.

53.5 For the purposes of this clause 53 (Notices), the address of each party shall be:

For the Authority:

The Pensions Regulator
Napier House
Trafalgar Place

The Pensions Regulator

Brighton
BN1 4DW

For the attention of: Head of Procurement
Email: aprocurement@tpr.gov.uk

For the Contractor:

[Title]

[Address]

For the attention of: []

Tel: []

Email: []

- 53.6 Either party may change its address for service by serving a notice in accordance with this clause 53 (Notices).

SAMPLE

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Schedule 5

Service Levels

This Schedule sets out the Service Levels, the performance of which the Parties have agreed to measure. The Schedule also provides a methodology for monitoring the provision of the Services.

2. The Services Levels:

Service Level Performance Criterion	Key Indicator	Service Level Performance Measure
<i>[Example: Accurate and timely billing of Authority]</i>	<i>[Example: A valid invoice is submitted within the timeframe specified in this Contract]</i>	<i>[Example: At least 98% at all times]</i>
<i>[Example: Access to Customer support]</i>	<i>[Example: Customer support is available during the periods specified in this Contract]</i>	<i>[Example: At least 98% at all times]</i>
<i>[Example: Complaints handling]</i>	<i>[Example: Complaints are dealt with promptly and in any event must be acknowledged within 48 hours of receipt Availability/timelines]</i>	<i>[Example: At least 98% at all times]</i>
<i>[Example: Provisions of specific Services]</i>	<i>[Example: Quality, only include if measurable]</i>	<i>[Example: At least 98% at all times]</i>
<i>[Example: Timely provision of the Services as per the Delivery Plan]</i>	<i>[Example: Services must be delivered within the timeframes specified in this Contract availability]</i>	<i>[Example: At least 98% at all times]</i>

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Schedule 6

Contract Management

Once every three (3) months from the Commencement Date the Contractor shall provide the Authority at the end of the three (3) month period (the **Service Period**) with the following information (the **Performance Monitoring Reports**) in respect of the relevant Service Period just ended:

- for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- a summary of all failures to achieve Service Levels that occurred during that Service Period (Service Level Failures) with an explanation of the reasons for the Service Level Failure and details of the action taken to ensure that the failure is not repeated;
- such other details as the Authority may reasonably require from time to time.

The Performance Monitoring Reports shall be discussed at the relevant contract management as indicated in the table below.

Meeting	Attendees	Frequency	Type	Quorum (minimum number of members)	Responsibility for agenda and minutes

Report	Type	Content	Frequency	Circulation list
Performance Management Report	Reporting against Service Levels as specified in Schedule 5	Service level measurements for preceding Service Period		

Schedule 7

Change Control

Change Control Procedure

1. Principles
 - 1.1 Where the Authority or the Contractor sees a need to change this agreement, the Authority may at any time request, and the Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7 (Change Control Procedure).
 - 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Contractor shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms prior to such Change.
 - 1.3 Any discussions which may take place between the Authority and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
 - 1.4 Any work undertaken by the Contractor and the Contractor's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7, shall be undertaken entirely at the expense and liability of the Contractor.
2. Procedures
 - 2.1 Discussion between the Authority and the Contractor concerning a Change shall result in any one of the following:
 - (a) No further action being taken; or
 - (b) The execution of a Change agreement in the form set out below (Change Agreement).
 - 2.2 A written request for a Change made by the Authority shall contain the information set out in Section 2 of the Change Agreement.
 - 2.3 Where a Change request is received from the Authority, the Contractor shall reply in writing within 3 weeks of the date of the request confirming details of the likely impact, if any, of the Change on other aspects of this agreement including as a minimum the information set out in Section 3 of the Change Agreement.

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- 2.4 The Authority shall consider the information provided by the Contractor pursuant to paragraph 2.3 to decide whether it wishes to proceed with the Change in which event it will submit the Change Agreement to the Contractor for signing.
- 2.5 The Contractor shall return the signed Change Agreement as soon as possible and in any event within 14 days of receiving it from the Authority.
- 2.6 A Change Agreement signed by the Authority and by the Contractor shall constitute an amendment to this agreement taking effect from the date of the Change agreement unless otherwise agreed in writing between the parties.

SAMPLE

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The Change Control process requires a written agreement between the parties in the form set out below.

Change agreement

Section 1

Administration [to be completed by the Authority]	
Contract number subject to change	[Insert Reference]
Contract title subject to change:	[Insert Contract Title]
Contract between	The Pensions Regulator and [Insert Contractor Name]
Contract dated	[Insert Contract Commencement Date]
Change agreement number	[CCXXX]
Change agreement dated	[Insert date]

Section 2

Change to Services [to be completed by Authority End-User]	
Title of change	
Full description of change	
What issues this change will address	
Details of the change and required outcomes	
Implementation Instructions	

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Section 3

Information [to be completed by the Contractor]	
Timetable for the provision of the Change	[Detail the timetable breakdown]
Charges as approved by the Authority	[Cost breakdown]
Documentation to be provided	[Detail documentation and party to provide each document]
Training to be provided	[If applicable]
Working arrangements	[If applicable]
Any contractual issues	[If applicable]

Section 4

Authority approval [to be completed by delegated Authority representative]	
Authority representative (print name)	
Signed	
Date	

Section 5

Contractor agreement [to be completed by delegated Contractor representative]	
Contractor representative (print name)	
Signed	
Date	

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Schedule 8

Key Personnel

Part 1. Authority's Key Personnel [to be completed by Authority representative]

Name	Job Title	Responsibilities
	Authority Representative	
	Authority Services Manager	
	[Others]	

Part 2. Contractor's Key Personnel [to be completed by Contractor representative]

Name	Job title	Responsibilities
	Contractor Representative	
	Contractor Services Manager	
	[Others]	

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Schedule 9

Performance Bond

Dear Sirs,

On demand performance bond No: [number] dated [date]

1. We understand that you are about to enter into a contract, reference [insert reference], dated [date] (Contract) with [name and address of the Principal] (Contractor) for [details of underlying contract] and that under the Contract, you require an on demand bond for [number]% of the contract price in respect of the Contractor's performance of the Contract.
2. In consideration of your entering into the Contract, we [name and address of bank] irrevocably and unconditionally promise to pay, as primary obligor, to you on your first written demand [and waiving all rights of objection and defence and without reference to the Contractor] an amount or amounts not exceeding in aggregate [maximum amount of bond] provided that your demand complies with the provisions of this bond.
3. This bond shall expire at the close of normal banking hours at this office on [date] (Expiry).
4. Your demand under this bond must be received at this office before Expiry and must be in the form of a statement signed by you that:
 - 4.1 the Contractor has failed to perform the Contract in accordance with its terms and conditions;
 - 4.2 as a result of such failure, the amount claimed is due to you;
 - 4.3 specifies in what respects the Contractor has so failed; and
 - 4.4 specifies the amount claimed.We shall accept such demand as evidence, for the purposes of this bond alone, that the amount claimed is due to you under this bond.
5. On Expiry, this bond shall become null and void, whether returned to us for cancellation or not, and any demand received after Expiry shall be ineffective.
6. This bond is personal to you and is not transferable or assignable. For the avoidance of doubt, nothing in this bond shall confer on any third party any benefit or the right to enforce any term of this bond.

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7. This bond and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
8. The parties to this bond irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this bond or its subject matter or formation (including non-contractual disputes or claims).

Yours faithfully,

.....
For and on behalf of
[Issuing bank]

SAMPLE

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Schedule 10

Form of Parent Guarantee

This Deed of Guarantee is made on the **[insert date]**

Between:

- (1) **[insert company name]** [a company incorporated in England and Wales with **[insert company number]** whose registered office is situated at **[insert address]** called the 'Guarantor' of one part; in favour of
- (2) The Pensions Regulator situated at Napier House, Trafalgar Place, Brighton, BN1 4DW (hereinafter called the 'Beneficiary' which expression shall include its successors and assigns) of the other part.

WHEREAS

- A. The Beneficiary has entered into the Contract dated **[insert date]** (hereinafter called the 'Contract') with **[insert Contractor name]** whose registered office is situated at **[insert Contractor address]** (hereinafter called 'The Contractor') for **[insert service requirement]** (hereinafter called the 'services') for the sum mentioned in the Contract: and **[insert value]**.
- B. It is a condition of the Contract that the Guarantor executes and delivers this deed to the Beneficiary.
- C. the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

Now in consideration of the Beneficiary entering into the Contract, the Guarantor **HEREBY AGREES** with the Beneficiary as follows:

1. The Guarantor will in all respects guarantee the due and proper performance of the Contract and the due observance and punctual performance of all obligations, duties, undertakings, covenants and conditions by or on the part of the Contractor contained therein and to be observed and performed by it, which guarantee shall extend to included any variation or addition to the Contract.
2. In the event of the Contractor failing to carry out, observe or perform all any of the said obligations, duties undertakings, covenants and conditions under the Contract (unless relieved from the performance of any part of the Contract by statute or by the decision of a court or tribunal of competent jurisdiction) the Guarantor will be liable for and shall indemnify the Beneficiary against all losses, damages, costs and expenses, whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe.
3. The Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:
 - a. Any alteration to the nature or extent of the services or otherwise to the terms of the Contract;
 - b. Any allowance of time, forbearance, indulgence or other concession granted to the Contractor under the Contract or any other compromise or settlement of any dispute

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- between the Beneficiary and the Contractor (but so that the Beneficiary shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Contractor shall have complied with such terms); or
- c. Any unenforceability, illegality or invalidity of any of the provisions of the Contract or any of the Contractor's obligations under the Contract, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
 - d. The liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity or any change in the name, composition or constitution of the contractor or the Guarantor.
4. This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Contractor under the Contract shall have been satisfied or performed in full and is in addition to an not in substitution for any other security which the Beneficiary may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Contractor.
 5. So long as any sums are payable (contingently or otherwise) by the Contractor to the Beneficiary under the terms of the Contract then the Guarantor shall not exercise any right of set off or counterclaim against the Contractor or any other person or prove in competition with the Beneficiary in respect of any payment by the Guarantor hereunder and in case the Guarantor receives any sum from the contractor or any other person in respect of any payment of the Guarantor hereunder the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Guarantee.
 6. The Guarantor will not without prior written consent of the Beneficiary hold any security from the Contractor or any other person in respect of the Guarantor's liability hereunder or in respect of any liabilities or other obligations of the Contractor to the Guarantor. The Guarantor will hold any security held by it in breach of this provision in trust for the Beneficiary.
 7. This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the Beneficiary. The Beneficiary's rights under this Guarantee are in addition to and not exclusive of those provided by law.

IN WITNESS THEREOF the Guarantor has caused this instrument to be executed and delivered as a Deed this day and year first before written.

**Executed as a Deed by
[name of executing
company]**

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acting by [NAME OF FIRST DIRECTOR], a director and [Signature of First Director] Director
[NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary] [Signature of Second Director or Secretary] Director or Secretary

SAMPLE

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Schedule 11

Health & Safety

Without limiting the requirements of the Terms and Conditions, the Contractor shall take all necessary measures and precautions to ensure the health and safety of all of its personnel and other personnel on the Authorities premises.

Standard conditions of entry to and work on the Authority's premises for contractors

The following conditions of entry are applicable to the Authority's premises.

Condition of Entry

Persons will be issued with a visitor's ID card. This card is to be displayed at all times and is used to gain access and egress from site.

Inspections of Premises

Access to any area within the Authority's premises by contractors, suppliers, visitors and consultants is only permissible with the prior approval of the regulator's representative, who will arrange the necessary passes. All such persons visiting the site must report to security in reception.

Prohibited Materials

Alcohol, non-prescription drugs, firearms of any type and some noxious materials are not permitted on the regulator's site. If in doubt, particularly with prescribed medications, the Contractor shall seek clarification from the regulator's representative.

Areas to be photographed within Napier House must be defined and agreed with the Authority. Photography of external areas within the Trafalgar Place site may take place only with the agreement of the Landlord.

Details of Work Force

The Contractor intending to start on site must submit a list of its personnel and their classification with proof of relevant qualification training and competencies to the Authority. This list shall be continually updated.

The Authority reserves the right to exclude or demand the removal of any individual from the site.

Compliance with Safety Regulations

Safety is given the highest priority at the Authority's premises. The Contractor shall be responsible for the safety of its work force and sub-contractors.

All incidents shall be reported to the Authority, using appropriate documentation.

Hazards reported shall be attended to immediately. Any hazard left by the Contractor will be attended to by the Authority and costs incurred will be to the Contractor's account.

Evacuation Procedure

Evacuation of the Authority's premises in the event of an emergency, procedures for evacuation, assembly areas, etc. are displayed on notice boards at the premises. The Contractor shall acquaint its work force with these procedures.

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In the event of an evacuation, or practice, extension in time can be claimed, but not the costs associated with time lost.

Evacuation drills will be practised on a regular basis. In the interest of safety the Contractor must adhere to the procedures.

Conduct on Site

The Authority may remove any person from site who behaves in an objectionable, hazardous or illegal manner, or in contravention of these provisions.

Smoking

Smoking is prohibited in all buildings and areas which form part of the Trafalgar Place site. Smoking is allowed only during designated breaks, in areas outside the Trafalgar Place site.

Power, Telephone and Water

Whilst the Authority will endeavour to ensure continuity of site services no claims will be considered from the Contractor due to failure of the site systems.

Damage to Property

Any damage to the Authority's property caused by or attributed to the Contractor or its sub-contractors shall be made good at the Contractor's expense, as soon as possible after the occurrence. In case of dispute, the Authority shall deduct and hold reasonable costs for restitution from the progress claim or lump sum payment until the dispute is resolved in accordance with the terms of the Contract.

Fire Reporting

In the event of an emergency or fire, please notify the Authority. Any fire on site shall be reported to one of the regulator's fire wardens.

The fire fighting facilities available on site are only to be used for fighting fires and shall not be used for any other purpose. Boosted fire systems in particular shall only be used by authorised personnel.

First Aid

The Authority operates a basic First Aid facility, which may be used by the Contractor. No charge is made for this facility unless use is excessive.

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Schedule 12

Sub-Contractors

This schedule contains details of the Sub-Contractors to be employed by the Contractor in the provision of the proposed Services.

The Authority would need to approve any proposed changes in Sub-Contractor during the Contract's lifecycle.

Sub-contractors [to be completed by the Contractor]	
Sub-contractor 1	
Sub-contractor name:	
Sub-contractor address:	
Sub-contractor company registration number:	
Sub-contractor's responsibility (i.e. what area of service):	
Sub-contractor 2	
Sub-contractor name:	
Sub-contractor address:	
Sub-contractor company registration number:	
Sub-contractor's responsibility (i.e. what area of service):	
Sub-contractor 3	
Sub-contractor name:	
Sub-contractor address:	
Sub-contractor company registration number:	
Sub-contractor's responsibility (i.e. what area of service):	

Schedule 13

Commercially Sensitive Information

Please list any information that is either:

- Commercially sensitive;
- Provided in confidence; and/or
- Personal data.

Commercially sensitive information would include information relating to a party, which has been provided to the Authority in confidence for a period to be set out in this schedule; and/or which constitutes a trade secret and includes its Intellectual property rights or its business or that which is indicated by that party and if disclosed, would cause it significant disadvantage or material financial loss.

Please be aware that the Authority may consult with the Contractor to inform its decision regarding any exemptions and redactions but the Authority shall have the final decision in its absolute discretion; the Contractor is requested to assist and cooperate with the Authority to enable any agreement or contract to be published.

Please also be aware that the Authority may publish all contracts of greater value than £10,000 on the government Contracts Finder website.

N.B. It will be interpreted by a nil response to this schedule that the Contract is wholly acceptable for publication

Please complete the form below detailing all information that you would request be redacted prior to Contract publication followed by the classification (under the Freedom of Information Act) of the information. These will be one of the following:

- S40 - Information is personal data
- S41 - Information was provided in confidence
- S43 - Information is commercially sensitive

(For commercially sensitive redaction requests, please set out below why you consider the information to be commercially sensitive.)

Information redaction request	Information classification (S40 / S41 / S43)

Schedule 14

TUPE

1. Definitions

In this Schedule, the following definitions shall apply:

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- f) employment claims whether in tort, contract or statute or otherwise;
- g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

Former Contractor: a Contractor supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Contractor (or any sub-contractor of any such sub-contractor);

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

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Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;

Replacement Contractor: any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

Replacement Sub-contractor: a sub-contractor of the Replacement Contractor to whom Transferring Contractor Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Contractor or any Sub-contractor to a Replacement Contractor or a Replacement Sub-contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Contractor's Provisional Personnel List or Contractor's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- c) the identity of the employer or relevant contracting Party;
- d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- e) their wages, salaries and profit sharing arrangements as applicable;
- f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- 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, parental leave, maternity leave or other authorised long term absence;
- i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

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Contractor Personnel: all directors, officers, employees, agents, consultants and contractors of the Contractor and/or any Sub-contractor engaged in the performance of the Contractor's obligations under this Agreement;

Contractor's Final Personnel List: a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Contractor's Provisional Personnel List: a list prepared and updated by the Contractor of all Contractor Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;

Transferring Contractor Employees: those employees of the Contractor and/or the Contractor's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. Interpretation

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

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

3. Procedure in the event of transfer

3.1 The Authority and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Contractor.

3.2 If any employee of the Authority and/or a Former Contractor claims, or it is determined in relation to any employee of the Authority and/or a Former Contractor, that his/her contract of employment has been transferred from the Authority and/or the Former Contractor to the Contractor and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- a) the Contractor shall, and shall procure that the relevant Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Contractor; and
- b) the Authority and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

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If an offer referred to in clause b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

If by the end of the 15 Working Day period specified in clause b):

- a) no such offer of employment has been made;
- b) such offer has been made but not accepted; or
- c) the situation has not otherwise been resolved,

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

4. Indemnities

4.1 Subject to the Contractor and/or the relevant Sub-contractor acting in accordance with the provisions of clause 0 to clause 0 and in accordance with all applicable employment procedures set out in applicable Law and subject also to clause 4.4, the Authority shall:

- a) indemnify the Contractor and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in clause 0 made pursuant to the provisions of clause 0 provided that the Contractor takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- b) procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor made pursuant to the provisions of clause 0 provided that the Contractor takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.2 If any such person as is described in clause 0 is neither re employed by the Authority and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-contractor within the 15 Working Day period referred to in clause 0 such person shall be treated as having transferred to the Contractor and/or the Sub-contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

4.3 Where any person remains employed by the Contractor and/or any Sub-contractor pursuant to clause 4.2, all Employee Liabilities in relation to such employee shall remain

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with the Contractor and/or the Sub-contractor and the Contractor shall indemnify the Authority and any Former Contractor, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-contractor.

4.4 The indemnities in clause 4.1:

- a) shall not apply to:
 - i. in any case in relation to any alleged act or omission of the Contractor and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - ii. any claim that the termination of employment was unfair because the Contractor and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- b) shall apply only where the notification referred to in clause a) is made by the Contractor and/or any Sub-contractor to the Authority and, if applicable, Former Contractor within six months of the Effective Date.

5. Procurement obligations

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

EMPLOYMENT EXIT PROVISIONS

6. Pre-service transfer obligations

6.1 The Contractor agrees that within 20 Working Days of the earliest of:

- a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

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- c) the date which is 12 months before the end of the Term; and
- d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

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

- 6.2 At least 28 Working Days prior to the Service Transfer Date, the Contractor shall provide to the Authority or at the direction of the Authority to any Replacement Contractor and/or any Replacement Sub-contractor:
 - a) the Contractor's Final Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
 - b) the Staffing Information in relation to the Contractor's Final Personnel List (insofar as such information has not previously been provided).
- 6.3 The Authority shall be permitted to use and disclose information provided by the Contractor under clause 6.1 and clause 6.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-contractor.
- 6.4 The Contractor warrants, for the benefit of the Authority, any Replacement Contractor, and any Replacement Sub-contractor that all information provided pursuant to clause 6.1 and clause 6.2 shall be true and accurate in all material respects at the time of providing the information.
- 6.5 From the date of the earliest event referred to in clause 6.1a), clause 6.1b) and clause 6.1c), the Contractor agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
 - a) replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

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- b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
- c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Personnel List;
- e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- f) terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List save by due disciplinary process,

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

- 6.6 During the Term, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- a) the numbers of employees engaged in providing the Services;
 - b) the percentage of time spent by each employee engaged in providing the Services;
and
 - c) a description of the nature of the work undertaken by each employee by location.
- 6.7 The Contractor shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Contractor and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Contractor and/or any Replacement Sub-contractor (as appropriate), in

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respect of each person on the Contractor's Final Personnel List who is a Transferring Contractor Employee:

- a) the most recent month's copy pay slip data;
- b) details of cumulative pay for tax and pension purposes;
- c) details of cumulative tax paid;
- d) tax code;
- e) details of any voluntary deductions from pay; and
- f) bank/building society account details for payroll purposes.

7. Employment regulations exit provisions

- 7.1 The Authority and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-contractor. Such change in the identity of the Contractor of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Contractor Employee.
- 7.2 The Contractor shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-contractor.

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- 7.3 Subject to clause 7.4, the Contractor shall indemnify the Authority and/or the Replacement Contractor and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- a) any act or omission of the Contractor or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - b) the breach or non-observance by the Contractor or any Sub-contractor occurring on or before the Service Transfer Date of:
 - i. any collective agreement applicable to the Transferring Contractor Employees; and/or
 - ii. any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-contractor is contractually bound to honour;
 - c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - i. in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - ii. in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to the Authority and/or Replacement Contractor and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - e) a failure of the Contractor or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
 - f) any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-contractor other than a Transferring Contractor Employee for whom it is alleged the Authority and/or the Replacement Contractor

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and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

- g) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.

7.4 The indemnities in clause 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- a) arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- b) arising from the Replacement Contractor's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

7.5 If any person who is not a Transferring Contractor Employee claims, or it is determined in relation to any person who is not a Transferring Contractor Employee, that his/her contract of employment has been transferred from the Contractor or any Sub-contractor to the Replacement Contractor and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- a) the Authority shall procure that the Replacement Contractor shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
- b) the Contractor may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-contractor, the Authority shall procure that the Replacement Contractor shall, or

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procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7 If after the 15 Working Day period specified in clause 7.5b) has elapsed:

- a) no such offer of employment has been made;
- b) such offer has been made but not accepted; or
- c) the situation has not otherwise been resolved

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

7.8 Subject to the Replacement Contractor and/or Replacement Sub-contractor acting in accordance with the provisions of clause 7.5 to clause 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 7.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9 The indemnity in clause 7.8:

- a) shall not apply to:
 - i. in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - ii. any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- b) shall apply only where the notification referred to in clause 7.5a) is made by the Replacement Contractor and/or Replacement Sub-contractor to the Contractor within six months of the Service Transfer Date.

7.10 If any such person as is described in clause 7.5 is neither re-employed by the Contractor or any Sub-contractor nor dismissed by the Replacement Contractor and/or Replacement

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Sub-contractor within the time scales set out in clause 7.5 to clause 7.7, such person shall be treated as a Transferring Contractor Employee and the Replacement Contractor and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 7.11 The Contractor shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Contractor Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- a) the Contractor and/or any Sub-contractor; and
 - b) the Replacement Contractor and/or the Replacement Sub-contractor.
- 7.12 The Contractor shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Contractor and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Contractor and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Contractor and/or Replacement Sub-contractor, shall promptly provide to the Contractor and each Sub-contractor in writing such information as is necessary to enable the Contractor and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 7.13 Subject to clause 7.14, the Authority shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Contractor Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee) arising from or as a result of:
- a) any act or omission of the Replacement Contractor and/or Replacement Sub-contractor;
 - b) the breach or non-observance by the Replacement Contractor and/or Replacement Sub-contractor on or after the Service Transfer Date of:

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- i. any collective agreement applicable to the Transferring Contractor Employees; and/or
 - ii. any custom or practice in respect of any Transferring Contractor Employees which the Replacement Contractor and/or Replacement Sub-contractor is contractually bound to honour;
- c) any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- d) any proposal by the Replacement Contractor and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees on or after their transfer to the Replacement Contractor or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- e) any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-contractor to, or in respect of, any Transferring Contractor Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;
- f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - i. in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - ii. in relation to any employee who is not a Transferring Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-contractor, to the Replacement Contractor or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

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- g) a failure of the Replacement Contractor or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period from (and including) the Service Transfer Date; and
- h) any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

7.14 The indemnities in clause 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

SAMPLE