

SCHEDULE Q: INDUSTRY STANDARD PARTNERING AGREEMENT

[] 2014

[CONTRACTOR]

and

[SUBCONTRACTOR]

[Notes:

- 1. This Industry Standard Partnering Agreement, or specific parts of it (e.g. the service level/service credit arrangement for performance of services), may not be appropriate for all types of services contracts.***
- 2. This Industry Standard Partnering Agreement will need to be reviewed and amended to reflect the terms of the contract being awarded by the Ministry of Justice. Contractors and subcontractors should seek their own legal advice before entering into an Industry Standard Partnering Agreement.]***

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THIS AGREEMENT is made on []

BETWEEN:

- (1) [●] (registered in England under number [●]), whose registered office is at [●] (**Contractor**); and
- (2) [●] (registered in England under number [●]), whose registered office is at [●] (**Subcontractor**),

each a **party** and together the **parties**.

BACKGROUND:

- (A) On [●], the Secretary of State for Justice appointed the Contractor as a provider of services on the terms set out in a contract dated [●] (**Services Agreement**).
- (B) The Contractor wishes to subcontract the provision of certain services in the Services Agreement to the Subcontractor on the terms set out in this Agreement.
- (C) The parties have entered into this Agreement in accordance with the Market Stewardship Principles having had regard to the Explanatory Guide.
- (D) The parties have completed the ISPA Questionnaire in relation to this Agreement and a copy of that completed Questionnaire is contained in Schedule 2 (Industry Standard Partnering Agreement Questionnaire) to this Agreement.

IT IS AGREED as follows:

1. SERVICES AND SERVICE COMMENCEMENT

1.1 Principal Obligations

- (a) The Subcontractor shall provide the Services to the Contractor with effect from the Service Commencement Date.
- (b) The Subcontractor shall at all times ensure that the Services comply with, and meet all the requirements of, and perform all its other obligations arising under or in connection with, this Agreement, in accordance with each of this Agreement, Good Industry Practice, and all Applicable Law. [***Explanatory Note: any other mandatory provisions required are to be listed here***]
- (c) [The Subcontractor shall provide the Services, where appropriate, having regard to the following aims:
 - (i) [***Explanatory Note: any overarching purposes of the agreement to be inserted here***]]
- (d) The Contractor shall supply or make available to the Subcontractor:
 - (i) all information, data or access to systems that is reasonably requested by the Subcontractor which the Contractor agrees to provide, in respect of the Services; and

- (ii) all information that the Subcontractor reasonably requires to assess the risk allocation to the Subcontractor in respect of the Services.
- (e) The Contractor agrees that the Subcontractor shall be entitled to request information from the Authority, as reasonably required by the Subcontractor, if the Contractor is unwilling or unable to provide the necessary information in accordance with Clause 1.1(d) above.
- (f) The Contractor shall provide to the Subcontractor for the Contract Period the support set out in Schedule 11 (Contractor Support) to assist the Subcontractor in providing the Services. **[Explanatory Note: This Schedule 11 will need to be completed to reflect what has been negotiated by the parties, including the support offered by the Contractor and agreed with the Authority during the tendering process.]**
- (g) The Contractor shall ensure that:
 - (i) **[Explanatory Note: For Material Subcontracts, conditions to the Authority's consent to that Material Subcontract are to be specified here. See Explanatory Guide, part 2 paragraph 5.2]**
 - (h) [Subject to paragraph [●] of Schedule 4 (Services),] the Subcontractor agrees that it has not been given any rights of exclusivity or any volume guarantees in relation to the Services under this Agreement. **[Explanatory Note: If the Subcontractor is to be given any volume guarantees, the wording in square brackets should be included and the details should be set out in Schedule 4.]**

1.2 Service Levels

- (a) Without limiting Clause 1.1, with effect from the Service Commencement Date, the Subcontractor shall meet or exceed the Service Levels in its provision of the relevant Services.
- (b) If, at any time after the Service Commencement Date, the Subcontractor fails to provide any of the Services in accordance with the Service Levels, without limiting the Contractor's other rights and remedies, the Subcontractor shall:
 - (i) advise the Contractor as soon as reasonably practicable [and in any event within [●] Business Days] of the failure and of the steps that the Subcontractor shall take to address the failure; and
 - (ii) at no additional cost to the Contractor:
 - (A) if applicable, perform or re-perform those elements of the Services in relation to which there was a failure to perform as are necessary to be performed or re-performed (as the case may be) to ensure that the relevant Services are compliant with the relevant Service Levels;
 - (B) to the extent practicable, rectify all direct operational consequences resulting from that failure to perform the Services in accordance with the relevant Service Levels; and
 - (C) as soon as practicable, arrange all additional resources as are reasonably necessary to perform its obligations set out in this Agreement and to ensure that the failure does not recur.

1.3 Service Credits

- (a) If the Subcontractor fails to provide the Services in accordance with the Service Levels, without limiting the Contractor's other rights and remedies, the Charges payable in relation to the Services shall be the Charges less an amount equal to the corresponding Service Credit (if any) as determined in accordance with Schedule 5 (Service Levels).
- (b) The amount of any Service Credits payable by the Subcontractor under Clause 1.3(a) shall be calculated in accordance with Schedule 5 (Service Levels). Service Credits will be included in the invoices (and, where applicable, recoverable) in accordance with Schedule 5 (Service Levels).
- (c) The parties agree that Service Credits are a genuine pre-estimate of the minimum level of loss or damage that the Contractor is likely to suffer as a result of a failure by the Subcontractor to provide the Services in accordance with Clause 1.2. Any deduction made in accordance with Clause 1.3(a) shall not limit the Contractor's other rights and remedies for the Subcontractor's failure to provide the Services in accordance with the Service Levels.

1.4 Changes to Service Levels

- (a) The Contractor shall be entitled and on giving not less than three months' prior written notice to the Subcontractor to require any or all of:
 - (i) a change to the Service Credits applicable to each Service Level;
 - (ii) a change to the Service Levels applicable to each Service; and
 - (iii) the introduction of new Service Levels or Service Credits,provided that the principal purpose of a change to the Service Levels or Service Credits is to reflect changes made to the service levels or service credits in the Services Agreement.
- (b) If the Subcontractor incurs additional costs as a result of a change under this Clause 1.4, subject to Clause 24.10(b), it shall be entitled to recover those costs from the Contractor in accordance with Clause 1.4(c) provided that it demonstrates to the reasonable satisfaction of the Contractor that the change to the Service Levels or the introduction of new Service Levels was the direct cause of the additional costs incurred.
- (c) [The Contractor shall not be likely to pay to the Subcontractor any costs in accordance with Clause 1.4(b):
 - (i) unless the amount of the costs exceed £[] and that amount shall be disregarded for all purposes; and
 - (ii) except to the extent that the amount of costs (other than costs disregarded as specified in Clause 1.4(c)(i) above) exceed in aggregate £[].]

[Explanatory Note: This compensation amount to be linked with the amount that the Contractor is entitled to be compensated for under the equivalent Clause in the Services Agreement]

2. CONTRACT MANAGEMENT

2.1 Annual Service Plan

- (a) The Subcontractor shall, for each Contract Year, prepare a plan which sets out its proposals for that Contract Year for the delivery of the Services in that Contract Year (**Annual Service Plan**).
- (b) [If the Contractor objects to any part of the Annual Service Plan, the matter shall be resolved in accordance with Clause 23.]

2.2 Service Report

- (a) The Subcontractor shall, for each Contract Year, prepare a report of the Subcontractor's performance in relation to the Services (**Service Report**).
- (b) In the Service Report, the Subcontractor shall, in each case reflecting the strategic nature of the Services to the Contractor:
 - (i) [illustrate how it has contributed to the requirements set out in Clause 1.1]
[Explanatory Note: To be included if there are overarching purposes to the Agreement as set out in Clause 1.1(c) and as explained in the Explanatory Guide]
 - (ii) report on the Subcontractor's performance of its obligations under this Agreement and the extent to which it has met the Annual Service Plan for that Contract Year; and
 - (iii) report on its overall performance in meeting the Services Levels and the amount of any Service Credits that have been payable.

2.3 Continuous Improvement Report

- (a) The Subcontractor shall adopt a continuous improvement approach to the provision of the Services, and shall work with the Contractor to identify opportunities for improving the performance, efficiency and effectiveness of the Services.
- (b) The Subcontractor shall, for each Contract Year, prepare a report (**Continuous Improvement Report**) which shall identify all activities undertaken by the Subcontractor to improve the effectiveness of the Services, any further opportunities for improvement of this Agreement through prospective changes in the Services and/or behaviour or usage changes by either party.

2.4 Contract Reviews

- (a) Within 40 Business Days after the end of a Contract Year, the Contractor and the Subcontractor shall meet to review the Subcontractor's performance of this Agreement during that Contract Year (the **Contract Review**). The parties agree that the Contract Review will focus on the strategic nature of the Services to the Contractor and the Authority and the importance to the Contractor and the Authority of assessing the performance of its strategic suppliers on a regular basis so that:
 - (i) performance issues can be monitored and addressed as they arise; and

- (ii) the outcomes and feedback from the Contract Review can be incorporated as applicable or as reasonably requested by the Subcontractor into the Contractor's annual review under the Services Agreement.
- (b) The Subcontractor shall, for the purposes of Clause 2.4(a), send to the Contractor not less than 40 Business Days prior to the start of each Contract Year a copy of each of:
 - (i) the Annual Service Plan for that Contract Year;
 - (ii) the Service Report for the previous Contract Year completed to the end of the ninth month of that previous Contract Year;
 - (iii) the Continuous Improvement Report for that Contract Year; and
 - (iv) any other written reports that the Contractor or the Authority may reasonably request.
- (c) The Contractor shall, insofar as reasonably practicable, present the Subcontractor's Annual Service Plan, Service Report and Continuous Improvement Report as part of the Contractor's Service Report under the Services Agreement.

2.5 Remedial Plan Process

- (a) If at any time the Authority has serious concerns about:
 - (i) the Contractor's continuing ability to meet its obligations under the Services Agreement; or
 - (ii) public protection and safeguards,

and those concerns relate to the Services (**Serious Concerns**), the Contractor shall be entitled to initiate the process set out in Clause 2.5(b) (**Remedial Plan Process**).
- (b) The Remedial Plan Process shall be as follows:
 - (i) The Contractor shall notify the Subcontractor that the Authority has Serious Concerns and that the Contractor requires the Subcontractor to provide a plan to specify how the Serious Concerns will be addressed (**Remedial Plan**). The notice shall specify the Serious Concerns in outline but must contain sufficient detail so that it is reasonably clear to the Subcontractor the matters it has to remedy.
 - (ii) The Subcontractor shall provide a draft Remedial Plan to the Contractor within 15 Business Days (or any other period agreed by the parties in writing) after the date of the notice referred to in Clause 2.5(b)(i) even if the Subcontractor disagrees with the Serious Concerns or disputes that it is responsible for the matters which are the subject of the Serious Concerns.
 - (iii) The Subcontractor shall provide all reasonable assistance and information to the Contractor in connection with the Remedial Plan to enable the Contractor to meet its obligations in favour of the Authority under the Services Agreement.

2.6 Services Agreement Meetings

The Contractor shall notify the Subcontractor in writing prior to each review meeting that it has with the Authority which relates to the Services (a **Services Agreement Meeting**) as soon as practicable after it has given or received notice of that Services Agreement Meeting. The Subcontractor shall be entitled to make representations to the Contractor that it should attend that Services Agreement Meeting specifying the purpose for that attendance. The Contractor shall consider those representations in good faith and, if the Contractor (acting reasonably) considers that it is appropriate for the Subcontractor to attend that Services Agreement Meeting, it shall use reasonable endeavours to obtain permission from the Authority for the Subcontractor to attend.

3. EQUALITY AND HUMAN RIGHTS REQUIREMENTS

- (a) The Subcontractor shall not:
- (i) discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; or
 - (ii) contravene Sections 29(6), 39, 108, 109, 111, 112 and 149 of the Equality Act 2010; or
 - (iii) unlawfully discriminate within the meaning and scope of any Applicable Law relating to discrimination in employment.
- (b) The Subcontractor shall, for the purposes of ensuring compliance with Clause 3(a)(i) above in relation to personnel engaged in the provision of the Services, observe as far as possible the provisions of:
- (i) the Equality and Human Rights Commission Code of Practice on Employment; and
 - (ii) any other relevant code of practice introduced by a commission or other body set up by the UK Parliament to promote, monitor and enforce Equalities Legislation,
- including those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.
- (c) The Subcontractor shall, in performing its obligations under this Agreement, comply (to the extent permitted by Applicable Law) with the provisions of Sections 149 and 150 of the Equality Act 2010 on the basis that it is a person who exercises public functions within the meaning of Section 149(2) of the Equality Act 2010.
- (d) The Subcontractor shall notify the Contractor's Relationship Manager in writing as soon as it becomes aware of any investigation of or proceedings brought against the Subcontractor under the Equalities Legislation.
- (e) Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Subcontractor's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, the Subcontractor shall, at its own cost and expense:
- (i) provide any information requested in the timescale allotted by the investigation or proceedings;

- (ii) attend any meetings as required and permit any of its staff to attend;
 - (iii) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - (iv) allow itself and any of its staff to appear as witness in any ensuing proceedings; and
 - (v) co-operate fully and promptly in every way required by the person or body conducting the investigation or proceedings during the course of that investigation or proceedings.
- (f) The Subcontractor shall, and shall procure that each subcontractor shall, in performing its obligations under this Agreement, act in a manner which is compatible with the European Convention on Human Rights on the basis that, for the purposes of this Agreement, it is a person who is exercising functions of a public nature under section 6(3)(b) of the Human Rights Act 1998.

4. CHANGE IN SERVICES

The parties shall follow the Change Protocol set out in Schedule 7 (Change Protocol).

5. INFORMATION ASSURANCE

The Subcontractor shall comply with its obligations set out in Schedule 12 (Information Assurance).

6. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

6.1 Warranty

Each party represents and warrants to the other party that:

- (i) it has the power to execute and deliver this Agreement and to perform its obligations under it and has taken all action necessary to authorise execution and delivery and the performance of its obligations;
- (ii) this Agreement constitutes legal, valid and binding obligations of that party in accordance with its terms; and
- (iii) authorisations, licences or consents from, and notices or filings with, each regulator or other governmental or other authority that are necessary to enable it to execute, deliver and perform its obligations under this Agreement have been obtained or made (as the case may be) and are in full force and effect and all conditions of each authorisation, licence, consent, notice or filing have been complied with.

6.2 Exercise of rights

In exercising its rights under this Agreement, the Contractor shall act reasonably and proportionally.

6.3 ISPA Questionnaire

- (a) The parties acknowledge and agree that they have considered and completed in full the ISPA Questionnaire.

- (b) The Contractor warrants that the completed ISPA Questionnaire in the Annex to Schedule 2 (Industry Standard Partnering Agreement Questionnaire) is true and accurate in all material respects.

6.4 Risk Assessment

The parties acknowledge and agree that:

- (i) they have entered into this Agreement having fully considered and assessed the allocation of risk to the Subcontractor and the ability of the Subcontractor to control that risk;
- (ii) the Subcontractor has not been allocated a disproportionate amount of risk relative to the nature of the Services and the Charges.

6.5 Subcontractor Undertakings

The Subcontractor undertakes to the Contractor that, for the Contract Period, it will:

- (i) not reorganise or change the nature or scope of its activities in a way that may, in the reasonable opinion of the Authority, have a detrimental effect on the provision of the Services in accordance with this Agreement;
- (ii) not, without the prior written consent of the Contractor, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any material part of its business, employees or Assets which would materially affect the ability of the Subcontractor to perform its obligations under this Agreement;
- (iii) not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a subcontractor;
- (iv) not be, and is not, subject to any contractual obligations, compliance with which is likely to have a material adverse effect on the Subcontractor's ability to perform its obligations under this Agreement;
- (v) not propose or permit the voluntary winding up or dissolution of itself or any subsidiary of it (from time to time);
- (vi) not, without the prior written consent of the Contractor, apply for the appointment of an administrator over its Assets;
- (vii) provide the Services, charge for the Services, carry out its business and conduct its affairs according to the highest standards of corporate governance applicable from time to time to companies registered in the United Kingdom and in a responsible manner and shall observe principles of good social responsibility; and
- (viii) not, without the prior consent of the Authority, change its corporate or trading name.

6.6 Reputational Damage

- (a) The Subcontractor shall provide the Services and perform all its other obligations arising under or in connection with this Agreement having regard to the standing and reputation of

the Authority[and the Contractor] and, in particular, shall not do anything (by act or omission) that would, or would be reasonably likely to:

- (i) damage the reputation of the Authority [or the Contractor];
 - (ii) bring the Authority [or the Contractor] into disrepute;
 - (iii) attract adverse publicity to the Authority [or the Contractor]; or
 - (iv) harm the confidence of the public in the Authority [or the Contractor].
- (b) The Subcontractor shall, when providing the Services, pay due regard to the need for persons in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

6.7 Tax

- (a) The Subcontractor shall comply, and shall ensure that each of its Affiliates complies, with all of its obligations as to declaration and payment of Tax and shall provide all information to the Contractor following a written request which demonstrates to the Contractor how it, or the relevant Affiliate, has complied with those obligations.
- (b) The Subcontractor represents, warrants and undertakes that:
- (i) neither it, nor any of its Affiliates, has been a party to, nor has been otherwise involved in, nor will be involved in, any transaction, scheme or arrangement designed wholly or mainly, or containing steps having no commercial purposes and designed wholly or mainly, for the purpose of avoiding, deferring or reducing a Tax liability;
 - (ii) none of its Tax affairs nor those of its Affiliates has given rise to a criminal conviction for Tax related offences which is unspent, or to a penalty for civil fraud or evasion; and/or
 - (iii) none of its Tax returns nor those of its Affiliates submitted on or after 1 October 2012 has been found to be incorrect as a result of:
 - (A) HMRC successfully challenging it under Part 5 of the Finance Act 2013 (the General Anti-Abuse Rule) or the "Halifax" principle; or
 - (B) the failure of an avoidance scheme which the Subcontractor or any of its Affiliates was involved in and which was, or should have been, notified to HM Revenue and Customs under any statutory provision relating to the disclosure of tax avoidance schemes.

7. LIABILITY

7.1 Limitations of liability

- (a) Nothing in this Agreement excludes or limits any party's liability:
- (i) for fraud, theft or any similar dishonesty offence or conduct which would amount to such an offence;

- (ii) for wilful misconduct or wilful abandonment;
- (iii) for death or personal injury caused by its negligence or that of its employees or agents and, in the case of the Subcontractor, any subcontractor or its employees or agents;
- (iv) arising as a result of a breach of Clause 18;
- (v) under Clause 19.7; or
- (vi) to the extent that any Applicable Law precludes or prohibits any exclusion or limitation of liability.

For the avoidance of doubt, any amounts payable by either party to the other party in respect of any of the above shall not count towards the financial cap[s] on liability set out in Clause 7.1(b).

- (b) Subject to Clause 7.1(a), the aggregate liability of each party to the other party under or in connection with this Agreement, whether arising in tort (including negligence), for breach of contract or otherwise shall be the greater of:
 - (i) £[●]; or
 - (ii) the total amounts paid or payable by the Contractor to the Subcontractor under this Agreement.

7.2 Indirect and consequential loss

Subject to Clause 7.1(a) neither party shall be liable to the other party for any indirect or consequential or special loss or damage, whether arising in tort (including negligence), breach of contract or otherwise, whether or not that loss was foreseeable.

7.3 Recoverable Losses

Clause 7.2 shall not limit or exclude the Contractor's right to recover any of the following Losses:

- (i) additional or administrative costs and expenses arising from a Default by the Subcontractor;
- (ii) expenditure or charges incurred as a result of, or rendered unnecessary as a result of, a Default by the Subcontractor;
- (iii) additional costs to maintain the Services until the Termination Date arising from dealing with the consequences of a Default by the Subcontractor, including the reasonable and proper cost of implementing and performing workarounds whilst a New Subcontractor is being procured;
- (iv) the cost of procuring replacement services to the extent that they are not included in Clauses 7.3(i), (ii) or (iii);
- (v) the costs and expenses of restoring and rectifying lost or corrupt Project Data arising from a Default by the Subcontractor;

- (vi) advertising costs reasonably incurred to limit damage caused to the Contractor's or the Authority's reputation and goodwill arising from a Default by the Subcontractor;
- (vii) the costs and expenses of conducting an audit, investigation, evaluation (including a financial evaluation) or request for information by the Authority in connection with a Default by the Subcontractor; and
- (viii) amounts equal to fines, penalties and other sanctions imposed by any court, tribunal, regulator or other governmental authority including any associated costs and expenses as a result of a Default by the Subcontractor,

and the Subcontractor assumes responsibility for losses falling within these categories.

7.4 Miscellaneous

- (a) Nothing in this Clause 7 shall operate to exclude or limit either party's obligations to make payments or pay costs or expenses which do not arise from a Default in accordance with this Agreement, including the Contractor's obligation to pay the Charges or the Subcontractor's obligation to make any refund of Charges.
- (b) Nothing in this Clause 7 shall in any way reduce or affect each party's general duty at law (if any) to mitigate loss suffered by it.

8. FORCE MAJEURE AND OTHER RELIEF EVENTS

8.1 Relief Events

- (a) Subject to Clauses 8.1(c) and (d), the Subcontractor shall not be in breach of this Agreement to the extent that the breach is a result of a Relief Event.
- (b) In this Agreement, **Relief Event** means a failure of the Contractor to carry out a Dependency in accordance with this Agreement.
- (c) The Subcontractor shall not be entitled to claim that a breach is a result of a Relief Event pursuant to Clause 8.1(a) unless it:
 - (i) as soon as practicable, and in any event within 15 Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay a breach of an obligation under this Agreement and/or the Subcontractor to incur costs, gives to the Contractor a notice in writing of its claim for an extension of time or relief from its obligations under this Agreement;
 - (ii) within 10 Business Days after receipt by the Contractor of the notice referred to in Clause 8.1 (c)(i) gives full details of the Relief Event and relief claimed; and
 - (iii) demonstrates to the reasonable satisfaction of the Contractor the extent that:
 - (A) the Relief Event was the cause of the cost incurred and/or the Subcontractor's failure to comply with its obligations under this Agreement; and
 - (B) the cost incurred and/or relief from the obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Subcontractor acting in accordance with Good Industry Practice.

- (d) Following service of a notice by the Subcontractor pursuant to Clause 8.1(c), the Subcontractor shall promptly supply to the Contractor all further information relating to the claim which:
 - (i) is received by the Subcontractor; or
 - (ii) is reasonably requested by the Contractor.
- (e) If the Subcontractor has complied with its obligations under Clauses 8.1(c) and (d), the Contractor shall give the Subcontractor relief from its obligations under this Agreement which is reasonable for the relevant Relief Event.
- (f) If information is provided after the dates referred to in Clause 8.1(c) above, the Subcontractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- (g) If the parties cannot agree the extent of any delay incurred, relief from the Subcontractor's obligations under this Agreement, or the Contractor disagrees that a Relief Event has occurred (or as to its consequences), or that the Subcontractor is entitled to any relief under this Clause 8.1, the parties shall resolve the matter in accordance with Clause 21.
- (h) The provisions of Clauses 8.1(e) are the Subcontractor's exclusive remedy in respect of any Relief Event (including in relation to any Losses suffered or incurred by the Subcontractor as a result of or in connection with a Relief Event).

8.2 Force Majeure Events

- (a) Subject to Clauses 7.1 and 8.2(c), neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement arising directly from any of the following cause or causes beyond its reasonable control which are unable reasonably to be planned for or avoided: act of God, act of terrorism, war, civil war, armed conflict, fire, earthquake, flood, embargo, riot or sabotage, in each case, which directly causes either party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement (a **Force Majeure Event**), provided that the Affected Party:
 - (i) promptly notifies the other party in writing of the cause of the delay or non-performance, the likely duration of the delay or non-performance, evidence of its effect on its obligations and details of the action it proposes to take to mitigate the effect of the delay or non-performance; and
 - (ii) takes all steps in accordance with Good Industry Practice to overcome or minimise the effect of the delay or non-performance on the other party.
- (b) The performance of the Affected Party's obligations, to the extent affected by the Force Majeure Event, shall be suspended during the period that the Force Majeure Event persists.
- (c) The occurrence of any Force Majeure Event shall not relieve the Subcontractor of its obligations under the Business Continuity Plan.
- (d) If a Force Majeure Event occurs and the Subcontractor has not restored full and uninterrupted Services within 24 hours after it has occurred, the Contractor shall not be required to pay, and the Subcontractor shall not be entitled to charge, the fees specified in paragraph [●] of Schedule 6 (Charges) with respect to those Services affected by the Force

Majeure Event for the duration of the period commencing on the date the Force Majeure Event occurred and ending on the date that those Services are resumed in full and on an uninterrupted basis in accordance with this Agreement.

- (e) The Contractor may instruct an alternative supplier to provide the services affected by the Force Majeure Event to ensure continuity of service and the Subcontractor shall co-operate with the alternative supplier to ensure the smooth and seamless provision of those services to the Contractor and the Authority.
- (f) The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following that notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

8.3 Business Continuity

- (a) Each party shall comply with its obligations set out in Schedule 8 (Business Continuity).
- (b) [The Subcontractor shall provide the Contractor with full details of its completed Business Continuity Plan within 40 Business Days after the Service Commencement Date.]
- (c) The Subcontractor shall maintain the Business Continuity Plan in accordance with Good Industry Practice and, where applicable, [●] ***[Explanatory Note: This will be updated to list applicable information security standards in advance of each procurement]***, and perform trial implementations of it on a regular basis (not less than once in each Contract Year) and shall provide full details of the results of those trial implementations to the Contractor as part of the Service Report for that Contract Year. The Subcontractor and the Contractor shall take all precautionary actions which are specified in the Business Continuity Plan. Any proposed changes to the Business Continuity Plan shall be subject to the Change Protocol, provided that any amendments to the Business Continuity Plan may only be made if the revised Business Continuity Plan shall provide at least the same level of business continuity as the then current Business Continuity Plan or are a necessary consequence of another agreed Change.
- (d) Without prejudice to Clause 8.3(c), the Subcontractor shall review, test and update the Business Continuity Plan:
 - (i) following a material change in the Subcontractor's business operations;
 - (ii) following a material change to the provision of the Services; andwhere reasonably requested to do so by the Contractor.
- (e) Each party shall notify the other party as soon as reasonably practicable if it believes that there has been, or is likely to be, a material disruption to business continuity that requires the implementation of the Business Continuity Plan. The parties shall then immediately implement the Business Continuity Plan and the parties shall perform their obligations set out in the Business Continuity Plan.

9. SUBCONTRACTOR PERSONNEL

9.1 Management of Subcontractor Personnel

- (a) The Subcontractor shall be responsible for the management of all Subcontractor Personnel.
- (b) The Subcontractor shall employ or utilise at all times a sufficient number of Subcontractor Personnel to fulfil its obligations under this Agreement and shall ensure that all Subcontractor Personnel:
 - (i) are competent and efficient;
 - (ii) have the right to live and work in the United Kingdom;
 - (iii) have appropriate and relevant qualifications, training and experience to provide the Services;
 - (iv) to the extent required for their role or employment, are properly trained and fully conversant with the technologies used by the Subcontractor in its provision of the Services;
 - (v) are made fully aware of, and attend scheduled training with respect to, procedures that are relevant to their respective roles and that are notified to the Subcontractor from time to time by the Contractor;
 - (vi) receive adequate training on equality and diversity in the workplace;
 - (vii) are not knowingly engaged nor members of a group or organisation considered to have racist philosophy, principles, aims or policies and would be subject to disciplinary proceedings and/or dismissal as a result of such engagement or membership; and
 - (viii) to the extent required for their role or employment, receive welfare and counseling services in connection with their provision of the Services including post incident support.

[Explanatory Note: Any further qualifications required of Subcontractor Personnel providing the Services to be included here]

- (c) The Authority shall have the right, by written notice to the Subcontractor, to require the removal of any member of the Subcontractor Personnel with an executive function within the Subcontractor from the provision of the Services who, in the reasonable opinion of the Authority is in any way disruptive to the provision or receipt of the Services or would, or would be likely to, damage the reputation of the Authority in the manner described in Clause 6.6. The exercise of this right shall not (i) relieve the Subcontractor of its obligations under this Agreement or (ii) entitle the Authority to require the removal of that member of the Subcontractor Personnel as a director of the Subcontractor. The Authority shall co-operate with the Subcontractor in providing any information the Subcontractor reasonably requires in relation to the notice from the Authority so as to enable the Subcontractor to investigate and take any disciplinary action with respect to the relevant member of the Subcontractor Personnel as it deems necessary.

9.2 Vetting

[Note to MOJ: The generic Security Vetting Requirements have been replaced in the TR programme by more specific requirements. We assume that these will not always be relevant so have kept this clause as originally drafted.]

- (a) The Subcontractor shall, at all times during the Contract Period:
 - (i) comply with the Security Vetting Requirements; and
 - (ii) maintain its security vetting status as required by the Security Vetting Requirements.
- (b) Subject to Clause 0, the Subcontractor shall, at the Contractor's cost and expense] ***[Explanatory Note: The parties may negotiate which party is responsible for the cost and expense of the risk-based assessments.]***, ensure that a risk-based assessment is made of the suitability of each Subcontractor Personnel for the duties he or it will be carrying out.
- (c) ***[Explanatory Note: Any further vetting required of Subcontractor Personnel providing the Services, including compliance with specific MOJ standards, to be included here]***

9.3 Security and conduct on Authority Premises and Contractor Premises

- (a) Whilst on any Authority Premises or Contractor Premises, the Subcontractor shall ensure that all Subcontractor Personnel shall comply with all security measures implemented by the Authority or the Contractor, as applicable, in respect of persons attending that Authority Premises or Contractor Premises to the extent those security measures have been notified to or ought reasonably to have been known by the Subcontractor and/or the Subcontractor Personnel. The Contractor shall provide copies of its written security procedures and the Authority's written security procedures (to the extent that they have been provided to the Contractor by the Authority) where they exist in general, or for specific Authority Premises or Contractor Premises, in each case to the Subcontractor on written request.
- (b) The Subcontractor agrees that any Subcontractor Personnel who cannot produce a pass issued by the Contractor or the Authority when required to do so by any appropriate personnel or agent of the Contractor or the Authority, or who contravene any conditions on the basis of which a pass is issued, may be refused admission to the Authority Premises or Contractor Premises, or be required to leave the Authority Premises or Contractor Premises.
- (c) The Subcontractor shall return any pass to the Authority Premises or Contractor Premises within four Business Days after the Contractor or Authority requires it to be returned or if the person for whom the pass was issued ceases to be involved in the performance of the Services. The Subcontractor shall return all passes on or before the date of termination of this Agreement.
- (d) Whilst on the Authority Premises or Contractor Premises, all Subcontractor Personnel shall comply with all rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and working at the Authority Premises or Contractor Premises, to the extent that those rules, regulations and other requirements have been notified to or ought reasonably to have been known by the Subcontractor and/or the Subcontractor Personnel.

10. GOVERNANCE

The parties shall comply with their respective obligations under Schedule 9 (Governance).

11. INSURANCE

The Subcontractor shall during the Contract Period take out and maintain or procure the maintenance of insurances as would be maintained by a reasonably prudent supplier of services similar to the Services in accordance with Good Industry Practice or as may be required by Applicable Law.

12. ACCESS RIGHTS

12.1 Access – General

- (a) If the Authority has exercised its rights to take action in connection with the services under the Services Agreement in accordance with the terms of the Services Agreement and that action also relates to the Services, the Contractor shall notify the Subcontractor in writing of the following:
 - (i) the action the Authority wishes to take with respect to the Subcontractor;
 - (ii) the reason for the action;
 - (iii) the date it wishes to start the action;
 - (iv) the expected time period which it believes will be necessary for the action (which, for the avoidance of doubt, can be an indefinite period); and
 - (v) to the extent practicable, the effect on the Subcontractor and its obligation to provide the Services during the period the action is being taken.
- (b) For the purposes of Clause 12.1(a), the Subcontractor agrees that the action which the Authority wishes to take may include access to any or all items and personnel specified in Schedule 10 (Audit).
- (c) Following service of the notice pursuant to Clause 12.1(a), the Subcontractor agrees that the Authority shall be entitled, and it shall permit the Authority, to take the action as notified under Clause 12.1(a) and any consequential additional action as it reasonably believes is necessary (together, **Required Action**) and the Subcontractor shall give all reasonable assistance to the Authority before it takes and while it is taking, the Required Action including providing the Authority with all necessary training to use the Subcontractor System for the purposes of taking the Required Action. The Contractor shall provide the Subcontractor with notice of completion of the Required Action and shall use reasonable endeavours to provide advance notice, as is reasonably practicable, of its anticipated completion.
- (d) If the Authority exercises its right to take the Required Action in accordance with this Clause 12, the employees of the Subcontractor will not transfer to the Contractor or the Authority (by operation of the Employment Regulations or a scheme pursuant to any Applicable Law or otherwise) and shall remain employed by the Subcontractor at all times while the Authority is taking the Required Action and afterwards.

12.2 Access Without Subcontractor Default

- (a) If the Required Action is taken in circumstances where the Subcontractor is not in Default under or in connection with this Agreement, then for so long as and to the extent that the

Required Action is taken, and the Subcontractor is prevented from providing any part of the Services:

- (i) the Subcontractor shall be relieved from its obligations to provide that part of the Services (and its obligation to pay Service Credits); and
 - (ii) subject to Clause 12.2(b), the Contractor shall continue to pay the Charges for the Services affected by the Required Action.
- (b) The Contractor shall not be required to pay the Charges in accordance with Clause 12.2(a)(ii) unless the Subcontractor provides all reasonable assistance to the Contractor and the Authority while the Authority is taking the Required Action. The Subcontractor shall also be required to provide additional assistance to the Contractor and/or the Authority if the Contractor requests it and, subject to Clause 24.10(b), the Contractor shall pay the Subcontractor's cost of providing that assistance.

12.3 Access on Subcontractor Default

If the Required Action is taken in circumstances where the Subcontractor is in Default under or in connection with this Agreement, then, without prejudice to the Contractor's other rights and remedies, for so long as and to the extent that the Required Action is taken and the Subcontractor is prevented from providing any part of the Services:

- (i) the Subcontractor shall be relieved from its obligations to provide that part of the Services (and its obligation to pay Service Credits); and
- (ii) the Contractor shall continue to pay the Charges, less an amount equal to all the Authority's reasonable costs of operation in taking the Required Action.

13. PRICE AND PAYMENT

The parties shall comply with their respective obligations under Schedule 6 (Charges).

14. AUDIT

- (a) The parties shall comply with their respective obligations set out in Schedule 10 (Audit).
- (b) The Subcontractor agrees that both the Contractor and the Authority shall be entitled to exercise all the rights specified in Schedule 10 (Audit) and the Subcontractor shall comply with its obligations under Schedule 10 (Audit) with respect to the Authority in addition to the Contractor.

15. CONTRACT PERIOD AND TERMINATION

15.1 Contract Period

- (a) This Agreement shall commence on the date of this Agreement and shall continue until the Termination Date.
- (b) This Agreement shall terminate automatically on the date that the Services Agreement effectively terminates unless the Authority requires this Agreement to be novated to a New Contractor in accordance with Clause 21(b). The Contractor shall ensure that the Exit Period shall expire on the same date as the expiry of the Exit Period under the Services Agreement.

- (c) If this Agreement terminates pursuant to Clause 15.1(b) in circumstances where the Subcontractor is not in default of this Agreement, the Contractor shall pay to the Subcontractor an amount equal to the Breakage Costs.

15.2 Voluntary Termination

- (a) The parties agree that this Agreement cannot be terminated pursuant to this Clause 15.2 without the Authority's prior written consent.
- (b) Subject to Clause 15.2(a), either party may terminate this Agreement at any time by giving not less than six months written notice to the other party stating that it is terminating this Agreement under this Clause 15.2 provided that the six month period may not expire prior to the end of the Initial Term.
- (c) Notwithstanding Clause 15.2(b), the Contractor shall be entitled to require the Subcontractor to cease to provide the Services and to terminate this Agreement by giving written notice to the Subcontractor if directed to do so by the Authority under the terms of the Services Agreement.
- (d) For the purposes of Clauses 15.2(b) and (c), the Exit Period shall commence on the date specified in the notice and this Agreement shall effectively terminate on the Termination Date.
- (e) If this Agreement terminates pursuant to Clause 15.2(b) or, in circumstances where the Subcontractor is not in default of this Agreement pursuant to Clause 15.1(c), the Contractor shall pay to the Subcontractor an amount equal to the Breakage Costs.
- (f) During the Exit Period following termination pursuant to this Clause 15.2(b), during the Exit Period the Contractor shall notify the Subcontractor and provide the Subcontractor with written details of its intention to subcontract any services provided by the Contractor to the Authority under the Services Agreement and the Contractor shall, if the Subcontractor wishes, consider the Subcontractor's proposal for the provision of those services on behalf of the Contractor.

15.3 Termination on Insolvency

- (a) [Each party may, without limiting its other rights or remedies, terminate this Agreement by written notice to the other party (the **Defaulting Party**) if any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of the Defaulting Party for a moratorium, composition, compromise or arrangement with creditors (by way of voluntary arrangement, scheme of arrangement or otherwise), administration, liquidation (other than for the purposes of amalgamation or reconstruction), dissolution, receivership (administrative or otherwise), distress or execution, or the Defaulting Party becomes insolvent or is deemed unable to pay its debts as they fall due, or anything analogous to the foregoing occurs in any applicable jurisdiction[, provided that the Authority has provided its prior written consent to that termination].] ***[Explanatory Note: The additional language in parenthesis in the final sentence of this Clause 15.3(a) must be included where the Subcontractor is a Material Subcontractor under the Services Agreement].***
- (b) The Exit Period shall commence on the date falling five Business Days after the date of the notice to terminate and this Agreement shall effectively terminate on the Termination Date.

15.4 Termination on Material Breach

- (a) Each party (the **Terminating Party**) may, without limiting its other rights or remedies, terminate this Agreement by written notice to the other party (the **Defaulting Party**), if:
- (i) the Defaulting Party is in material breach of this Agreement (and for this purpose a material breach may be a single event or a series of events taken together) and either:
 - (A) that breach is not capable of remedy;
 - (B) that breach is capable of remedy and the Defaulting Party has failed to remedy that breach within 20 Business Days after receiving written notice from the Terminating Party requiring it to do so; or
 - (C) the Terminating Party has given notice under this Clause 15.4 within the preceding 60 Business Days for the same or a substantially similar breach,and for this purpose a breach will be treated as (A) capable of remedy only if the Terminating Party can be put in the position that it would have been in but for the breach; and (B) remedied only if the Terminating Party is put in the position that it would have been in but for the breach[; and
 - (ii) the Authority has provided its prior written consent to that termination].
[Explanatory Note: The additional language in parenthesis in Clause 15.4(a)(ii) must be included where the Subcontractor is a Material Subcontractor under the Services Agreement.]
- (b) The notice of termination for the purposes of this Clause 15.4 must specify:
- (i) the type and nature of breach that has occurred, giving reasonable details; and
 - (ii) that the Exit Period will commence on the day falling 20 Business Days after the date the Non-Defaulting Party sends the notice of termination and this Agreement shall effectively terminate on the Termination Date unless, in the case of a breach which is capable of remedy, the Defaulting Party rectifies the breach within that period of [20] Business Days (**Rectification Period**).
- (c) If the Defaulting Party rectifies the breach within the Rectification Period, the notice of termination will be deemed to be revoked and this Agreement will continue in force.
- (d) If the Defaulting Party fails to rectify the breach within the Rectification Period, the Exit Period will commence on the date falling five Business Days after the expiry of the Rectification Period and this Agreement shall effectively terminate on the Termination Date.

16. EXIT AND EXIT PLAN

- (a) The Subcontractor shall, within [120] Business Days after the date of this Agreement, produce a draft Exit Plan, based on the principles set out in Schedule 13 (Exit Plan), for the orderly transition of the Services (or any of the Services) from the Subcontractor to the Contractor or any New Subcontractor if this Agreement is terminated or otherwise ceases to have effect.

- (b) Within 20 Business Days after the submission by the Subcontractor to the Contractor of the draft Exit Plan, the parties shall meet and respectively use all reasonable endeavours to agree the contents of the Exit Plan, based on the principles set out in Schedule 13 (Exit Plan).
- (c) The Subcontractor shall update the Exit Plan at the commencement of each Contract Year as part of the Annual Service Plan to reflect changes in the Services and the manner of provision of the Services during that Contract Year. Following each update, the Subcontractor shall submit the revised Exit Plan to the Contractor for review. Within 20 Business Days after the submission of the revised Exit Plan by the Subcontractor to the Contractor, the parties shall meet and respectively use all reasonable endeavours to agree the contents of the revised Exit Plan.
- (d) The Subcontractor shall, in updating the Exit Plan, ensure that all necessary information and explanation required for the purpose of executing the Exit Plan and to enable suitably qualified employees of the Contractor or a New Subcontractor to be able to use the Subcontractor System and receive the Services is made available to the Contractor.
- (e) Within 20 Business Days prior to the commencement of the Exit Period on termination of this Agreement (or, where this Agreement ceases to have effect for any other reason, as soon as practicable afterwards), the Subcontractor shall submit to the Contractor for review and approval, a revised Exit Plan that could be implemented immediately. The parties shall meet and respectively use all reasonable endeavours to agree the contents of the Exit Plan. Until the agreement of the Exit Plan, the Subcontractor shall provide the Services to the Contractor in accordance with the last approved version of the Exit Plan (in so far as this still applies).
- (f) The Subcontractor shall during the Exit Period at the request of the Contractor continue to provide, or shall ensure that each relevant subcontractor continues to provide, all or any part of the Services (as determined by the Contractor) (as applicable). During the Exit Period, if the Contractor has requested the Subcontractor to continue to provide the Services or ensure that the Services are provided by any subcontractor, the Contractor shall continue to pay the Charges in accordance with Schedule 6 (Charges).
- (g) If there is any dispute between the parties regarding, or any failure to agree, the content of the Exit Plan, either party may, by written notice to the other, refer that issue for determination in accordance with the Dispute Resolution Procedure.
- (h) During the Exit Period, the Subcontractor shall also provide to the Contractor any reasonable assistance requested by the Authority to allow the Services to continue without interruption or adverse effect following the termination of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Contractor or a New Subcontractor.
- (i) During the Exit Period, the Subcontractor shall not make any change to the Subcontractor Personnel which would have a material adverse impact on the Contractor's business or the Services without the prior written consent of the Contractor, which shall not be unreasonably withheld or delayed.
- (j) During the Exit Period and, in any event, by the end of the Exit Period:
 - (i) the Subcontractor shall, as requested by the Contractor, destroy all Project Data in its possession which is no longer relevant in accordance with [●] or transfer that

Project Data to the Contractor save to the extent that the Project Data is required for the purposes of providing any of the Services or to the extent it remains relevant in accordance with [●] to the Contractor under this Clause 16 or the Exit Plan; **[Explanatory Note: The relevant information security and information assurance standards will be listed here prior to each procurement.]**

- (ii) each party shall, on request of the other party, destroy or return to the other party all Confidential Information of the other party and shall certify that it has not retained or has destroyed (as applicable) the other party's Confidential Information save to the extent that information is required by the party in question for the purposes of providing or receiving any Services; and
- (iii) the Contractor and the Authority may exercise its rights in accordance with Clause 12.

17. VAT

- (a) All amounts due under this Agreement are exclusive of VAT. If any supply made or referred to in this Agreement is or becomes chargeable to VAT for which the person making the supply is liable to account the person receiving the supply (the **Recipient**) shall in addition pay the person making the supply (the **Supplier**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- (b) Where this Agreement requires any party (the **Paying Party**) to repay, refund or reimburse any other party (the **Indemnified Party**) for the costs of any supplies made to the Indemnified Party, the Paying Party shall also indemnify the Indemnified Party against all liability to VAT in respect of that supply, except to the extent that the Indemnified Party is able to recover the VAT on such supply.
- (c) The Subcontractor shall provide the Contractor with any information reasonably requested by the Contractor in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Contractor to the Subcontractor.

18. TRANSPARENCY AND INFORMATION

18.1 Subcontractor's Records and Provision of Information

- (a) The Subcontractor shall:
 - (i) at all times maintain a full record of particulars of the costs of performing the Services; and
 - (ii) when requested by the Contractor, provide all of the costs referred to in Clause 18.1(a)(i), including details of any funds held by the Subcontractor specifically to cover those costs, in the form and detail as the Contractor may require.
- (b) The Subcontractor shall keep (and procure that each subcontractor shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:
 - (i) administrative overheads;
 - (ii) payments made to its subcontractors and any other operating costs;

- (iii) capital and revenue expenditure; and
 - (iv) all other items that the Contractor may require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement.
- (c) The Subcontractor shall maintain or procure that full records are maintained of:
 - (i) the Subcontractor's performance against the Service Levels and the payment of Service Credits;
 - (ii) all incidents relating to health, safety and security which occur during the term of this Agreement; and
 - (iii) of all staff matters including turnover, pay and disciplinary matters.
- (d) The Subcontractor shall, within the timescale specified by the Contractor, provide the Contractor with all data, statistics and other information in its possession or control including information which it obtains in connection with the performance of its obligations under this Agreement which the Contractor reasonably requires for the purposes of the Contractor's ability to manage this Agreement and assuring delivery of the Services.
- (e) The Subcontractor shall provide all information requested by any or all organisations and agencies as the Authority reasonably requests, for the purposes of those agencies carrying out their public duties.
- (f) The Subcontractor shall permit records referred to in this Clause 18 to be examined and copied by the Authority and any Authority Related Party, and by the Comptroller and Auditor General and his representatives.
- (g) The records referred to in this Clause 18 shall be retained for the periods specified in the Authority's [Record Retention Disposal and Archiving Policy PI 6/2011]. **[Explanatory Note: This policy may be updated and/or replaced from time to time.]**
- (h) If the Contractor wishes to enter into an agreement with a New Subcontractor on termination of this Agreement, or engage in a comparison of services and costs between providers of services similar to the Services at any time during the Contract Period, the Subcontractor shall (and shall ensure that each of its subcontractors shall) comply with all requests of the Contractor to provide information which it reasonably requires for the purposes of that agreement, any associated procurement process and engagement in a comparison of services and costs between providers of services similar to the Service including in relation to the Subcontractor's costs of providing the Services.
- (i) The Subcontractor shall:
 - (i) provide to the Contractor copies of its annual report and accounts within 20 Business Days after their publication;
 - (ii) use all reasonable endeavours to assist the Contractor in its preparation of any report required by the Authority, from time to time; and
 - (iii) provide all information reasonably required by the Contractor in connection with Changes in accordance with the provisions of the Change Protocol.

- (j) The Subcontractor agrees that performance related and financial information provided to the Contractor under this Agreement will be made available to the Authority and any Authority Related Party at its request for the purposes of contract management, assessing the suitability for bidders when considering the award of contracts and overseeing the management, and the performance, of relationships with strategic suppliers at a cross-Government level.

18.2 Data Protection

- (a) The terms processing (and its derivatives), personal data, data controller, data processor and data subject shall, where used in this Agreement, have the meanings given to them under the UK Data Protection Act 1998 (the **DPA**).
- (b) Where the Subcontractor is providing the Services it is agreed that the Contractor is the data controller and the Subcontractor is the data processor, and the Subcontractor shall only process Relevant Personal Data related to those Services in accordance with the instructions of the Contractor or (where not subject to instructions of the Contractor) as otherwise set out in this Agreement.
- (c) The Subcontractor shall:
 - (i) only undertake processing of Relevant Personal Data as reasonably required in connection with the Services;
 - (ii) not process or transfer any Relevant Personal Data outside the United Kingdom without the prior written consent of the Authority;
 - (iii) other than pursuant to Clause 18.2(f) below, not process any Relevant Personal Data that it receives pursuant to this Agreement for any other reason other than in connection with the Services;
 - (iv) not disclose Relevant Personal Data to any third parties other than:
 - (A) to employees and subcontractors to whom disclosure is reasonably necessary for the Subcontractor to carry out the Services;
 - (B) to the extent required under a court order; or
 - (C) where explicitly permitted pursuant to this Agreement;
 - (v) bring into effect and maintain all appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Relevant Personal Data and accidental loss or destruction of, or damage to, personal data including taking reasonable steps to ensure the reliability of any person having access to the personal data.
- (d) The Contractor may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Subcontractor referred to in Clause 18.2(c)(v). Within 20 Business Days after a request, the Subcontractor shall, at its own cost and expense, supply written particulars of the measures to enable the Contractor to determine whether or not any Relevant Personal Data has been, or will be processed, in compliance with the DPA.

- (e) If the data subject of any Relevant Personal Data makes a written request to the Subcontractor requesting information concerning the processing of, or copies of, Relevant Personal Data, the Subcontractor shall promptly notify the Contractor of that request (including a copy of the request) and shall not respond to that request except in accordance with the Contractor's prior written instructions.
- (f) If requested by the Contractor, the Subcontractor shall provide details of the Relevant Personal Data processed by it in relation to any data subject promptly on receipt of a request by the Contractor.

18.3 Public Relations and Publicity

- (a) Subject to Clause 18.3(b), the Subcontractor shall be permitted to communicate with representatives of the press, television, radio or other communications media in order to promote and publicise its business and service capabilities as they relate to the Services.
- (b) The Subcontractor shall consult with the Contractor prior to engaging in any activity set out in Clause 18.3(a) that would involve the disclosure of any matter under this Agreement and shall not in any circumstances disclose any Confidential Information.
- (c) No facilities or permission to photograph or film in or on any property used for the provision of the Services by the Subcontractor shall be given by the Contractor to the Subcontractor without the prior written approval of the Authority.

18.4 Confidentiality

- (a) The parties agree that the provisions of this Agreement shall, subject to Clauses 18.4(c) and 18.4(d), not be treated as Confidential Information and may be disclosed without restriction.
- (b) The Subcontractor agrees that, subject to Clause 18.4(d), the Contractor may (as is required under the terms of the Services Agreement) provide the Authority with:
 - (i) a copy of this Agreement;
 - (ii) any amendments to this Agreement; and
 - (iii) each subcontract that the Subcontractor enters into pursuant to this Agreement,
 in each case for the Authority to publish on a website.
- (c) Clause 18.4(a) shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Part I of Schedule 15 (Commercially Sensitive Information) to this Agreement which shall, subject to Clause 18.4(g), be kept confidential for the periods specified in that Part.
- (d) Each party (a **Recipient**) undertakes to the other party (a **Disclosing Party**) to treat as confidential all information disclosed by whatever means, in any medium or format (whether marked "confidential" or not) which the Recipient receives from the Disclosing Party, either directly or from any other person, which concerns the business, operations or customers of the Disclosing Party, its Affiliates and subcontractors (**Confidential Information**).
- (e) The Recipient may use the Confidential Information only for the purposes of and in accordance with this Agreement. The Recipient shall, and shall procure that its Affiliates shall, not disclose Confidential Information of the Disclosing Party to any other person save

that they may disclose Confidential Information of the Disclosing Party to their employees, directors, subcontractors and professional advisers and to any other party to whom this Agreement expressly permits disclosure (**Permitted Users**) on a strict "need-to-know" basis only. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence to the standard required under this Agreement. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality), the Recipient shall ensure that the Permitted User shall enter into a written confidentiality undertaking with the Recipient on substantially equivalent terms to this Agreement, a copy of which shall be provided to the Disclosing Party upon request.

- (f) Clauses 18.4(d) and (e) shall not apply to any information which:
 - (i) is in or subsequently enters the public domain other than as a result of a breach of this Clause 18.4 or a breach of equivalent confidentiality provisions of a Permitted User;
 - (ii) has been or is subsequently received by the Recipient from a Third Party which is under no confidentiality obligation in respect of that information;
 - (iii) has been or is subsequently independently developed by the Recipient without use of the Disclosing Party's Confidential Information;
 - (iv) was previously known to the Recipient free of any obligation to keep it confidential; or
 - (v) the Contractor is required to disclose under the terms of the Services Agreement.
- (g) The Subcontractor agrees that the Contractor shall be entitled to provide the Authority with a copy of this Agreement and each subcontract that the Subcontractor enters into pursuant to Clause 22.
- (h) Each Permitted User may disclose Confidential Information where that Permitted User (or, where the Permitted User is an individual, his or her employer or any Affiliate of his or her employer) is required to do so by law or by any competent regulatory authority or securities exchange on which securities of the Recipient (or any member of its corporate group) are listed. In these circumstances the Recipient shall give the Disclosing Party prompt advance written notice of the disclosure (where lawful and practical to do so) so that the Disclosing Party has sufficient opportunity (where possible) to prevent or control the manner of disclosure by appropriate legal means.
- (i) This Clause 18.4 shall remain in full force and effect notwithstanding the termination of this Agreement.

18.5 Freedom of Information

- (a) The parties acknowledge that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and both parties shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clause 18.5(b) to (g) (inclusive) below.
- (b) Where the Contractor receives a Request for Information from the Authority in relation to Information that the Subcontractor is holding on the Contractor's behalf, and which the Contractor or the Authority does not hold itself, the Contractor shall refer the Request for

Information to the Subcontractor as soon as practicable and in any event within 5 Business Days after receiving it and the Subcontractor shall:

- (i) provide the Contractor with a copy of the Information in the form that the Authority requires as soon as practicable and in any event within 10 Business Days (or any other period as the Contractor acting reasonably may specify) after the Authority's request; and
 - (ii) provide all necessary assistance reasonably requested by the Contractor in connection with the Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- (c) Following a referral under Clause 18.5(b), and until the time the Subcontractor has provided the Contractor with the Information specified in Clause 18.5(b)(i), the Subcontractor may make representations to the Contractor as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided to identify and locate the Information requested, provided always that the Contractor shall be responsible for determining at its absolute discretion:
- (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (ii) whether Information is to be disclosed in response to a Request for Information,
- and in no event shall the Subcontractor respond directly, or allow its subcontractors to respond directly, to a Request for Information unless expressly authorised to do so by the Contractor in writing.
- (d) The Subcontractor shall ensure that all Information held on behalf of the Contractor is retained for disclosure for at least six years (from the date it is acquired) and shall permit the Contractor to inspect the Information as requested from time to time.
- (e) The Subcontractor shall transfer to the Contractor any Request for Information received by the Subcontractor as soon as practicable and in any event within 2 Business Days after receiving it.
- (f) The Subcontractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- (g) In the event of a referral from the Contractor pursuant to Clause 18.5(b), the Subcontractor shall as soon as practicable, and in any event within 5 Business Days after the referral, inform the Contractor of the Subcontractor's estimated costs of complying with the Request for Information to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where the costs (either on their own or in conjunction with the Contractor or the Authority's own costs in respect of the Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Contractor shall inform the Subcontractor in writing whether or not it still requires the Subcontractor to comply with the Request for Information and, where it does require the Subcontractor to comply with the Request for Information, the 10 Business Days period for compliance shall be extended by the number of additional Business Days for compliance as the Authority is entitled to under Section 10 of the FOIA.

In that case, the Contractor shall notify the Subcontractor of the additional Business Days as soon as practicable after becoming aware of them and shall reimburse the Subcontractor for the costs incurred by the Subcontractor in complying with the Request for Information to the extent it is itself entitled to reimbursement of those costs in accordance with its own FOIA policy from time to time.

- (h) The parties acknowledge that (notwithstanding the provisions of Clause 20.3) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I 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, the Subcontractor or the Services:
 - (i) in certain circumstances without consulting with the Contractor and/or the Subcontractor; or
 - (ii) following consultation with the Contractor and/or the Subcontractor and having taken their views into account.

19. INTELLECTUAL PROPERTY

19.1 Ownership of Pre-existing Intellectual Property Rights

- (a) All Intellectual Property Rights belonging to a party prior to the date of this Agreement shall remain vested in that party.
- (b) All Intellectual Property Rights in or to any brand or trade mark shall remain vested in the owner of the relevant brand or trade mark and neither party's trade marks or brands shall be used by the other party for any purpose without the other party's prior written consent. If that consent is given, the party receiving consent shall use the relevant trade marks or brands in compliance with the consenting party's brand guidelines and in accordance with the terms and conditions of the consent or the relevant trade mark licence between the parties (if any).

19.2 Licence of Intellectual Property Rights

[Explanatory Note: The IPR clause only deals with the flow of IPR between the Authority and the Subcontractor. Parties should add the negotiated licences of Contractor to Subcontractor and/or Subcontractor to Contractor IPR, as applicable. See Explanatory Guide for more detail.]

- (a) As between the parties, the Subcontractor shall be the sole and exclusive owner of the Subcontractor IPRs.
- (b) The parties acknowledge and agree that the Authority is the sole and exclusive owner of the Authority IPRs.
- (c) The Contractor grants to the Subcontractor a non-exclusive, non-transferable, royalty-free licence to use the Authority IPRs solely to the extent necessary to provide the Services in accordance with this Agreement. The Subcontractor shall ensure that the Subcontractor Personnel are made aware that the Authority IPRs are provided under licence only and, where applicable are owned by the Authority and shall comply with the terms of this licence and this Clause 19.

- (d) The Subcontractor grants to the Contractor, Authority and each Authority Related Party a royalty-free, non-exclusive, non-transferable, irrevocable and worldwide licence (including a right to sub-license) to use and reproduce Subcontractor IPRs to the extent necessary to receive and use the Services.

19.3 Branding

- (a) The parties acknowledge that the Authority is the owner of all the Authority brands (including all trade marks, signs and logos, whether registered or unregistered).
- (b) The Subcontractor shall not, and shall procure that each of its subcontractors shall not:
 - (i) use the Authority brands as part of its corporate or trading name;
 - (ii) do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Authority brands or the reputation or goodwill associated with the Authority brands or the Authority;
 - (iii) not apply for, or obtain, registration of the Authority brands for any goods or services; and
 - (iv) not apply for, or obtain, registration of any trade or service mark which consists of, or comprises, or is confusingly similar to, the Authority brands.
- (c) The Subcontractor shall comply at all times during the Contract Period with the Brand Manual.

19.4 Notification of unauthorised use of IPRs

- (a) The Subcontractor shall immediately notify the Contractor in writing giving full particulars if any of the following matters come to its attention:
 - (i) any actual, suspected or threatened infringement of the Authority IPRs;
 - (ii) any claim made or threatened that use of the Authority IPRs infringes the rights of any third party;
 - (iii) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Subcontractor under Clause 19.2; or
 - (iv) any other form of attack, charge or claim to which the Authority IPRs may be subject.

19.5 Consequences of termination on Authority IPRs

- (a) On termination of this Agreement for any reason and subject to any provisions set out elsewhere in this Agreement:
 - (i) all rights and licences granted pursuant to Clause 19.2 shall cease; and
 - (ii) the Subcontractor shall cease all use of the Authority IPRs.

- (b) Without prejudice to any other rights or remedies that the Contractor or the Authority may have, the Subcontractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Clause 19.5 by the Subcontractor. Accordingly, the Contractor shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Clause 19.5.

19.6 Ownership of Bespoke Materials

- (a) Except to the extent expressly agreed otherwise, the Intellectual Property Rights subsisting in Bespoke Materials shall vest in the Authority unconditionally and immediately on their creation or acquisition. The Subcontractor assigns to the Authority absolutely with full title guarantee (or such title as it holds with limited title guarantee) all right, title and interest (present and future) in any Intellectual Property Rights in the Bespoke Materials.
- (b) The Authority grants to the Subcontractor a royalty-free, non-exclusive licence (including a right to sub-license) to use, reproduce, modify, adapt and develop the Intellectual Property Rights in the Bespoke Materials solely for the purpose of performing its obligations under this Agreement.
- (c) The Subcontractor grants to the Authority a fully paid up royalty-free, non-exclusive, transferable, perpetual, irrevocable and worldwide licence (including a right to sub-license) to use any Subcontractor IPRs to for the purposes of using and exploiting the Bespoke Materials only.
- (d) The Subcontractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Agreement or the performance of this Agreement.
- (e) If the Subcontractor wishes to use any of the Bespoke Materials other than for the purposes of providing the Services in accordance with this Agreement, it shall notify the Authority in writing and the parties shall negotiate in good faith with a view to agreeing the terms of a licence for the use of the Bespoke Materials and the terms of any arrangements for the sharing of revenue arising from the use.

19.7 Intellectual Property Rights Indemnity

- (a) The Subcontractor shall indemnify the Contractor and the Authority on written demand in respect of all Losses incurred by or awarded against the Contractor or the Authority in connection with any claim or action against the Contractor or the Authority by any Third Party that the receipt by the Contractor of any Services (or any part of them) infringes the Intellectual Property Rights of that Third Party (**Subcontractor IPR Claim**) within the time specified in that written demand and shall take all steps necessary to defend the Subcontractor IPR Claim.
- (b) If any Subcontractor IPR Claim is made, or in the Contractor's reasonable opinion is likely to be made against the Contractor or the Authority, the Subcontractor shall promptly and at its cost and expense either:
 - (i) obtain for the Contractor the right to continue using the Services in the manner permitted under this Agreement; or
 - (ii) modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement but in such a way that it complies with the representations and warranties in this Agreement in relation to all and every part of the Services.

- (c) This Clause 19.7 shall remain in full force and effect notwithstanding any termination of this Agreement.

20. PROJECT DATA

20.1 Project Data

- (a) The Authority is to be treated as the owner of Project Data and the parties agree that the Project Data is the property of the Authority. All Intellectual Property Rights in or to the Project Data shall vest in the Authority unconditionally and immediately on their creation. The Subcontractor assigns to the Authority absolutely with full title guarantee (or the title as it holds with limited title guarantee) all right, title and interest (present and future) in any Intellectual Property Rights in the Project Data which may vest in it.
- (b) The Contractor grants the Subcontractor a royalty-free and non-exclusive licence for the Contract Period to use the Project Data solely to the extent necessary to provide the Services in accordance with this Agreement.
- (c) The Subcontractor shall:
 - (i) store, copy or use Project Data only to the extent necessary to perform its obligations under this Agreement;
 - (ii) keep the Project Data logically segregated from all other data (including the Subcontractor's own data and the data of any other customer of the Subcontractor);
 - (iii) ensure that the Project Data is accurate (other than Project Data provided to the Subcontractor by the Contractor where the Subcontractor shall use reasonable endeavours to ensure that the Project Data is accurate) and shall preserve the integrity of the Project Data and prevent the corruption or loss of the Project Data; and
 - (iv) to the extent the Project Data is held or processed or both by the Subcontractor, supply the Project Data to the Contractor in the format specified by the Contractor from time to time.
- (d) The Subcontractor shall not:
 - (i) delete or remove any proprietary notices contained within or relating to the Project Data;
 - (ii) disclose Project Data to any Third Party (other than permitted subcontractors) or any of the Subcontractor's customers without the prior written approval of the Contractor except if required to do so by a Relevant Authority or by any Applicable Law provided it notifies the Contractor in writing that it is required to do so before the disclosure (if permitted to do so by the relevant Applicable Law) or after it has made the disclosure if prior notification is prohibited by the relevant Applicable Law; and
 - (iii) use the Project Data to solicit any business for any of the Subcontractor's products or services,

save as expressly permitted under Clauses 20.1(b) or Clause 14.

- (e) If any part of the Project Data ceases to be required by the Subcontractor for the performance of its obligations under this Agreement and, in any event, on or before the Termination Date, the Subcontractor shall promptly return that Project Data to the Contractor.
- (f) If any Project Data is corrupted, lost or degraded as a result of the Subcontractor's failure to comply with the Authority ICT Policies or any other breach by the Subcontractor of this Agreement, the Subcontractor shall, without limiting the Contractor's other rights or remedies, at its own cost and expense carry out any remedial action necessary to restore or replace the corrupted, lost or degraded Project Data.
- (g) In all other circumstances not covered by Clause 20.1(f), if the Project Data is corrupted, lost or degraded, the Contractor shall carry out, so far as it is reasonably capable, those remedial actions which are reasonably necessary to restore Project Data as the Contractor reasonably requires and at the Contractor's cost and expense.
- (h) If and to the extent the Project Data comprises personal data, this shall be processed always in accordance with Clause 18.2.

20.2 Back-up and safe storage of data

The Subcontractor shall ensure the back up and storage in safe custody of the Project Data in the possession or control of the Subcontractor at all times during the Contract Period in accordance with Good Industry Practice. Without prejudice to this obligation, the Subcontractor shall comply with all procedures for back-up and storage of Project Data which the Contractor reasonably requires the Subcontractor to follow having reviewed the Subcontractor's proposals for the back up and storage of Project Data.

20.3 Conflicts of Interest

The Subcontractor shall take appropriate steps to ensure that neither the Subcontractor nor any Subcontractor Personnel is placed in a position where there is or may be an actual conflict or potential conflict, between the interests of the Subcontractor and the duties owed to the Contractor under the provisions of this Agreement.

21. ASSIGNMENT

- (a) Neither party shall assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this Agreement, without the prior written consent of the other party and any such purported assignment, transfer or disposal shall be void.
- (b) If the Services Agreement expires or terminates for whatever reason, the Subcontractor shall, at the request of the Authority, novate its obligations under this Agreement to a New Contractor.

22. SUBCONTRACTING

22.1 Contractor's consent

- (a) The Subcontractor shall not subcontract the provision of any part of the Services under this Agreement.

[Explanatory Note: ESF Rules and Regulations prohibit more than one level of sub-contracting.]

23. DISPUTE RESOLUTION

- (a) The parties agree that each dispute arising under or in relation to any aspect of this Agreement or any non-contractual obligations arising under or in connection with it (a **Dispute**) shall be resolved in accordance with this Clause 23.
- (b) If a Dispute arises, the Contractor and the Subcontractor shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.
- (c) Each Dispute shall be referred for resolution by either party first to:
 - (i) in the case of the Contractor, the Relationship Manager appointed by the Contractor under Schedule 9 (Governance); and
 - (ii) in the case of the Subcontractor, the Relationship Manager appointed by the Subcontractor under Schedule 9 (Governance).
- (d) If the Dispute cannot be resolved by the Relationship Managers in accordance with Clause 23(c) within 10 Business Days after the Dispute has first been referred pursuant to Clause 23(c), either party may give written notice to the other party that a Dispute has not been resolved by the Relationship Managers (**Dispute Notice**). Within five Business Days after the date of the Dispute Notice, the Dispute shall be referred to the respective Chief Executive Officers of the Contractor and the Subcontractor for resolution. If the Dispute is not resolved by agreement in writing between the parties within 10 Business Days after the date of the Dispute Notice, the Dispute shall be resolved in accordance with the remaining provisions of this Clause 23 or Clause 24.13, as the case may be.
- (e) A Dispute may at either party's request be referred to mediation. The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within 15 Business Days after the date of the request that the Dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR) in London on the application of either party. The mediation shall be conducted in a mutually convenient venue as agreed between the parties and the mediator pursuant to a procedure established by the mediator in his absolute discretion. Mediation does not limit the rights and remedies of the parties in any future proceedings. The costs of the mediation, including the fees and expenses of the mediator shall be borne equally by the parties.
- (f) This Clause 23 and Clause 24.12 do not limit either party's right to seek interim relief (such as an injunction) against the other party through the English courts to protect its rights and interests, or to enforce the obligations of the other party.

24. MISCELLANEOUS

24.1 Announcements

Neither party shall:

- (i) [subject to Clause 18.3,]make or authorise any public or private announcement or communication concerning this Agreement; or

- (ii) Subject to Clause 19.3, refer to or use any business name or trade mark of the other party in any promotional communications,

without the prior written consent of that other party, except where required by Applicable Law.

24.2 Notices

- (a) Any notice or other communication to be given under this Agreement to a party must be in writing [(which includes fax, but not any other form of electronic communication (as defined in the Electronic Communications Act 2000))] and must be delivered or sent by post [or facsimile] to the party to whom it is to be given at its address set out below:

- (i) [to the Contractor at:

[●]

Marked for the attention of: [●]

- (ii) to the Subcontractor at:

[●]

Marked for the attention of: [●]

or at any other address [or facsimile number] as it shall have notified to the other party in accordance with this Clause 24. Any notice or other communication sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere). The parties shall agree in writing within 20 Business Days after the date of this Agreement a protocol for the delivery of notices for the operational management of this Agreement (including by way of email) and the parties shall comply at all times with that protocol as updated from time to time.

- (b) Any notice or other communication shall be deemed to have been given:

- (i) if delivered, on the date of delivery;
 - (ii) if sent by post, on the second Business Day after it was put into the post; or
 - (iii) if sent by facsimile, on the date of transmission, if transmitted before 3.00 p.m. (local time at the country of destination) on any Business Day, and in any other case on the Business Day following the date of transmission.

- (c) In proving the giving of a notice or other communication it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted by prepaid first class recorded delivery post or by prepaid airmail or that the facsimile message was properly addressed and transmitted, as the case may be.

- (d) This Clause 24.2 shall not apply in relation to the service of any claim form, notice, order, judgement or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

24.3 Entire Agreement

- (a) This Agreement (and the documents referred to in it) contains the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersedes all previous agreements between the parties relating to these transactions. Except as required by statute, no terms shall be implied (whether by custom, usage or otherwise) into this Agreement.
- (b) Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the documents referred to in it) made by or on behalf of the other party at any time before the signature of this Agreement.
- (c) Each party waives all rights and remedies which, but for Clause 24.3(b), might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.
- (d) Nothing in Clause 24.3(a) limits or excludes any liability for fraud.

24.4 Third Party Rights

- (a) The Subcontractor acknowledges and agrees that the Contractor has entered into this Agreement for its own benefit and for the benefit of the Authority.
- (b) The Authority may enforce against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999 any Clause in this Agreement even though the relevant Clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to the Contractor or not specifically identify the Authority or an Authority Related Party but subject always to the liability provisions in this Agreement, which shall apply, making the necessary changes, to claims made by the Authority.
- (c) Subject to Clause 24.4(b), a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- (d) This Agreement may not, without the prior written consent of the Authority (that consent not to be unreasonably withheld or delayed), be varied or terminated in any way that might affect the rights of the Authority and any Authority Related Party under this Clause 24.4.
- (e) This Clause 24.4 does not apply to the Crown and does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

24.5 Waiver

The rights of each party under this Agreement:

- (i) may be exercised as often as necessary;
- (ii) except as otherwise provided by this Agreement, are cumulative and not exclusive of rights or remedies provided by law; and
- (iii) may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any right is not a waiver of that right. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

24.6 No partnership or agency

At all times during the Contract Period, the Subcontractor shall be an independent contractor and nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Subcontractor or the Contractor and the Subcontractor and accordingly neither the Contractor nor the Subcontractor shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party or the Authority save as expressly permitted by the terms of this Agreement.

24.7 Severability

The provisions contained in each Clause and paragraph of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid. If any provision is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

24.8 Amendments

- (a) [The parties agree that this Agreement cannot be amended without the Authority's prior written consent.] ***[Explanatory Note: This clause will only be required for Material Subcontracts.]***
- (b) No amendment of this Agreement shall be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by an authorised representative of each of the parties.

24.9 Further assurance

Each party undertakes, at the request and cost and expense of the other party, to sign all documents and to do all other acts which may be necessary to give full effect to this Agreement.

24.10 Costs

- (a) Each party shall pay the costs and expenses incurred by it in connection with the entering into of this Agreement.
- (b) Where this Agreement provides for the Contractor to pay costs to the Subcontractor, the Subcontractor shall be entitled to recover those costs from the Contractor provided that it demonstrates, to the reasonable satisfaction of the Contractor, that the costs incurred could not reasonably be mitigated or recovered by the Subcontractor acting in accordance with Good Industry Practice.

24.11 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any party (including any duly

authorised representative of a party) may enter into this Agreement by executing a counterpart.

24.12 Welsh Language

- (a) The Subcontractor shall at all times comply with the Welsh Language Act 1993 and the Authority's Welsh Language Scheme (as amended from time to time) as if it were the Authority to the extent that the same relate to the provision of the Services.
- (b) The Subcontractor shall be responsible for promoting the delivery of the services in Welsh or English to the service user and shall use all reasonable steps to achieve this.
- (c) For the purposes of this Clause 24.12, the Welsh Language Scheme means the scheme issued in writing by the Authority from time to time which can be found on the Authority Website.

24.13 Governing Law and Jurisdiction

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.
- (b) Subject to the Dispute Resolution Procedure, the courts of England shall have exclusive jurisdiction to settle any dispute, claim or controversy arising out of or in connection with this Agreement (including a dispute, claim or controversy relating to any non-contractual obligations arising out of or in connection with this Agreement) and the parties accordingly submit to the exclusive jurisdiction of the English courts.

THIS AGREEMENT has been signed on behalf of the parties by their duly authorised representatives on the date which appears on page 1.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. INTERPRETATION

- 1.1 In this Agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes:
- (a) that enactment as amended, extended or applied by or under any other enactment (before, on or after the execution of this Agreement);
 - (b) any enactment which that enactment re-enacts (with or without modification); and
 - (c) any subordinate legislation made (before, on or after the execution of this Agreement) under that enactment, including (where applicable) that enactment as amended, extended, or applied as described in paragraph 1.1(a), or under any enactment which it re-enacts as described in paragraph 1.1(b).
 - (d) In this Agreement:
 - (i) any reference to a **person** includes a body corporate, unincorporated association of persons (including a partnership), government, state, agency, organisation, and any other entity whether or not having a separate legal personality and an individual, his estate and personal representatives;
 - (ii) subject to Clauses 21 and 22, any reference to a party to this Agreement includes a reference to the successors or assigns (immediate or otherwise) of that party;
 - (iii) any reference importing a gender includes the other genders;
 - (iv) any reference to a time of day is to London time;
 - (v) subject to Clause 24.2, any reference to writing includes typing, printing, lithography and photography but excludes any form of electronic communication (as defined in the Electronic Communications Act 2000) to the other party by email (and Clause 24.2 shall not apply to those communications);
 - (vi) each reference to a document is to that document as amended, varied, assigned or novated from time to time otherwise than in breach of this Agreement or that document;
 - (vii) each reference to a Clause, Schedule or Appendix is to a clause of, or a schedule or appendix to, this Agreement;
 - (viii) each reference to a paragraph is to a paragraph of a Schedule or Appendix;
 - (ix) the Schedules form part of this Agreement;
 - (x) the headings do not affect the interpretation of this Agreement;

- (xi) any reference to a company includes any company, corporation or other body corporate wherever incorporated; and
- (xii) any reference to an indemnity being given on an after-Tax basis means that the amount payable pursuant to such indemnity (the **Payment**) shall be increased (or decreased, as the case may be) so as to ensure that, after taking into account:
 - (A) the amount in respect of Tax required by law to be deducted or withheld from such amount (or increased or decreased amount, as the case may be);
 - (B) the Tax that is chargeable (or would be chargeable but for the use, setting off or application of any relief) on such amount (or increased or decreased amount, as the case may be) in the hands of the recipient of the Payment; and
 - (C) any Tax credit, repayment or other Tax benefit which is actually received and used by the recipient of the Payment solely as a result of the matter giving rise to the indemnity or as a result of receiving the Payment,

(which amount of Tax and Tax credit, repayment or other Tax benefit is, in the case of (B) and (C) above, to be determined by the recipient (acting reasonably and in good faith) and certified as such to the party making the Payment), the recipient of the Payment is in the same position as it would have been in had there been no such withholding, deduction, Tax, Tax credit, repayment or other Tax benefit, provided that nothing in this paragraph 1.1(d)(xii) shall require the recipient to make any changes to the way in which it deals with any Tax Authority in relation to any Tax credit, repayment or other Tax benefit. References in this paragraph 1.1(d)(xii) to the recipient of a payment include references to any person who is treated as receiving that payment for any Tax purpose.

- (e) In this Agreement each reference to indemnifying any person against any event, matter or circumstance shall be construed as a reference to indemnifying that person in full and holding that person harmless on an after Tax basis from and against all Losses suffered or incurred by that person, in each case arising out of any and all claims (whether or not successful, compromised or settled), actions, demands, proceedings or judgments which may be instituted, made, threatened, alleged, asserted or established in any jurisdiction against or otherwise involving that person, including Losses suffered or incurred in establishing a right to be indemnified under this Agreement, and indemnified and indemnify and similar expressions shall be interpreted accordingly.
- (f) A reference in this Agreement to any English legal term for any action, remedy, method or form of judicial proceeding, legal document, court or any other legal concept or matter will be deemed to include a reference to the corresponding or most similar legal term in any jurisdiction other than England, to the extent that jurisdiction is relevant to the transactions contemplated by this Agreement or the terms of this Agreement.
- (g) If there is any conflict or inconsistency between any of:

- (i) a term in the main body of this Agreement;
- (ii) a term in any of the Schedules;
- (iii) a term in any of the Appendices to the Schedules; and
- (iv) any term included in any other document incorporated by reference into this Agreement,

the term falling into the category first appearing in the list above shall, unless expressly stated otherwise, take precedence.

- (h) The *ejusdem generis* rule does not apply to this Agreement. Specific words indicating a type, class or category of thing do not restrict the meaning of general words following specific words, such as general words introduced by the word "other" or a similar expression. General words followed by specific words shall not be restricted in meaning to the type, class or category of thing indicated by the specific words. The words including and include shall mean "including without limitation" and "include without limitation", respectively.
- (i) In the Schedules and Appendices, capitalised terms that are not defined in this Schedule 1 (Definitions and Interpretation) shall have the meaning given to them in the relevant Schedule or Appendix.
- (j) Paragraphs 1.1(a) to 1.1(g) (inclusive) of this Schedule 1 (Definitions and Interpretation) apply unless expressly stated otherwise in this Agreement.

2. DEFINITIONS

Affiliate means, in relation to any person, any Holding Company or subsidiary of that person or any subsidiary of that holding company and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006, save that, for the purposes of determining whether one entity is an Affiliate of another, any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Agreement means this agreement and its Schedules and Appendices;

Annual Service Plan has the meaning given to it in Clause 2.1(a);

Applicable Law means all Legislation, Directions and any applicable judgement of a relevant court of law which changes a binding precedent;

Assets means all assets and rights to enable the Contractor or a successor subcontractor to provide the Services in accordance with this Agreement, including:

- (a) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (b) any revenues and any other contractual rights; and
- (c) any intellectual property rights,

but excluding any assets and rights in respect of which the Contractor is full legal and beneficial owner;

Authority means the Secretary of State for Justice;

Authority IPRs means those Intellectual Property Rights owned by the Authority;

Authority Premises means premises owned, controlled or occupied by the Authority that are made available to the Contractor or the Subcontractor in connection with the provision of the Services from time to time;

Authority ICT Policies means the ICT and security related policies, guidelines and requirements issued in writing by the Authority from time to time, as amended from time to time by the Authority which can be found on the Authority Website;

Authority Related Party means any or all of (i) the Authority, (ii) the Police and Crime Commissioners, (iii) a government department, agency or a non-departmental government body, in each case as the Authority may specify and (iv) an officer, agent, contractor, employee or subcontractor of the Authority acting in the course of his office or employment or appointment (as appropriate) but excluding, in each case, the Contractor, any Contractor Related Party and the Subcontractor;

Authority Website means that part of www.[] headed [] or headed with a similar title or heading; *[Explanatory Note: MOJ will provide the domain name for this website at a later date.]*

Bespoke Materials means concepts, operating manuals and processes, and any other items in which Intellectual Property Rights subsist, which are created, developed or acquired by the Subcontractor or any subcontractor in or for the performance of the Subcontractor's obligations under this Agreement (whether or not on an exclusive basis);

Brand Manual means the Authority's guidelines prescribing the logo which the Subcontractor must use and the form and manner of its use in connection with the provision of the Services including any amendments or additions notified in writing by the Contractor to the Subcontractor from time to time;

Breakage Costs means costs that have been reasonably incurred by the Subcontractor as a direct result of the termination of this Agreement, but only to the extent that:

- (a) the costs that have been incurred for the provision of Services including:
 - (i) any materials or goods ordered or subcontracts between the Subcontractor and the Third Party placed that cannot be cancelled without those costs being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of the Services in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Services; and
 - (iv) redundancy payments for employees of the Subcontractor; and
- (b) the costs are incurred under a subcontract entered into by the Subcontractor in accordance with this Agreement that is consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;

Business Continuity Plan means the business continuity plan referred to in Clause 8.3 and set out in Schedule 8;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

Change means each addition to or amendment of this Agreement other than Clauses [], which is to be made through the Change Protocol; [***Explanatory Note: Specify changes which should not be subject to protocol but subject to the variation clause such as those relating to liability.***]

Change Protocol means the procedure for agreeing and implementing Changes as set out in Schedule 7 (Change Protocol);

Charges means the payment calculated in accordance with Schedule 6 (Charges);

Commercially Sensitive Information means [the sub-set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 15 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 15;

Compact means the agreement between the Government and civil society organisations which can be found at: www.cabinetoffice.gov.uk/sites/default/files/resources/The%20Compact.pdf;

Confidential Information means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and
- (b) Commercially Sensitive Information;

Continuous Improvement Report means the report referred to in Clause 2.3(b);

Contract Period means the period from and including the Service Commencement Date to the Termination Date;

Contract Review has the meaning given to it in Clause 2.4(a);

Contract Year means a period of 12 months commencing on the date of this Agreement or on an anniversary of the date of this Agreement except for the first Contract Year which shall commence on the date of this Agreement and terminate on the December 31 following the date of this Agreement and the last Contract Year which shall commence on the January 1 prior to the Termination Date and end on the Termination Date;

Contractor Premises means premises in the possession or control of the Contractor, its Affiliates or any Subcontractor (which are not Authority Premises) from which the Services are delivered, in whole or in part or otherwise relate to the provision of the Services or the performance of the Contractor's other obligations arising under or in connection with this Agreement;

Contractor Related Party means each of the Contractor, Contractor's Affiliates, agents and contractors and its or their subcontractors and its or their directors, officers and employees, but excluding the Subcontractor and its directors, officers and employees;

Crown means Her Majesty's Government which shall be deemed to include any government department, office or agency and any Secretary of State;

Default means any breach of this Agreement, act or omission giving rise to actual or potential Losses whether arising in tort (including negligence), breach of contract or otherwise, including any Loss that is subject to an indemnity set out in this Agreement;

Dependency means the actions of the Contractor set out in Schedule 4;

Direction means any applicable guidance or direction with which the Contractor is bound to comply;

Dispute has the meaning given to it in Clause 23(a);

Dispute Resolution Procedure means the procedure for the resolution of disputes specified in Clause 23;

DPA means the Data Protection Act 1998;

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Environmental Information Regulations means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Equalities Legislation means the Racial and Religious Hatred Act 2006, the Civil Partnership Act 2004, the Gender Recognition Act 2004 and the Equality Act 2010;

Escalation Process means the process set out in Clause 23;

Exit Period means the period of up to six months as specified by the Contractor commencing on the date specified in the termination notice;

Exit Plan means the plan for the orderly transition of Services from the Subcontractor to the Contractor or one or more New Subcontractors based on the procedures set out in Schedule 13 (Exit Plan) ;

Explanatory Guide means the explanatory guide to the terms in the Industry Standard Partnering Agreement published on the Authority Website from time to time;

Fees Regulations means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 Act;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same or similar type of undertaking as that of the Contractor) or any Subcontractor under the same or similar circumstances;

HMG Data means any data that relates to or contains reference to Allocated Persons and pursuant to the Authority Policy "Security Notice – Handling Protectively Marked Information" shall be protectively marked or any replacement to the "protective" standard;

Holding Company has the meaning given to it in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Industry Standard Partnering Agreement (ISPA) means the Authority's standard form contract for subcontracting arrangements;

Information has the meaning given under section 84 of the Freedom of Information Act 2000;

Initial Term means the period of 36 months from the Service Commencement Date; *[Explanatory Note: The Initial Term must be a minimum of 36 months unless the Authority has given its prior written consent to a shorter term.]*;

Intellectual Property Rights means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;

Interest Rate means the statutory rate of interest from time to time under the Late Payment of Commercial Debts (Interest) Act 1998;

ISPA Questionnaire means the questionnaire set out in Schedule 2 (Industry Standard Partnering Agreement Questionnaire);

Legislation means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom;

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;

Market Stewardship Principles means the principles set out in Schedule 3 (Market Stewardship Principles);

New Contractor means the person who has entered or who will enter into an agreement with the Authority for the provision of services the same as or substantially the same as the services under the Services Agreement in substitution for the services that the Contractor currently provides under the Services Agreement;

New Subcontractor means the person who has entered or who will enter into an agreement with the Contractor for the provision of services the same as or substantially the same as the Services in substitution for the Services;

personal data means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Service;

Prohibited Employment Grounds means the following protected characteristics among those listed within Section 4 of the Equality Act 2010, namely:

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) marriage and civil partnership;
- (e) pregnancy and maternity;
- (f) race;
- (g) religion or belief;
- (h) sex;
- (i) sexual orientation.

Project Data means:

- (a) all data, drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, structure, testing or operation of the Services;
- (b) all other materials, documents or data (including HMG Data) acquired or brought into existence or used in relation to the Services or this Agreement,

in each case that is used or created by the Contractor, any Contractor Related Party or the Subcontractor for the purpose of the provision of the Services or otherwise for this Agreement;

Relationship Manager means each party's representative appointed [to manage the contractual relationship with the other party under this Agreement];

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspector, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

Relevant Personal Data means [all personal data processed in connection with this Agreement];

Remedial Plan has the meaning given to it in Clause 2.5(b)(i);

Remedial Plan Process has the meaning given to it in Clause 2.5(a);

Request for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

Required Action has the meaning given to it in Clause 12;

Security Vetting Requirements means the security vetting requirements issued in writing by the Authority from time to time which can be found on the Authority Website;

Serious Concerns has the meaning given to it in Clause 2.5(a);

Service Commencement Date means [[●] or the date of this Agreement];

Service Credits means the service credits set out in Schedule 5 (Service Levels);

Service Levels means the service levels set out in Schedule 5 (Service Levels);

Service Report means the service report referred to in Clause 2.4(b);

Services means the services set out in Schedule 4 (Services);

Services Agreement means the contract dated [●] 2014 between the Secretary of State for Justice and the Contractor pursuant to which the Secretary of State for Justice appointed the Contractor as a provider of rehabilitation services;

Subcontractor Personnel means all employees, agents and consultants of the Subcontractor and its Affiliates and any subcontractor engaged in the performance of the Subcontractor's obligations arising under or in connection with this Agreement (including the Services);

Subcontractor System means the equipment, computer programs, technical information and documentation used by the Subcontractor for the provision of the Services or the performance of its other obligations under this Agreement, as varied, updated and renewed from time to time;

Tax means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Agreement and imposed by a Relevant Authority;

Termination Date means the date on which the Exit Period expires and this Agreement is effectively terminated in accordance with Clause 15;

Third Party means each person or entity that is not a party to this Agreement; and

VAT means any value added taxes.

SCHEDULE 2

INDUSTRY STANDARD PARTNERING AGREEMENT QUESTIONNAIRE

This questionnaire must be completed before an Industry Standard Partnering Agreement is entered into. It is to be used as a checklist to confirm that both parties have identified all the risks to be assumed by the Subcontractor under the Agreement, quantified those risks and described the impact of those risks on the Subcontractor's business.

Terms defined in the Industry Standard Partnering Agreement shall have the same meaning in this questionnaire.

| | Principle/Requirement | Confirmed | Where addressed? (if applicable) |
|---|--|------------------|---|
| 1 | Does the Agreement provide for the Subcontractor to input into the Contractor's Annual Service Plan under the Services Agreement? | | Clause 2.4(c) |
| 2 | Is the Contractor obliged under the terms of the Agreement to provide appropriate support to the Contractor in providing the Services (e.g. business support, IT support, office space etc.) | | Schedule 11 (Contractor Support) |
| 3 | <p>Have the parties analysed and quantified the risk being transferred to the Subcontractor, including all potential materially adverse effects of the provision of the Services on the Subcontractor's business and financial stability, and is the Subcontractor satisfied:</p> <p>(i) that the risk allocated to it under this Agreement is proportionate to the services it is providing and the payment it will receive for those services;</p> <p>(ii) that it has not been allocated a risk which, if it were to materialise, would have a material adverse effect on its business or financial stability or which it would not be reasonably able to control to a material degree; and</p> <p>(iii) that the Service Levels are set at a realistic level that reflects market practice, and it can achieve them without incurring a disproportionate cost or investment?</p> | | |
| | | | Clause 6.4 |
| | | | |
| | | | |
| 4 | Have the parties implemented a governance process incorporating key contact points within their respective organisations, regular meetings and recording of key decisions taken and a clear escalation process for the resolution of disputes, in each case in accordance with Good Industry Practice? | | Schedule 9 (Governance) |

| | | | |
|--|--|--|---|
| 5 | Have the parties implemented a practitioner forum or any other method of sharing and publicising good practice? | | |
| 6 | Does the Agreement allow for the Subcontractor to further subcontract its obligations under the Agreement to another provider and has the Subcontractor acknowledged and agreed that any further subcontracting under this Agreement will be compliant with the Market Stewardship Principles? | | Clause 22 |
| 7 | Has the Subcontractor confirmed that it understands its statutory obligations under the Agreement, including its obligations to put in place adequate technical and organisational measures to ensure compliance with its data protection requirements under this Agreement and UK data protection laws? | | Clause 18.2 |
| 8 | Does the Agreement provide for the Subcontractor to be rewarded and recognised for good performance? | | |
| 9 | Has the Contractor confirmed that it will meet its commitments to the Contracting Authority with respect to volumes to the Subcontractor? [Explanatory Note: to be included only if volumes guarantee is given.] | | |
| 10 | Have both parties read and understood the Market Stewardship Principles and confirmed that this Agreement is compliant with these principles? | | Schedule 3 (Market Stewardship Principles) |
| 11 | Does the description of the Services in Schedule 4 accurately reflect the services the Subcontractor will be providing and have the parties identified all appropriate Dependencies (including any dependencies that are set out in the Services Agreement and are relevant to the Services)? | | Schedule 4 (Services) |
| 12 | Has the Subcontractor confirmed that it understands the Audit requirements under Schedule 10 and will comply and assist with the Contractor's and the Contracting Authority's audit requirements? | | Schedule 10 (Audit) |
| 13 | Has each party made the necessary arrangements to allow the other party to benefit from the licence to use the intellectual property rights of the other, and the Contracting Authority as applicable, from the date of this Agreement? | | Clause 19 |
| SIGNED [] by behalf of [CONTRACTOR] | | | |

SIGNED

by

[

] for and on behalf of **[SUBCONTRACTOR]**

ANNEX TO SCHEDULE 2
COMPLETED ISPA QUESTIONNAIRE

SCHEDULE 3

MARKET STEWARDSHIP PRINCIPLES

Introduction

The Market Stewardship Principles cover five key principles that must underpin the Contractor's provision of the Services and its engagement with all entities to which it subcontracts the provision of the Services.

Each of the principles is set out in this Schedule together with guidance as to how the Contractor should respond to its obligations against each of the principles.

1. Adherence to appropriate management of risk in the supply chain

All contractual and other risk should be appropriately managed. This should extend to not passing risk down supply chains disproportionately, the management of volume fluctuations and other events and the management of intellectual property rights.

- **Meaningful volume of work allocation.** The Contractor should be able to evidence its approach in allocating work to supply chain partners in a manner which meets its obligations under the Services Agreement. Where a supplier is specified in the Services Agreement as a supply chain partner, the Contractor shall refer meaningful volumes of work to that supplier. These volumes should be set out in the Service Agreement.

The Contractor shall record details of all issues arising out of complaints from suppliers that they have not received expected volumes of work and shall refer these complaints to the Authority.

- **Systems for allocation of work to the supplier.** The Contractor should have systems for allocation of specific work to a supplier where the delivery of that work best served by calling on the particular expertise of the supplier. The allocations should ensure that the service recipients receive services from a supply chain organisation that has the correct level of expertise. Examples would include suppliers who have the skills and experience required to work with offenders with a range of different needs such as protected characteristics, female offenders, BAME, and offenders with learning difficulties or dyslexia etc.
- **Volume Fluctuations.** The Contractor must demonstrate to the Authority's satisfaction how it manages any volume fluctuations in caseload referrals and the reallocation of caseload to the supply chain. The potential impact of both increases and particularly reductions in work allocation and associated drop in income, and actions to mitigate these risks, must be set out in the Industry Standard Partnering Agreement.
- **Spot purchase arrangements.** Spot purchase arrangements may be entirely appropriate but can be detrimental to supply chain partners as opposed to more standard contracts that guarantee an income. Suppliers generally, but also in seeking funding or additional business may be disadvantaged in only being able to reference spot purchase contracts. The Contractor should therefore ensure that, wherever 'spot purchase' arrangements are utilised, options to transition to more stable contractual referral systems are reviewed at regular periods.

- **Payment terms.** The Contractor should detail a full exploration of payment terms and the impact of these on the supply chain including the requirement for any clawback/ repayment if targets are not met. The implications of this should be worked through for each year of the Industry Standard Partnering Agreement.
- **Minimum contract term.** Consideration should be given to the needs of the supplier in relation to the contract term. The contract length, if inadequate, may damage the ability of the supplier in seeking new business or additional funding from elsewhere. Supporting statements around expected minimum term of contracts may be helpful for sub-contracting organisations to avoid this. A minimum three year term should be appropriate for most supply chain partnerships.
- **Intellectual Property Rights (IPR).** The Contractor should set out in the Industry Standard Partnering Agreement an approach for the handling of intellectual property rights to be established as part of the supply chain selection process.

2. Alignment of ethos in the supply chain

The Authority envisages that a sustainable relationship is fostered throughout the contractual period, which meets the expectations of both parties according to the position established at contract inception. In entering into a contractual agreement, there should be an understanding of what is important to both parties and this should go on to form part of the contractual agreement which will be reviewed throughout the contract term to ensure that expectations are being met. The Authority's market engagement has reinforced that this is an important expectation for many organisations and key to building trust, especially in the early stages of such business relationships.

- **Audit trail.** The Contractor must maintain an audit trail of engagement with suppliers that demonstrate compliance with the principles established at the outset of their working relationship and shall include any additional support the Contractor offers.
- **Support declared in the bid to supply chain organisations.** The Contractor must publish a statement with regard to the support that is being offered by the Contractor to suppliers. Each support element must be itemised.
- **[Referrals of clients to non-contracted partners.** The Contractor may wish to refer services to organisations who already deliver similar support services. The Contractor must not exploit the services delivered by these organisations, particularly those that do not enter into a formal contractual or grant funding arrangement with the Contractor. The Authority will require the Contractor to articulate how it is supporting and sustaining all organisations that the Contractor intends to refer a significant volume of work. In this context, 'significant' should be interpreted in proportion to the size of the organisation rather than the Contractor's caseload.
- **Meetings.** The Contractor must record details of the conduct of all meetings with members of its supply chain and review these records to ensure that they are timely and appropriate and reinforce good relationship management.

3. Visibility across the supply chain:

The Authority expects that all parties have visibility of participation within the supply chain. This should include payment terms against contractual targets, the volume of business handled by supply chain partners, fair apportionment of referrals with regard to easier cases, and how the supply chain adjusts to changing volumes or demographics.

- **Supply chain sourcing, selection and refresh process.** The Contractor must ensure that the sourcing, selection and refresh process for supply chain partners is transparent. This information must be made freely available to both the Authority and each potential supplier on request.

4. Reward and recognition of good performance

The Authority considers it important that organisations in the supply chain receive appropriate reward for good performance. Recognition of good performance should be shared across the chain and this should include the sharing of good practice. As industry forums are instigated methods for sharing data other than through the data room will be developed.

5. Application of the principles of the Compact in work with Civil Society Organisations:

Evidence of compliance and other issues. The Authority has an expectation that the Contractor and its supply chain follow the principles of the Compact when engaging with Civil Society Organisations (as that term is defined in the Compact).

SCHEDULE 4
SERVICES

SCHEDULE 5
SERVICE LEVELS

SCHEDULE 6

CHARGES

1. ***[Explanatory Note: Details of agreed charges to be set out here]***
2. **INVOICING**
 - 2.1 Subject to paragraph 2.3, the Contractor shall pay all invoices within 20 Business Days after the date of receipt of the relevant invoice.
 - 2.2 The Subcontractor shall ensure that each invoice includes or is accompanied by supporting information setting out all details which are necessary for the Contractor to verify the accuracy of the invoice.
 - 2.3 If any part of the Charges is subject to a good faith Dispute between the Contractor and the Subcontractor:
 - (a) the disputing party (**Disputing Party**) shall notify the other party (**Issuing Party**), within 10 Business Days after the date of receipt by the Disputing Party of the relevant invoice, of any disputed amounts and shall, as soon as reasonably practicable after it has notified the Issuing Party, describe in reasonable detail the Disputing Party's reasons for disputing each amount;
 - (b) the Issuing Party shall issue:
 - (i) a credit note for the original invoice; and
 - (ii) a new invoice for the undisputed amount;
 - (c) the Disputing Party shall pay the new invoice issued under paragraph 2.3(b)(ii) in accordance with paragraph 2.1; and
 - (d) the Contractor and the Subcontractor shall seek to reach settlement of the items that are the subject of the Dispute in accordance with the Dispute Resolution Procedure.
 - 2.4 When any Dispute regarding the Charges is resolved:
 - (a) the Issuing Party shall issue an invoice (which shall be payable in accordance with paragraph 2.1) for the amount which it is agreed or determined to be payable by the Disputing Party (whether that sum is the amount originally invoiced or a reduced amount) within 20 Business Days after the date of resolution of that Dispute; and
 - (b) if the Disputing Party has disputed an amount payable under an invoice and it is subsequently agreed or determined that the amount originally invoiced was correct, the Disputing Party shall pay to the Issuing Party interest on that amount accruing daily from (and including) the date that the Dispute is settled until (but excluding) the date of payment by the Disputing Party at the Interest Rate for the time being in force.
 - 2.5 Subject to paragraph 2.4(b), where one party is owed any undisputed amount under this Agreement and that amount remains unpaid for more than 20 Business Days after the due

date, without limiting its other rights and remedies, that party may charge, and the other party shall pay, interest at the Interest Rate on that amount accruing daily from (and including) the due date to (but excluding) the date of actual payment.

SCHEDULE 7
CHANGE PROTOCOL

SCHEDULE 8
BUSINESS CONTINUITY

SCHEDULE 9
GOVERNANCE

SCHEDULE 10

AUDIT

[Explanatory Note: This Schedule will replicate the Audit provisions included in the Services Agreement as adapted.]

SCHEDULE 11

CONTRACTOR SUPPORT

[EXPLANATORY NOTE: This will include the support which the bidder has stated it will provide to sub-contractors as part of its response to any tender or other applicable competition document submitted to the Authority]

SCHEDULE 12
INFORMATION ASSURANCE

SCHEDULE 13

EXIT PLAN

SCHEDULE 14
EMPLOYEE TRANSFERS

SCHEDULE 15
COMMERCIALLY SENSITIVE INFORMATION

SIGNATORIES

SIGNED by
[]
for and on behalf of
[CONTRACTOR

)
)
)
)

SIGNED by
[]
for and on behalf of
[SUBCONTRACTOR]

)
)
)
)

SCHEDULE R: PERFORMANCE MANAGEMENT

Definitions

“Action Plan” means a plan issued to the Contractor by the Authority relating to the Contractor's underperformance of the Contract as described in Schedule R

“Performance Improvement Plan” means a plan to be agreed by the Parties relating to the Contractor's underperformance of the Contract as described in Schedule R

R1. Introduction and Scope

R1.1. This Schedule R sets out the process by which the Authority and the Contractor will work together to address underperformance by the Contractor of the Contract. This includes, but is not limited to, action or improvements that the Contractor will be required to make that arise from its underperformance in respect of:

R1.1.1. Schedule G Specification

R1.1.2. Schedule H Pricing and Payment

R1.1.3. Schedule M European Social Fund Publicity and Audit Requirements

R1.1.4. Schedule N European Social Fund

R1.1.5. Section (vii) Administrative Instructions

R1.2. The operation of this Schedule R:

R1.2.1. shall be without prejudice to the Authority's other rights and remedies (including under clause 37 (Termination on Default)), and the requirement for the Contractor to comply with its obligations and to deliver the Services, in each case as set out in the Contract; and

R1.2.2. shall not constitute any waiver of such rights, remedies and requirements.

R2. Performance Improvement Plan

R2.1. If, in the opinion of the Authority, the Contractor is not delivering any aspect of the Services or the Contract as required under the Contract, then the Authority may require the Contractor to, following notice from the Authority at any time during the term of the Contract, work with the Authority to both agree and implement a Performance Improvement Plan.

R2.2. The Authority will prepare the initial version of each Performance Improvement Plan, which shall be in a format determined by the Authority as being appropriate to the nature of the concerns being raised. The Performance Improvement Plan will document the concerns of the Authority

and reference the part(s) of the Contract the Authority considers that the Contractor is not delivering against satisfactorily.

- R2.3. The Performance Improvement Plan will then be shared with the Contractor and both the Authority Representative and the Contractor Representative will agree the steps and actions that the Contractor will be required to implement and adhere to in order to address the concerns of the Authority, which the Contractor will document in the Performance Improvement Plan without delay for approval by the Authority. The Authority Representative and the Contractor Representative will agree the period of time no longer than 3 months in duration within which the Contractor must both implement the actions contained within Performance Improvement Plan and deliver the relevant improvements to the delivery of the Services under the Contract.
- R2.4. The Performance Improvement Plan will be implemented by the Contractor in accordance with its terms following its agreement by the Parties and it will be reviewed at least once a month by the Authority and the Contractor, where progress towards addressing the concerns of the Authority will be discussed. The Authority considers this to be a supportive process and will work with the Contractor, as far as is reasonably practicable to do so, to improve the delivery of the Services under the Contract.
- R2.5. If at the end of the period of time agreed pursuant to paragraph R2.3 the steps and actions contained within the Performance Improvement Plan have either not been implemented by the Contractor and/or if the delivery of the Services under the Contract has not improved to the satisfaction of the Authority Representative, the Authority may issue an Action Plan to the Contractor in accordance with paragraph R3.
- R2.6. The Authority may issue an Action Plan without needing to first agree a Performance Improvement Plan, provided that where a Performance Improvement Plan has been agreed in accordance with this Schedule R the Authority can only issue a related Action Plan in accordance with paragraph R2.5.

R3. Action Plan

- R3.1. If, in the opinion of the Authority, the Contractor is not delivering any aspect of the Services or the Contract as required under the Contract, then the Authority may issue an Action Plan to the Contractor.
- R3.2. The Action Plan will be in a format determined by the Authority as being appropriate to the nature of the concerns being raised. The Action Plan will

document the concerns of the Authority, reference the part(s) of the Contract the Authority considers that the Contractor is not delivering against satisfactorily and set out the actions to be undertaken by the Contractor.

- R3.3. The Action Plan will then be sent to the Contractor. The Authority Representative will notify the Contractor the period of time no longer than 3 months in duration within which the Contractor must both implement the actions contained within the Action Plan and deliver the relevant improvements to the delivery of the Services under the Contract.
- R3.4. The Contractor will implement the Action Plan in accordance with its terms and it will be reviewed at least once a month by the Authority and the Contractor, where progress towards addressing the requirements of the Action Plan will be discussed.
- R3.5. If at the end of the period of time notified by the Authority pursuant to paragraph R3.3 the steps and actions contained within the Action Plan have not been implemented by the Contractor and/or if the delivery of the Services under the Contract has not improved to the satisfaction of the Authority Representative, the Authority may terminate the Contract in accordance with clause 37.1.2.

R4. Costs

- R4.1. Each Party will be responsible for its own costs incurred in relation to this Schedule R, including in relation to the preparation and implementation of any Performance Improvement Plan and Action Plan.
- R4.2. Unless the Authority approves otherwise in writing, the Contractor shall not be entitled to submit any claim for payment under the Contract or otherwise use any ESF funding in respect of its costs incurred in relation to this Schedule R.

SCHEDULE S

PENSIONS – ELIGIBLE LGPS EMPLOYEES

PART A

1. DEFINITIONS AND INTERPRETATIONS

In this Schedule:

Authority means Secretary of State for Justice acting through the authorised representative identified in the Contract Letter;

Contractor Admission Agreement means an LGPS Admission Agreement entered into in accordance with Part 3 of Schedule 2 of the LGPS 2013 Regulations by the Relevant Administering Authority, the Authority and the Contractor;

Contractor Scheme has the meaning given to it in paragraph 2.6 of this Schedule;

Eligible LGPS Employees means the Previous Contractor Transferring Employees who are employed by a Community Rehabilitation Company and are active members of (or eligible to join) the Local Government Pension Scheme on the Relevant Transfer Date;

Former LGPS Fund means the pension fund of the Local Government Pension Scheme in which the Eligible LGPS Employees were active members immediately prior to the Relevant Transfer Date;

LGPS Admission Agreement means an agreement to be entered into by which the Contractor or any Employing Subcontractor agrees to participate in the Local Government Pension Scheme;

LGPS Admission Body means an admission body for the purposes of paragraph 1 of Part 3 of Schedule 2 of the LGPS 2013 Regulations;

LGPS 2013 Regulations means the Local Government Pension Scheme Regulations 2013;

Local Government Pension Scheme means the occupational pension scheme constituted by the Local Government Pension Scheme Regulations 2013 and where the context admits, the earlier occupational pension schemes constituted under 1995, 1997 and 2008 Regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972, as amended from time to time;

Offender Management Regulations means the Local Government Pension Scheme (Offender Management) Regulations 2014;

Relevant Administering Authority means the body administering the Relevant LGPS Fund established under the Local Government Pension Scheme into which the Eligible LGPS Employees are to be admitted as active members or eligible to join whilst employed by the Contractor or an Employing Subcontractor;

Relevant LGPS Fund means the pension fund within the Local Government Pension Scheme to which the Eligible LGPS Employees are to be admitted or invited to join as active members;

Retirement Benefit Scheme means a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004; and

Subcontractor Admission Agreement means an LGPS Admission Agreement entered into in accordance with Part 3 of Schedule 2 of the LGPS 2013 Regulations by the Relevant Administering Authority and an Employing Subcontractor.

All other capitalised terms shall have the meanings given to them in clause 1 and Schedule D to this Contract.

2. LOCAL GOVERNMENT PENSION SCHEME

2.1 Contractor and Employing Subcontractors to be LGPS Admission Bodies under the Local Government Pension Scheme

- (a) The Contractor shall use its best endeavours to procure that it and/or any relevant Employing Subcontractor remains or shall become (as appropriate) an LGPS Admission Body for the purpose of the Eligible LGPS Employees earning benefits under the Local Government Pension Scheme and shall remain an LGPS Admission Body for the duration of this Contract (or the relevant Subcontract as the case may be).
- (b) The Contractor shall, before the Relevant Transfer Date, execute, and shall (at the appropriate time) use best endeavours to procure that each relevant Employing Subcontractor executes an LGPS Admission Agreement in relation to the participation of the Eligible LGPS Employees in the Local Government Pension Scheme during their employment with the Contractor or Employing Subcontractor. The LGPS Admission Agreement will have effect from and including the Relevant Transfer Date or such later date (in the case of an Employing Subcontractor) upon which the Services or a part of the Services are subcontracted to, and Eligible LGPS Employees are employed by the Employing Subcontractor.
- (c) The Contractor shall, and shall procure that any Employing Subcontractor that is an LGPS Admission Body shall, comply with the provisions of the LGPS Admission Agreement to which it is a party in all respects, for as long as it employs Eligible LGPS Employees.

2.2 Local Government Pension Scheme admission

- (a) The Authority and the Contractor shall execute such agreements, and shall use reasonable endeavours to ensure that the Relevant Administering Authority executes such agreements as are required for the Contractor and any Employing Subcontractors to maintain their status as LGPS Admission Bodies in relation to the Eligible LGPS Employees for the duration of this Contract and any Subcontract for the provision of the Services.
- (b) The Contractor or any Employing Subcontractor will bear their own costs in connection with the negotiation, preparation and execution of documents to facilitate the Contractor or any Employing Subcontractor participating in the Local Government Pension Scheme.

2.3 Funding position of the Relevant LGPS Fund at start of this Contract

The Authority shall procure that sufficient assets will be transferred from the Former LGPS Fund to the Relevant LGPS Fund, or internally within the Former LGPS Fund if that is also the Relevant LGPS Fund for the Contractor, such that the value of those assets is equal to the value placed on the liabilities transferring to the Relevant LGPS Fund in respect of the benefits payable to or in respect of the Eligible LGPS Employees as at the Relevant Transfer Date, making an allowance for assumed pensionable salary increases, calculated using the actuarial bases, methods and assumptions adopted by the Relevant Administering Authority's actuary for the purpose of determining the Contractor's liability to contribute to the Relevant LGPS Fund in respect of the Eligible LGPS Employees on a basis consistent with the basis adopted for other contractors commencing participation in the Relevant LGPS Fund.

2.4 Funding

The Contractor shall, and shall procure that each Employing Subcontractor that is a LGPS Admission Body shall, pay to the Local Government Pension Scheme such amounts as are required of an employer participating in the Local Government Pension Scheme under the terms of the relevant LGPS Admission Agreement and LGPS 2013 Regulations, including employee contributions.

2.5 Contractor or Employing Subcontractor ceases to be an LGPS Admission Body

If the Contractor employs any Eligible LGPS Employees and:

- (a) due to exceptional circumstances beyond the control of the Authority and the Contractor it is not possible to operate the provisions of paragraphs 2.1 to 2.4 inclusive meaning that continued access to the Local Government Pension Scheme for the Eligible LGPS Employees is not possible; or
- (b) if for any reason beyond the control of the Authority and the Contractor after the Relevant Transfer Date the Contractor or any Employing Subcontractor ceases to be an LGPS Admission Body (other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible LGPS Employees), the date of such cessation being the **Cessation Date**, and there are exceptional circumstances beyond the control of the Authority and the Contractor which mean that continued access to the Local Government Pension Scheme for the Eligible LGPS Employees is no longer possible,

then the provisions of paragraphs 2.1 to 2.4 inclusive shall not apply (without prejudice to any rights of the Authority under those paragraphs) and the provisions of paragraph 2.6 shall apply.

2.6 Alternative to the Local Government Pension Scheme

Where this paragraph 2.6 applies pursuant to paragraph 2.5 the following shall apply:

- (a) The Contractor shall, or shall procure that the relevant Employing Subcontractor shall, not later than the Relevant Transfer Date or the Cessation Date (as the case may be), nominate to the Authority in writing the occupational pension scheme or schemes which are to be the **Contractor Scheme** for the purposes of this paragraph 2.6. The Contractor Scheme must be:

- (i) established within three (3) months prior to the Relevant Transfer Date or Cessation Date (as the case may be), where reasonably practicable, and capable of receiving a bulk transfer payment from the Local Government Pension Scheme on terms described in Part B to this Schedule (Bulk Transfer Terms);
 - (ii) acceptable to the Authority as a scheme replacing the Local Government Pension Scheme for the Eligible LGPS Employees (such acceptance not to be unreasonably withheld or delayed);
 - (iii) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
 - (iv) broadly comparable to the Local Government Pension Scheme in accordance with the Fair Deal Policy published by HM Treasury in June 1999 ("Staff Transfers from Central Government: A Fair Deal for Staff Pensions"), the Fair Deal guidance note issued by HM Treasury in June 2004 ("Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues") and paragraph 1.19 of the New Fair Deal Policy published by HM Treasury in October 2013 ("Fair Deal for Staff Pensions: staff transfer from central government");
- (b) The Contractor shall procure that:
- (i) the Eligible LGPS Employees shall, where reasonably practicable, not later than three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect on and from the Relevant Transfer Date or the Cessation Date (as the case may be);
 - (ii) the Contractor Scheme shall provide benefits in respect of the Eligible LGPS Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which an actuary appointed by the Authority or the Contractor shall certify to be the same as, broadly comparable to or better than the benefits to which the Eligible LGPS Employees were entitled under the Local Government Pension Scheme immediately before the Relevant Transfer Date or the Cessation Date;
 - (iii) where, for whatever reason, the Contractor Scheme has not been established at the Relevant Transfer Date or Cessation Date (as the case may be) the Eligible LGPS Employees shall be provided with benefits in respect of death in service which are no less favourable than the death in service benefits provided by the Local Government Pension Scheme immediately before the Relevant Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until appropriate death in service benefits are provided by the Contractor Scheme;
 - (iv) if the Contractor Scheme is terminated for whatever reason and benefits can no longer accrue under its terms for the benefit of the Eligible LGPS Employees who are members of it, a replacement pension scheme shall be provided by the Contractor (or the relevant Employing Subcontractor) with immediate effect for those Eligible LGPS Employees who are still employed

by the Contractor (or the relevant Employing Subcontractor). The replacement pension scheme must comply with this paragraph 2.6 (Alternative to the Local Government Pension Scheme);

- (v) all necessary information is provided to the staff, recognised unions and/or other appropriate representative bodies and, where applicable, consultation takes place, in relation to any proposals to offer membership of the Contractor's Scheme as an alternative to the Local Government Pension Scheme;
- (c) Part B (Bulk Transfer Terms) to this Schedule shall apply in relation to the terms for bulk transfers from the Local Government Pension Scheme to a Contractor Scheme following the Relevant Transfer Date or Cessation Date (as the case may be) and any subsequent bulk transfers on termination or expiry of this Contract or any sub-contracting of the Services where a Replacement Contractor or Subcontractor is unable to gain admission to the Local Government Pension Scheme for whatever reason.

2.7 Undertaking from the Contractor

The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible LGPS Employees) that:

- (a) all information which the Authority or the Relevant Administering Authority or their respective professional advisers may reasonably request from the Contractor or any relevant Employing Subcontractor for the administration of the Local Government Pension Scheme or concerning any other matters raised in paragraph 2.6 or in Part B shall be supplied to them as expeditiously as possible;
- (b) it shall not and shall procure that any relevant Employing Subcontractor shall not take or omit to take any action which would materially affect the benefits under the Local Government Pension Scheme or under the Contractor Scheme of any Eligible LGPS Employees who are or will be employed wholly or mainly in connection with the Services without the prior written agreement of the Authority (such agreement not to be unreasonably withheld or delayed), provided that the Contractor and/or any relevant Employing Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible LGPS Employees.

3. GENERAL PROVISIONS

3.1 Contractor obligations on expiry or termination

The Contractor shall and shall procure that each relevant Employing Subcontractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pensions aspects of any onward transfer of any person engaged or employed by the Contractor or any Employing Subcontractor in the provision of the Services on the expiry or termination of this Contract or a Subcontract (including without limitation identification of the Eligible LGPS Employees);
- (b) promptly provide to the Authority such documents and information mentioned in paragraph 2.7(a) which the Authority (or other entities referred to in paragraph

2.7(a)) may reasonably request in advance of the expiry or termination of this Contract or a Subcontract; and

- (c) fully co-operate with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pensions aspects of any onward transfer of any person engaged or employed by the Contractor or any Employing Subcontractor in the provision of the Services on the expiry or termination of this Contract or a Subcontract.

3.2 Authority obligations on expiry or termination

Following the expiry or termination of this Contract, the Authority shall use its reasonable endeavours to procure that:-

- (a) the Replacement Contractor complies with the provisions of paragraph 2 of this Schedule, provided that references to the "Contractor" will become references to the Replacement Contractor;
- (b) the Replacement Contractor undertakes that the Replacement Contractor's scheme, for the purposes of complying with paragraphs 2.5 and 2.6 is capable of receiving a bulk transfer of pension liabilities in relation to any onward transfer of an Eligible LGPS Employee engaged or employed by the Contractor and will receive such a transfer at the request of the Contractor or the Authority.

3.3 Indemnity for a breach of the Contractor Admission Agreement

The Contractor hereby indemnifies the Authority and/or any Replacement Contractor and, in each case, a Subcontractor of a Replacement Contractor on demand from and against all Losses suffered or incurred by it or them which arise from any breach by the Contractor or any of its Employing Subcontractors of the terms of the Contractor Admission Agreement, any Subcontractor Admission Agreement, or this Schedule before or as a result of the termination or expiry of this Contract (howsoever caused).

3.4 Claims from Eligible LGPS Employees or Trade Unions

- (a) The Contractor hereby indemnifies the Authority and/or any Replacement Contractor and, in each case, their Subcontractors from and against all liabilities suffered or incurred by it or them which arise from claims by Eligible LGPS Employees of the Contractor and/or of any of its Employing Subcontractors, or by any trade unions, elected employee representatives or staff associations, in respect of all or any such Eligible LGPS Employees which liabilities:
 - (i) arise out of the acts or omissions of the Contractor (or the relevant Employing Subcontractor) after the Relevant Transfer Date and relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date and on or before the date of termination or expiry of this Contract (or the relevant Subcontract); or
 - (ii) arise out of the failure of the Contractor and/or any relevant Employing Subcontractor to comply with the provisions of paragraph 2 of this Schedule (or the equivalent provisions in the relevant Subcontract) before the date of termination or expiry of this Contract (or the relevant Subcontract).

- (b) For the avoidance of doubt this paragraph 3.4 shall survive the termination of this Contract.

3.5 Transfer to another Employer

Save on expiry or termination of this Contract, if the employment of any Eligible LGPS Employee transfers to a Replacement Contractor (by way of a subsequent Relevant Transfer) in connection with a transfer or sub-contracting of the Services the Contractor shall:

- (a) consult with and inform those Eligible LGPS Employees of the pension provisions relating to that transfer; and
- (b) procure that the Replacement Contractor complies with and enters into an agreement containing provisions equivalent to the provisions of paragraph 2.1, 2.2, 2.4, 2.5, 2.6, 2.7 and paragraphs 3.1 and 3.5, provided that references to “Relevant Transfer Date” will become references to the date of the transfer to the Replacement Contractor and references to “Eligible LGPS Employees” will become references to the Eligible LGPS Employees so transferred to the Replacement Contractor.

4. PREVIOUS CONTRACTOR TRANSFERRING EMPLOYEES NOT MEMBERS OF THE LOCAL GOVERNMENT PENSION SCHEME

The Contractor shall at all material times, and shall procure that any relevant Employing Subcontractors shall at all material times, in respect of any Previous Contractor Transferring Employees who are not participating in the Local Government Pension Scheme, provide a Retirement Benefits Scheme which is a “qualifying scheme” for the purposes of the Contractor’s or Employing Subcontractor’s auto-enrolment obligations under the Pensions Act 2008, the terms of which satisfy the conditions in s.258 Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 (where applicable).

PART B

BULK TRANSFER TERMS

1. Interpretation and Definitions

In this Part B, unless the context otherwise requires, the following terms shall have the meanings given to them below:

Actuary's Letter means a letter from the Relevant Administering Authority's Actuary setting out the assumptions that will be used to calculate a past service reserve transfer value allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of any final salary-type benefits) or allowing for the applicable active service revaluation rate to be applied up to the assumed date of retirement, leaving service or death (in the case of career average salary benefits);

AVCs means additional voluntary or enhanced contributions payable by employees under the LGPS 2013 Regulations (or under regulations governing any of the Earlier Schemes within the meaning of regulation 1(6) of the Local Government Pension Scheme Transitional Provisions, Savings and Amendment Regulation 2014);

Contractor's Actuary means the actuary appointed by the Contractor and/or relevant Employing Subcontractor for the purposes of this Schedule;

Contractor's Scheme means the pension scheme or schemes nominated by the Contractor and/or relevant Employing Subcontractor in accordance with paragraph 2.6 of Part A of this Schedule;

Due Date means the date agreed between the Contractor's Actuary and the Relevant Administering Authority's Actuary which shall be no later than the date 60 days after the last of the conditions in paragraph 3.6 of this Part B has been satisfied;

Relevant Administering Authority's Actuary means the actuary appointed by the Relevant Administering Authority for the purposes of this Part B;

Transfer Amount means the amount or amounts referred to in paragraph 3.1 of this Part B; and

Transferring Member means an Eligible LGPS Employee who agrees to a transfer of benefits being made for him or her from the Local Government Pension Scheme to the Contractor's Scheme under paragraph 2 of this Part B.

2. The Contractor's Scheme

- 2.1 The Contractor shall (and shall procure that each relevant Employing Subcontractor shall) invite each Eligible LGPS Employee who joins the Contractor's Scheme in accordance with paragraph 2.6 of Part A to consent to a transfer of benefits being made for him from the Local Government Pension Scheme to the Contractor's Scheme. The Contractor and/or relevant Employing Subcontractor must issue this invitation no later than one month after the Relevant Transfer Date or Cessation Date (as applicable). The invitation must be in a form acceptable to the Authority and the Relevant Administering Authority (such acceptance not to be unreasonably withheld or delayed). Any Eligible LGPS Employee wishing to consent to a transfer of benefits must notify the Contractor and/or relevant

Employing Subcontractor of this consent in writing no later than three months after the date of the invitation. The Contractor shall (and shall procure that each relevant Employing Subcontractor shall) provide the Authority and the Relevant Administering Authority with the names of the Transferring Members no later than five months after the Relevant Transfer Date or Cessation Date (as applicable).

3. Transfer payment from the Local Government Pension Scheme

- 3.1 The Authority shall use reasonable endeavours to ensure that the Relevant Administering Authority transfers from the Local Government Pension Scheme to the Contractor's Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Local Government Pension Scheme before the Relevant Transfer Date or the Cessation Date calculated in accordance with the Actuary's Letter and the LGPS 2013 Regulations.
- 3.2 As soon as reasonably practicable following the Relevant Transfer Date or the Cessation Date, the Contractor shall (and shall procure that each relevant Employing Subcontractor shall) promptly provide all data within its possession or under its control which the Relevant Administering Authority and the Relevant Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.3 As soon as reasonably practicable following the Relevant Transfer Date or the Cessation Date, the Authority shall promptly provide all data within its possession or under its control which the Relevant Administering Authority and the Relevant Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.
- 3.4 The Authority shall use its reasonable endeavours to procure that:
 - (a) as soon as reasonably practicable after the Relevant Administering Authority's Actuary has been provided with the necessary data and information, the Relevant Administering Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS 2013 Regulations; and
 - (b) within one week of completing this calculation, the Relevant Administering Authority's Actuary shall notify the Contractor's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Contractor's Actuary will then have one month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation shall be final and binding on the parties if the Contractor's Actuary raises no objection within this stated period.

- 3.5 The Authority and the Contractor shall use all reasonable endeavours to ensure that:
- (a) if the Contractor's Actuary objects in writing under paragraph 3.4 of this Part B, the Relevant Administering Authority's Actuary and the Contractor's Actuary shall agree the Transfer Amount within three months (or such longer period as shall be agreed between the parties) of the objection;
 - (b) if agreement cannot be reached within that period, the amount shall be determined by an independent actuary to be nominated by the Relevant Administering Authority and the Contractor and/or relevant Employing Subcontractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party;
 - (c) the independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties; and
 - (d) the independent actuary's costs shall be payable equally by the Relevant Administering Authority and the Contractor and/or relevant Employing Subcontractor.
- 3.6 Payment to the Contractor's Scheme of the Transfer Amount shall only be made on the following conditions:
- (a) the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Part B and in accordance with the LGPS 2013 Regulations;
 - (b) the Contractor and/or relevant Employing Subcontractor has complied with all its obligations under this Part B; and
 - (c) the trustees of the Contractor's Scheme have confirmed in writing that:
 - (i) a payment should be made in accordance with the LGPS 2013 Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Part B;
 - (ii) they shall accept liability for each Transferring Member's accrued contracted-out rights under the Local Government Pension Scheme; and
 - (iii) they shall accept the Transfer Amount in full and final settlement of all claims against the Local Government Pension Scheme in respect of each Transferring Member (save in the event of information provided by the Authority or the Local Government Pension Scheme (as applicable) being materially incorrect or where there has been manifest error) provided that the trustees of the Contractor's Scheme notify the Local Government Pension Scheme that materially incorrect information has been provided or that there has been a manifest error within 12 months of receipt of the Transfer Amount by the trustees of the Contractor's Scheme).
- 3.7 The payment of the Transfer Amount from the Local Government Pension Scheme shall be satisfied by the transfer of readily marketable stocks and shares of the Local Government Pension Scheme as agreed by the Relevant Administering Authority and the trustees of the Contractor's Scheme, having a mid-market value on the day before the Due Date equal to the Transfer Amount. If the Relevant Administering Authority and the trustees of the Contractor's Scheme are not able to agree some or all of the particular assets to be

transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Local Government Pension Scheme transferring cash equal in value to 99.8% of that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred (with the 0.2% deduction being an allowance for the costs incurred by the Relevant Administering Authority of making the transfer in cash).

4. Past service benefits

The Contractor shall (and shall procure that each relevant Employing Subcontractor shall) ensure that the Contractor's Scheme provides in respect of each Transferring Member such benefits as the Relevant Administering Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the Local Government Pension Scheme in respect of the Transferring Member's service before the Relevant Transfer Date or the Cessation Date (as applicable) if he had remained a member of the Local Government Pension Scheme.

5. Additional voluntary contributions

Nothing in this Part B shall apply to AVCs or to benefits secured by them. However, the Authority shall use all reasonable endeavours to procure that the assets representing each Transferring Member's AVCs in the Local Government Pension Scheme shall be transferred to the Contractor's Scheme. The Contractor shall (and shall procure that each relevant Employing Subcontractor shall) ensure that the Contractor's Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6. No assistance

The Contractor shall not (and shall procure that each relevant Employing Subcontractor shall not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Local Government Pension Scheme to pay an amount larger than the Transfer Amount to the Contractor's Scheme in respect of the Transferring Members.

7. Exit Provisions

7.1 The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible LGPS Employees) that on:

- (a) the expiry or termination of this Contract; or
- (b) the expiry or termination of any Subcontract in the case of a relevant Employing Subcontractor; or
- (c) the employment of any Eligible LGPS Employee transferring to a Replacement Contractor as a result of a staff transfer scheme or TUPE,

the Contractor shall (and shall procure that each relevant Employing Subcontractor shall), if requested by the Authority, use its best endeavours to procure that the trustees of the Contractor's Scheme offer bulk transfer terms in respect of the relevant Eligible LGPS Employees' service in the Contractor's Scheme (including any service credits awarded in accordance with paragraph 4 of this Part B) to the pension scheme of the Authority, any

Replacement Contractor (or their Subcontractors), or any new Employing Subcontractor (as applicable), which are no less favourable (in the opinion of the Relevant Administering Authority's Actuary or an actuary appointed by the Authority) than the bulk transfer terms set out in the Actuary's Letter, provided always that the bulk transfer payment that relates to the service credits that were awarded in the Contractor's Scheme in accordance with paragraph 4 of this Part B shall be not less than that provided for under the Actuary's Letter. The Service Credits to be awarded by the pension scheme of the Authority, any Replacement Contractor or any new Employing Subcontractor shall be awarded on a day for day basis or actuarial equivalent basis where there are benefit differences between the two schemes. In addition to this, the Contractor shall procure that the Replacement Contractor complies with the requirements of paragraph 3.1 of Part A to this Schedule.

- 7.2 If the transfer payment paid by the trustees of the Contractor's Scheme is less (in the opinion (acting reasonably) of the Relevant Administering Authority's Actuary or an actuary appointed by the Authority) than the transfer payment which would have been paid had paragraph 7.1 of this Part B been complied with, the Contractor shall (and/or shall procure that each relevant Employing Subcontractor shall) pay to the Authority, or any Replacement Contractor (or their Subcontractor), (as appropriate) (or as such person shall direct) the amount of the difference.

8. Authority's Costs

Any costs of the Authority necessarily and reasonably incurred in connection with this Part B shall be borne by the Contractor.