

**Contract Dated 15<sup>th</sup> August 2022**

**Between the parties**

- 1) The Secretary of State for Education whose Head Office is at <redacted> acting as part of the Crown (“the Department”);

**And**

- 2) Eleanor Brazil (trading as EDB Associates Ltd) of <redacted> (“the Contractor”)

**Agreement relating to**

**The Provision of Non-Executive Commissioner Services in Herefordshire**

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## **Recitals**

The Contractor has agreed to act as the Department for Education's Children's Services Commissioner for Herefordshire County Council on the terms and conditions set out in this Contract.

The Department's reference number for this Contract is GRx501

## **1 Interpretation**

### **1.1** In this Contract the following words shall mean:-

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  (a) Government Department;  (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  (c) Non-Ministerial Department; or  (d) Executive Agency;
"the Charges"	means the contract price amounts set out in Schedule 2 as tendered by the Contractor and payable by the Department as consideration for the provision of Services;
"the Contract Manager"	<redacted>  <redacted>
"Contract Period"	means the duration of the Contract as set out in Clause 2 subject to any extensions.
"the Contractors Contract Manager"	<redacted>
"Confidential Information"	the Department's Confidential Information and/or the Contractor's Confidential Information;
"Contracting Department"	any contracting Department as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than

	the Department;
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities (or its successor portal);
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and <b>"Controls"</b> and <b>"Controlled"</b> shall be interpreted accordingly;
"Controller", "Processor," "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer"	Shall take the meaning given in the UK GDPR
"Crown"	means Queen Elizabeth II and any successor
"Crown Body"	any department, office or agency of the Crown;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
"DPA 2018"	means the Data Protection Act 2018
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	(i) the UK GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of personal data and privacy; (iii) all applicable Law about the Processing of personal data and privacy;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject (as defined in the UK GDPR) in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Department's Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs,

		developments, trade secrets, know-how, personnel, and suppliers of the Department, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Department's Intellectual Property Rights"		means all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Consultancy Services
"Environmental Regulations"	Information	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;
"FOIA"		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;
"Good Industry Practice"		means the standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
"Her Majesty's Government"		means the duly elected Government for the time being during the reign of Her Majesty and/or any department, committee, office, servant or officer of such Government
"Information"		has the meaning given under section 84 of the Freedom of Information Act 2000;
"Intellectual Property Rights"		means any copyright, rights in designs, database rights, domain names, trade marks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988
"Joint Controllers"		Where two or more Controllers jointly determine the purposes and means of processing

"KPIs"	Means the key performance indicators in relation to the Services set out in schedule 1 which the Contractor shall comply with.
"Law"	is any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of Section 4(1) EU Withdrawal Act 2018 as amended by EU (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Contractor is bound to comply.
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 2018.
"Processor Personnel"	employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract.
"Property"	means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.
"Protective Measures"	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 the such measures adopted by it including those set out in the Contract.
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may

be further detailed in the Services schedule 1.

"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Department and <b>"Regulatory Body"</b> shall be construed accordingly.
"Replacement Contractor"	Means any third party supplier appointed by the Department to supply any services which are substantially similar to any of the Services in substitution for the Contractor following the expiry, termination or partial termination of the Contract.
"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"the Services"	Means the services to be performed by the Contractor as described in Schedule 1;
"SME"	means a micro, small or medium-sized enterprise defined in accordance with the European Commission Recommendation 2003/361/EC and any subsequent revisions.
"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Sub-processor"	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract
"UK GDPR"	Means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679), as transposed into UK Law by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
"VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

**1.2** References to "Contract" mean this contract (and include the Schedules). References to "Clauses" and "Schedules" mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties

as if set out in full in this Contract.

- 1.3** Reference to the singular include the plural and vice versa and references to any gender include both genders and the neuter. References to a person include any individual, firm, unincorporated association or body corporate.

## **2 Commencement and Continuation**

- 2.1** The Contractor shall commence the Services on 16 August 2022 (“the Effective Date”) and, subject to Clause 10.1 shall complete the Services on or before 15 August 2023 (“the Expiry Date”) unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.

- 2.2** The contract will be reviewed after the report in December 2022 to consider whether further commissioner services are required for Herefordshire. If termination of this contract is required due to the services not been required in Herefordshire point 10.1 refers to the amount of notice the contractor will receive prior to termination contract end date.

- 2.3** The Department at its sole discretion may extend the Contract, subject to satisfactory performance of the Contractor, for a period of up to [12 months] by giving not less than 1 months’ notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.

- 2.3** This Contract shall be deemed to have been effective from 16 August 2022.

## **3 Contractor's Obligations**

- 3.1** The Contractor shall promptly and efficiently complete the Services in accordance with the provisions set out in Schedule 1.

- 3.2** The Contractor shall comply with the accounting and information provisions of Schedule 2.

- 3.3** The Contractor shall, in performing its obligations under the Contract:

3.3.1 conform to the requirements of the Services requirements (as set out in Schedule 1) and the Contractor’s Solution or as otherwise agreed in writing between the Parties;

3.3.2 carry out and complete the Services in a proper professional manner (taking account of the standards of a reasonably proficient practitioner) and in conformity with all reasonable directions and requirements of the Department specified by the Department from time to time;

3.3.3 comply with Good Industry Practice;

3.3.4 ensure that the Services are provided by competent and appropriately trained personnel;

3.3.5 comply with the Quality Standards and where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;



- 3.3.6 comply with the KPIs and service levels requirements set out in schedule 1;
- 3.3.7 comply with applicable Law, any applicable codes of practice or governmental regulation, and monitor compliance with relevant legislation;
- 3.3.8 comply with all health and safety legislation, adopt and maintain safe operating systems of work and appropriate safety policies in order to protect the health and safety of Personnel, employees of the Department, the service recipients and all other persons including members of the public; and
- 3.3.9 comply with all safety, security, acceptable use and other policies of the Department from time to time notified to it and procure that the Contractor's Personnel also comply.

#### **4 Departments Obligations**

- 4.1 The Department shall pay the Charges in compliance with the payment provisions of Schedule 2 provided that the Department has received full and accurate information and documentation as required by Schedule 2 to be submitted by the Contractor for work completed to the satisfaction of the Department.

#### **5 Changes to the Department's Requirements**

- 5.1 The Department shall notify the Contractor of any material change to the Department's requirement under this Contract.
- 5.2 The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Department, provided that it shall be entitled to payment for any additional costs above the Charges set out in Schedule 2, it incurs as a result of any such changes. The Parties shall the amount of such additional costs in writing, prior to implementing the changes.

#### **6 Management**

- 6.1 The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.
- 6.2 The Contractor shall address any enquiries about procedural or contractual matters in writing to the Contract Manager. Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

#### **7 Contractor's Employees and Sub-Contractors**

- 7.1 Where the Contractor enters into a contract with a supplier or contractor for the purpose of performing its obligations under the Contract (the "**Sub-contractor**") it shall ensure prompt payment in accordance with this clause 7.1. Unless otherwise agreed by the Department in writing, the Contractor shall ensure that any contract requiring payment to a Sub-contractor shall provide

for undisputed sums due to the Sub-contractor to be made within a specified period from the receipt of a valid invoice not exceeding:

7.1.1 10 days, where the Sub-contractor is an SME; or

7.1.2 30 days either, where the sub-contractor is not an SME, or both the Contractor and the Sub-contractor are SMEs,

The Contractor shall comply with such terms and shall provide, at the Department's request, sufficient evidence to demonstrate compliance.

**7.2** The Department shall be entitled to withhold payment due under clause 7.1 for so long as the Contractor, in the Department's reasonable opinion, has failed to comply with its obligations to pay any Sub-contractors promptly in accordance with clause 7.1. For the avoidance of doubt the Department shall not be liable to pay any interest or penalty in withholding such payment.

**7.3** The Contractor shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.

7.3.1 Notwithstanding the Contractor's right to sub-contract pursuant to Clause 7.1, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

**7.4** The Contractor shall give to the Department if so requested a list of all persons who are or may be at any time directly concerned with the performance of this Contract specifying the capacity in which they are concerned with the provision of the Services and giving such other particulars as the Department may reasonably require.

**7.5** If the Department notifies the Contractor that it considers that an employee or sub-contractor is not appropriately qualified or trained to provide the Services or otherwise is not providing the Services in accordance with this Contract, then the Contractor shall, as soon as is reasonably practicable, take all such steps as the Department considers necessary to remedy the situation or, if so required by the Department, shall remove the said employee or sub-contractor from providing the Services and shall provide a suitable replacement (at no cost to the Department).

**7.6** The Contractor shall take all reasonable steps to avoid changes of employees or sub-contractors assigned to and accepted to provide the Services under the Contract except whenever changes are unavoidable or of a temporary nature. The Contractor shall give at least one month's written notice to the Contract Manager of proposals to change key employees or sub-contractors.

**7.7** The Contractor shall immediately notify the Department if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

**7.8** The Contractor, its employees and sub-contractors (or their employees), whilst on Departmental premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in

force from time to time.

- 7.9** The Contractor shall ensure the security of all the Property whilst in its possession, during the supply of the Services, in accordance with the Department's reasonable security requirements as required from time to time.

## **8 Intellectual Property Rights**

- 8.1** It is acknowledged and agreed between the parties that all existing or future Department's Intellectual Property Rights shall vest in the Crown absolutely.

- 8.2** Any Intellectual Property Rights of the Contractor which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Services owned by the Contractor ("**Background Intellectual Property**") shall remain in the ownership of the Contractor but in consideration of the fees payable pursuant to this Contract, the Contractor hereby grants to the Department in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences to a replacement contractor and/or Government department.

- 8.3** The Contractor agrees that at the request and cost of the Department it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Department receives the full benefit of all of its rights under this Contract in respect of the Department's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property Rights.

- 8.4** The Contractor hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.

- 8.5** The Contractor warrants:

- 8.5.1 that the Department's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Contractor;
- 8.5.2 that the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
- 8.5.3 That the use of or exercise by the Department of the Department's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
- 8.5.4 that the Contractor has not granted or assigned any rights of any nature in the Department's Intellectual Property Rights to any third party.

- 8.6** The Contractor shall ensure that any copyright materials produced by or on behalf of the Contractor shall be marked with the following copyright notice "© Crown Copyright \*\*\*year of publication\*\*\*".

- 8.7** On expiry or termination of this Contract however arising, the Contractor shall deliver to the Department (or as the Department directs) any documents and data (whether hard copy or electronic) incorporating the Department's Intellectual Property Rights or necessary for the Department to receive the

full benefit of the licence or the Background Intellectual Property pursuant to Clause 8.2 and any property belonging to the Department which may be in the Contractor's possession or under their control.

## **9 Indemnity and Warranty**

**9.1** The Contractor shall, in discharging its obligations under the Contract, ensure the Services are performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for the Department to expect in all the circumstances. The Department relies upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made in its Contractor's Solution and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services shall conform to the Quality Standards of the Contract using Good Industry Practice and shall be fit for their purpose and will be free from defects in design, material and workmanship.

**9.2** Neither Party excludes or limits its liability (if any) to the other:

9.2.1 for breach of any obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

9.2.2 for personal injury or death resulting from the its negligence;

9.2.3 under section 2(3) Consumer Protection Act 1987;

9.2.4 any breach of clause 12 (Confidentiality);

9.2.5 for its own fraud; or

9.2.6 for any other matter which it would be unlawful for it to exclude or to attempt to exclude its liability.

**9.3** Subject to clauses 9.2 and 9.4, the Contractor shall indemnify the Department and keep the Department indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor or any Contractor Personnel, including in respect of death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any breach of the terms of this Contract or default by the Contractor or any other loss which is caused directly by any act or omission of the Contractor.

**9.4** The Contractor does not exclude or limit its liability (if any) pursuant to any indemnities given by it in clauses 8 (Intellectual Property) and 16 (Tax Indemnity).

**9.5** Subject to clauses 9.2, 9.3 and 9.7, neither Party shall have any liability to the other under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise:

- 9.5.1 for any losses of an indirect or consequential nature;
  - 9.5.2 for any claims for loss of profits, revenue, business or opportunity (whether direct, indirect or consequential); or
  - 9.5.3 to the extent that it is prevented from meeting any obligation under the Contract as a result of any breach or other default by the other Party.
- 9.6** Subject to clauses 9.2 and 9.4, the maximum liability of either Party to the other under the Contract, whether in contract, tort (including negligence) or otherwise:
- 9.6.1 in respect of damage to property is limited to £1,000,000 in respect of any one incident or series of connected incidents; and
  - 9.6.2 in respect of any claim not covered by clause 9.6.1, is limited in each calendar year in aggregate to 150% of the sum of the Charges payable in that year.
- 9.7** The Department may recover from the Contractor the following losses incurred by the Department to the extent they arise as a result of a Default by the Contractor:
- 9.7.1 any additional operational and/or administrative costs and expenses incurred by the Department, including costs relating to time spent by or on behalf of the Department in dealing with the consequences of the default;
  - 9.7.2 any wasted expenditure or charges;
  - 9.7.3 the additional costs of procuring a Replacement Contractor for the remainder of the Contract and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
  - 9.7.4 any compensation or interest paid to a third party by the Department; and
  - 9.7.5 any fine or penalty incurred by the Department and any costs incurred by the Department in defending any proceedings which result in such a fine or penalty.
- 9.8** Except as otherwise expressly provided by the Contract, all remedies available to the Department for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 9.9** All property of the Contractor whilst on the Department's premises shall be there at the risk of the Contractor and the Department shall accept no liability for any loss or damage howsoever occurring to it.
- 9.10** The Contractor shall effect and maintain in force with a reputable insurance company employer's liability and public liability insurances for the sum and

range of cover as the Department deems to be appropriate but not less than £5,000,000 for any one claim; for Professional Indemnity Insurances for the sum and range of cover as the Department deems to be appropriate but not less than £1,000,000 for any one claim and insurance to cover the liability of the Contractor under the Contract. Such insurances shall be maintained for the duration of the Contract and for a minimum of 6 years following the end of the Contract period.

- 9.11** The Contractor shall supply to the Department on demand copies of the insurance policies and/or duly signed Broker's certificate evidencing the insurance maintained under clause 9.10.
- 9.12** The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 9.13** It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability it has under, or in connection with, the Contract.
- 9.14** The Contractor warrants and represents that:
- 9.14.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - 9.14.2 in entering the Contract it has not committed any fraud;
  - 9.14.3 as at the Effective Date, all information contained in the Contractor's Solution remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Department prior to execution of the Contract;
  - 9.14.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might, and it is not subject to any contractual obligation, compliance with which is likely to, have a material adverse effect on its ability to perform its obligations under the Contract;
  - 9.14.5 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
  - 9.14.6 the service specific Intellectual Property Rights materials will be its original work and will not have been copied wholly or substantially from another party's work or materials provided that this clause 9.14.6 shall not apply to any Intellectual Property materials used by the Contractor under permission or licence from any other person or entity (including, without limitation, any Sub-Contractor); and
  - 9.14.7 the use by the Department of any Intellectual Property Rights assigned or licensed to it by the Contractor under the Contract will not infringe or conflict with the rights of any third party;

9.14.8 in the 3 years (or actual period of existence if the Contractor has been in existence for less time) prior to the Effective Date:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

9.14.9 it has and will continue to hold all necessary regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

9.14.10 it has notified the Department in writing of any Occasions of Tax Non-Compliance or any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

## **9.15 Monitoring and Remediation**

**9.16** If the Department reasonably considers that any provision of the Contract is at risk of not being complied with it may, notwithstanding and without prejudice to any other right or remedy that it may have under the Contract or otherwise:

9.15.1 require the Contractor to produce a plan of remedial action in order to remedy or remove such risk, which shall be subject to the approval of the Department (not to be unreasonably withheld) and which, once approved, the Contractor shall implement; and

9.15.2 monitor, supervise, direct and/or guide the Contractor's provision of the Services until the Department reasonably considers that any such risk has been remedied or removed. The Contractor shall cooperate at all times with the Department in this regard.

**9.17** If the Contractor fails to comply with any provision of the Contract or fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Department may instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 21 days or such other period of time as the Department may direct.

## **10 Termination**

**10.1** This Contract may be terminated by either party giving to the other party at least 30 days notice in writing.

**10.2** In the event of any breach of this Contract by either party, the other party may

serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate this Contract with immediate effect by notice in writing.

**10.3** In the event of a material breach of this Contract by either party, the other party may terminate this Contract with immediate effect by notice in writing.

**10.4** This Contract may be terminated by the Department with immediate effect by notice in writing if at any time:-

10.4.1 in England and Wales, a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or it makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors; or

10.4.2 in Scotland, if the Contractor becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) act 1985; or

10.4.3 where the Contractor is a firm or a number of persons acting together in any capacity (including as trustees), any event referred to in Sub-Clauses 10.4.1 or 10.4.2 occurs in respect of any partner in the firm or any of those persons (including any trustees);

10.4.4 the Contractor is convicted (or being a company, any officers or representatives of the Contractor are convicted) of a criminal offence related to the business or professional conduct;

10.4.5 the Contractor commits (or being a company, any officers or representatives of the Contractor commit) an act of grave misconduct in the course of the business;

10.4.6 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to the payment of Social Security contributions;

10.4.7 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to fulfil its obligations relating to payment of taxes;

10.4.8 the Contractor fails (or being a company, any officers or representatives of the Contractor fail) to disclose any serious misrepresentation in supplying information required by the Department in or pursuant to this Contract.

**10.5** Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

## **11 Status of Contractor**

**11.1** In carrying out its obligations under this Contract the Contractor agrees that it will be acting as principal and not as the agent of the Department.



- 11.2** The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Department.

## **12 Confidentiality**

- 12.1** Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

12.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- 12.2** Clause 12 shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information);

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.2.3 such information was obtained from a third party without obligation of confidentiality;

12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

12.2.5 it is independently developed without access to the other party's Confidential Information.

- 12.3** The Contractor may only disclose the Department's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Project and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

- 12.4** The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Department's Confidential Information received otherwise than for the purposes of this Contract.

- 12.5** The Contractor shall ensure that their employees, servants or such professional advisors or consultants are aware of the Contractor's obligations under this Contract.

- 12.6** Nothing in this Contract shall prevent the Department from disclosing the Contractor's Confidential Information:

12.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Department or of the relevant Central Government Body;

- 12.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 12.6.3 to the extent that the Department (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - 12.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 12.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
  - 12.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
  - 12.6.6 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
- 12.7** The Department shall use all reasonable endeavours to ensure that any Central Government Body, Contracting Department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 12 is made aware of the Department's obligations of confidentiality.
- 12.8** Nothing in this clause 12 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 12.9** The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Department 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.
- 12.10** Subject to Clause 12.9, the Contractor hereby gives its consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.11** The Department may consult with the Contractor to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- 12.12** The Contractor shall assist and cooperate with the Department to enable the Department to publish this Contract.
- 13 Freedom of Information**
- 13.1** The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and

shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.

**13.2** The Contractor shall and shall procure that its Sub-contractors shall:

13.2.1 transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

13.2.2 provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

13.2.3 provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

**13.3** The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

13.5.1 in certain circumstances without consulting the Contractor; or

13.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 13.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

**13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

**14 Access and Information**

**14.1** The Contractor shall provide access at all reasonable times to the Department's internal auditors or other duly authorised staff or agents to inspect such documents as the Department considers necessary in connection with this Contract and where appropriate speak to the Contractors employees.

## **15 Transfer of Responsibility on Expiry or Termination**

- 15.1** The Contractor shall, at no cost to the Department, promptly provide such assistance and comply with such timetable as the Department may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Department shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
- 15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the documents and data, if any, referred to in the Schedule.
- 15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Department to ensure an orderly transfer of responsibility.

## **16 Tax Indemnity**

- 16.1** Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate Income Tax and pay it to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.2** Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration. Where the Department has deemed the Contractor to be an Off-Payroll Contractor as defined by Her Majesty's Revenue and Customs the Department reserves the right to calculate primary (employee) National Insurance contributions (NICs) and pay them to HMRC. The amounts will be deducted from the Contractor's fee for the work provided.
- 16.3** The Department may, at any time during the term of this contract, ask the Contractor to provide information which demonstrates how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
- 16.4** A request under Clause 16.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 16.5** The Department may terminate this contract if-
- (a) in the case of a request mentioned in Clause 16.3 above if the Contractor:
    - (i) fails to provide information in response to the request within a

reasonable time,

or

- (ii) provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
- (b) in the case of a request mentioned in Clause 16.4 above, the Contractor fails to provide the specified information within the specified period, or
- (c) it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Contractor is not complying with those Clauses.

**16.6** The Department may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

**16.7** The Contractor warrants and represents to the Department that it is an independent contractor and, as such, bears sole responsibility for the payment of tax and national insurance contributions which may be found due from it in relation to any payments or arrangements made under this Contract. The Contractor shall promptly and regularly pay all National Insurance Contributions due from it as a self-employed person and shall account to the HM Revenue and Customs for all taxes due from it in respect of the payments made to it under this Contract.

**16.8** If, notwithstanding Clause **Error! Reference source not found.7**, the HM Revenue and Customs and/or any other appropriate agency consider that the Contractor is an employee of the Department for the purposes of tax and/or national insurance contributions; then the Department shall be entitled to terminate this Contract immediately and deduct from the payments payable to the Contractor under the terms of this Contract, such sums as the HM Revenue and Customs and/or other agencies require in respect of income tax and employee national insurance contributions. The deduction of such tax and national insurance contributions will not affect the status of the Contractor as self-employed for all other purposes.

**16.9** Without prejudice to the provisions of Clause 16.8 above, the Contractor shall indemnify the Department against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by the Department in connection with any such assessment or claim.

**16.10** The Contractor authorises the Department to provide the HM Revenue and Customs and all other departments or agencies of the Government with any information which they may request as to fees and/or expenses paid or due to be paid under this Contract whether or not the Department is obliged as a matter of law to comply with such request.

**16.11** The Contractor shall register for value added tax if and when required by law and shall promptly notify the Department for Work and Pensions of its liability

for Class 2 and, where appropriate, Class 4 national insurance contributions

## **17 Data Protection**

- 17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 3a. The only processing that the Processor is authorised to do is listed in Schedule 3a by the Controller and may not be determined by the Processor
- 17.2** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, 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 Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4** The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- (a) process that Personal Data only in accordance with Schedule 3a , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 3a);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Processor's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor 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 any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor 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 Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

**17.5** Subject to clause 17.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

**17.6** The Processor's obligation to notify under clause 17.5 shall include the provision of further information to the Controller in phases, as details become available.

- 17.7** Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.10** Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 17 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12** The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.13** The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification



scheme (which shall apply when incorporated by attachment to this Contract).

- 17.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **18 Amendment and variation**

- 18.1** No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Department may have in place from time to time.

## **19 Assignment and Sub-contracting**

- 19.1** The benefit and burden of this Contract may not be assigned or sub-contracted in whole or in part by the Contractor without the prior written consent of the Department. Such consent may be given subject to any conditions which the Department considers necessary. The Department may withdraw its consent to any sub-contractor where it no longer has reasonable grounds to approve of the sub-contractor or the sub-contracting arrangement and where these grounds have been presented in writing to the Contractor.

## **20 The Contract (Rights of Third Parties) Act 1999**

- 20.1** This Contract is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person not a party to the Contract.

## **21 Waiver**

- 21.1** No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

## **22 Notices**

- 22.1** Any notice, demand or communication in connection with the Contract shall be in writing and may be delivered by hand, pre-paid first class post or (where being sent to an address in a different country to where posted) airmail, or e-mail, addressed to the recipient at its registered office or its address (or such other address, or e-mail address as may be notified in writing from time to time).

- 22.2** The notice, demand or communication shall be deemed to have been duly served:

22.2.1 if delivered by hand, when left at the proper address for service;

22.2.2 if given or made by prepaid first class post 48 hours after being posted or in the case of airmail 14 days after being posted;

22.2.3 if made by e-mail, at the time of transmission, dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message or, in the case of transmission by e-mail where the time of transmission is not between 9.00 am and 5.00 pm, service shall be deemed to occur at 9.00 am on the next following Business Day (such times being local time at the address of the recipient).

## **23 Dispute resolution**

**23.1** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

**23.2** Any dispute not capable of resolution by the parties in accordance with the terms of Clause 23 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

**23.3** No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation, but any such mediation may be terminated by either party at any time of such party wishing to commence court proceedings/arbitration.

## **24 Discrimination**

**24.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

**24.2** The Contractor shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **25 Law and Jurisdiction**

This Contract shall be governed by and interpreted in accordance with English Law and the parties submit to the jurisdiction of the English courts.

As witness the hands of the parties

Authorised to sign for and on behalf of the Secretary of State	Authorised to sign for and behalf of EDB Associates
Signature	Signature
<redacted>	<redacted>
<redacted>	EDB associates
Address <redacted>	Address <redacted>
Date	Date

Herefordshire County Council's children's social care services have been found to be 'inadequate' across all of the key judgements in the recent Ofsted inspection report. There is a presumption in cases of systemic failure of this nature that children's social care services will be removed from local authority control, for a period of time, in order to bring about sustainable improvement, unless there are compelling reasons not to do so.

The Children's Services Commissioner for Herefordshire is expected to take the following steps.

1. To issue any necessary instructions to the local authority for the purpose of securing immediate improvement in the authority's delivery of children's social care.
2. To work with the Department's improvement adviser to identify ongoing improvement requirements; and to recommend any additional support required to deliver those improvements. In light of the findings around leadership and management this should include consideration of the supporting functions within children's services, in particular SEND.
3. To work with the Department's improvement adviser to ensure Herefordshire implements a comprehensive improvement programme addressing the shortcomings identified by Ofsted, including appropriate governance, accountability and reporting arrangements through the improvement board.
4. To bring together evidence to assess the council's capacity and capability to improve itself, in a reasonable timeframe, and recommend whether or not this evidence is sufficiently strong to suggest that long-term sustainable improvement to children's social care can be achieved should operational service control continue to remain with the council.
5. As appropriate, to advise on relevant alternative delivery and governance arrangements for children's social care, outside of the operational control of the local authority, taking account of local circumstances and the views of the council and key partners.
6. To report to the Minister of State for Children and Families by 12 December 2022.
7. Following the December report, in agreement with the contract manager, oversee/broker implementation of any new delivery and governance arrangements.

**End of SCHEDULE 1**

## **SCHEDULE 2; FINANCIALS**

- 1** The Department shall pay the Supplier at the fixed daily rate of £800 (excluding VAT) with the number of days payable in total limited to a maximum of 8 days per month from 16/08/2022 to 15/08/2023 to work as the Department For Education Children's Services Commissioner for Herefordshire County Council. If additional days are required they will be negotiated and agreed with the Department prior to the work taking place.
- 2** The service provided will comprise a mixture of on-site and remote work, with an expectation of a minimum of 3 days spent on site in Herefordshire each month.
- 3** The Department shall reimburse the Supplier for such reasonable travelling and hotel expenses wholly and reasonably incurred by the Key Personnel in connection with the provision of the Services, in accordance with the schedule 3 and with the expenses policy of the Department from time to time. Payment of expenses shall be made only upon the provision of suitable invoices relating to the provision of such expenses.
- 4** Such reasonable travelling and hotel expenses (clause 1.4 refers) shall be limited as follows and no other out of pocket expenses shall be allowable. For the avoidance of doubt where stated rates apply these shall be based on the Department's rates at the time of awarding the Contract and shall be fixed for the duration of the Contract.

  - a. Hotel accommodation bed and breakfast, the Department to reimburse the actual expenditure of the Key Personnel which shall not exceed the Department's rates of London: £110 including VAT; elsewhere £75 including VAT;
  - b. Rail travel, the Department to reimburse the actual expenditure of the Key Personnel which shall be restricted to standard class;
  - c. Car mileage, the Department to reimburse the Key Personnel at the Department's "Public Transport Rate" (PTR) of 25 pence per mile;
  - d. Taxis, the Department to reimburse the Key Personnel's actual costs only where their use can be justified against using public transport.
- 5** The Contractor shall maintain full and accurate accounts for the Service provided. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Contract. Input and output VAT shall be included as separate items in such accounts.
- 6** The Contractor shall permit duly authorised staff or agents of the Department or the National Audit Office to examine the accounts at any reasonable time and shall furnish oral or written explanations of the account if required. The Department reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the contractor has used the Department's resources in the performance of this Contract.
- 7** Invoices shall be prepared by the Contractor monthly in arrears. The contractor or its nominated representative or accountant shall certify on the invoice that the amounts claimed were expended wholly and necessarily by the adviser on the Service in accordance with the Contract and that the invoice does not

include any costs being claimed from any other body or individual or from the Department within the terms of another contract.

- 8** The Department shall accept and process for payment an electronic invoice submitted for payment by the adviser where the invoice is undisputed and where it complies with the standard on electronic invoicing. For the purposes of this paragraph, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 9** Invoices shall be sent, within 10 days of the end of the relevant month to <redacted> and copied to: <redacted>  
The Department undertakes to pay correctly submitted invoices within 5 days of receipt. The Department is obliged to pay invoices within 30 days of receipt from the day of physical or electronic arrival at the nominated address of the Department. Any correctly submitted invoices that are not paid within 30 days will be subject to the provisions of the Late Payment of Commercial Debt (Interest) Act 1998. A correct invoice is one that: is delivered in timing in accordance with the contract; is for the correct sum; in respect of goods/services supplied or delivered to the required quality (or are expected to be at the required quality); includes the date, supplier name, contact details and bank details; quotes the relevant purchase order/contract reference and has been delivered to the nominated address. If any problems arise, contact the Department's Contract Manager. The Department aims to reply to complaints within 10 working days. The Department shall not be responsible for any delay in payment caused by incomplete or illegible invoices.
- 10** The Contractor shall have regard to the need for economy in all expenditure. Where any expenditure in an invoice, in the Department's reasonable opinion, is excessive having due regard to the purpose for which it was incurred, the Department shall only be liable to reimburse so much (if any) of the expenditure disallowed as, in the Department's reasonable opinion after consultation with the Contractor, would reasonably have been required for that purpose.
- 11** If this Contract is terminated by the Department due to the Contractor's insolvency or default at any time before completion of the Service, the Department shall only be liable under paragraph 1 to reimburse eligible payments made by, or due to, the Contractor before the date of termination.
- 12** On completion of the Service or on termination of this Contract, the Contractor shall promptly draw-up a final invoice, which shall cover all outstanding expenditure incurred for the Service. The final invoice shall be submitted not later than 30 days after the date of completion of the Service.
- 13** The Department shall not be obliged to pay the final invoice until the Contractor has carried out all the elements of the Service specified as in Schedule 1.
- 14** It shall be the responsibility of the Contractor to ensure that the final invoice covers all outstanding expenditure for which reimbursement may be claimed. Provided that all previous invoices have been duly paid, on due payment of the final invoice by the Department all amounts due to be reimbursed under this Contract shall be deemed to have been paid and the Department shall have no further liability to make reimbursement of any kind.

**End of SCHEDULE 2**

### **SCHEDULE 3A; Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: <redacted>

The contact details of the Processor's Data Protection Officer are: <redacted>.

2. The Processor shall comply with any further written instructions with respect to processing by the Controller.
3. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 17.1.
Subject matter of the processing	Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract.
Duration of the processing	This may occur at any point during the life of the contract, including any extensions.
Nature and purposes of the processing	<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: reviews, diagnostics, employment processing, statutory obligation, recruitment assessment etc.</p>
Type of Personal Data	Any data relating to personal details. This includes but is not limited to; name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.
Categories of Data Subject	This includes but is not limited to: Staff (including volunteers, agents, and temporary workers), Departments/ clients, suppliers, patients, students / pupils, members of the public, service users etc.



Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Any data processed will only be retained for the duration of the contract and returned to the Department upon contract completion.
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**End of SCHEDULE 3A**