

Section 7

Terms and Conditions of Services Agreement

Contract Ref: EXPxxx

Dated: xx/xxxxx/2025

The Parties:

- (1) **School-Led Development Trust, trading as National Institute of Teaching, (CRN: 13429740) whose registered office is at Outwood Grange Academies Trust, Potovens Lane, Wakefield, WF1 2PF (the NIOT).**
- (2) **xxxxxxxxxx (company registration xxxxxxxxx), whose registered address is at xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxxxxxxxxxxxxxx, xxxxxxxxxxxxxxxxxxxxxxxxxxxx (the EPAO)**

for the **Provision of End Point Assessment Services** in relation to the **National Institute of Teaching (NIOT).**

1. Definitions and Interpretations

1.1. The following definitions and rules of interpretation in this clause apply in this agreement:

- 1.1.1. "Agreement" means these Conditions together with
 - Appendix A - Specification
 - Appendix B - Pricing Schedule
 - Providers Tender Return
- 1.1.2. "Authorised Representative" means the persons respectively designated as such by NIoT and the Provider.
- 1.1.3. "Charges" means the charges which shall become due and payable by NIoT to the Provider in respect of the Services in accordance with the provisions of this agreement.
- 1.1.4. "Commencement Date" means the date provided in clause 2.1 of these Conditions.
- 1.1.5. "Conditions" means these terms and conditions.
- 1.1.6. "Confidential Information" means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:
 - any information that would be regarded as confidential by a reasonable businessperson relating to: (i) the business, affairs, customers, Providers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
 - any information developed by the parties while carrying out this agreement;
 - Personal Data; and
 - any Commercially Sensitive Information.
- 1.1.7. "the Department" means the Department for Education and its agencies.
- 1.1.8. "EIRs" means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
- 1.1.9. "FOIA" means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
- 1.1.10. "Force Majeure" means any circumstance not within a party's reasonable control including, without limitation:
 - acts of God, flood, drought, earthquake or other natural disaster;
 - epidemic or pandemic other than COVID-19;
 - terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - nuclear, chemical or biological contamination or sonic boom;

- any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and
 - collapse of buildings, fire, explosion or accident;
 - but excluding any industrial action occurring within the Provider's or any of its Sub-Contractor's organisation, or otherwise involving any staff of the Provider.
- 1.1.11. "Intellectual Property Rights / IPR" means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.1.12. "Mandatory Policies" means the NIoT's business policies and codes set out at the end of these Conditions, the content of which are made available to the Provider by accessing the appropriate hyperlink.
- 1.1.13. "Necessary Consents" means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
- 1.1.14. "NIoT" means the School-Led Development Trust trading as the National Institute of Teaching.
- 1.1.15. "Party" means each of the NIoT or the Provider and "Parties" means both.
- 1.1.16. "Request For Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
- 1.1.17. "Services" means the service(s) to be provided under the Agreement.
- 1.1.18. "Provider" means the company or entity from whom the NIoT procures the Service(s).
- 1.1.19. "Term" means the period commencing on the Commencement Date and ending on the date as provided in clause 2.1.
- 1.1.20. "UK GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).
- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3. Any words following the terms **including**, **include** for **example** or any similar expression shall be construed as illustrative and shall not limit the sense of the

words, description, definition, phrase or term preceding those terms.

- 1.4. A person includes a natural person, corporate or unincorporated body (whether having separate legal personality).
- 1.5. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.6. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.8. Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9. A reference to writing or written includes fax and attachments to emails but not e-mail.
- 1.10. Any obligation in this agreement for a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11. A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12. References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13. Any words following the terms including, include, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Term

This agreement shall take effect on [date], the Commencement Date, and shall continue until its expiry on [date].

3. Scope of this agreement

- 3.1. This agreement governs the overall relationship between NIoT and the Provider in respect of the Services during the Term.
- 3.2. NIoT appoints the Provider to deliver the Services during the Term.

4. Provision of Services

- 4.1. The Provider shall promptly and efficiently provide the Services to NIoT with effect from the Commencement Date and for the duration of this agreement.
- 4.2. The Provider shall from the Commencement Date provide the Services as laid out in Appendix A – Specification:
 - 4.2.1. in cooperation with the NIoT and in compliance with any instructions given by the NIoT from time to time;
 - 4.2.2. with reasonable skill, care and diligence and in accordance with best practice in the Provider's industry, profession or trade;
 - 4.2.3. by using personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number as well as providing all equipment, tools and vehicles necessary to ensure that the Provider fulfils its obligations under these Conditions;
 - 4.2.4. in conformance to all descriptions, standards and specifications provided by the NIoT and that delivery of the Services shall be fit for purpose;
 - 4.2.5. using the best quality goods, materials, standards and techniques and, to the extent that the Services include any product of workmanship, installation and/or design and ensure such work product shall be free from defects arising therefrom;
 - 4.2.6. in accordance with all licences and consents and shall maintain in force such licences and consents for the duration under which Services are provided to the NIoT;
 - 4.2.7. in accordance with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time in providing the Services;
 - 4.2.8. in accordance with the Mandatory Policies; and
 - 4.2.9. in a professional and courteous manner.
- 4.3. The Provider shall comply with the Supply of Goods and Services Act 1982.
- 4.4. If during performance of the Services the Provider becomes aware of any quality, performance and/or safety related report, notice, alert or other communication which has or may have an impact on the safety, performance, function or carrying out of the Services the Provider shall promptly inform the NIoT of the same and provide a copy of the same. the NIoT shall have absolute discretion to decide what subsequent action it takes in response to any matter brought to its attention under this clause 4.

- 4.5. The Provider shall notify NIoT as soon as possible upon becoming aware of any matter(s) which may affect the quality of the Services.
- 4.6. The Provider shall attend meetings relating to the Services, continuous improvement and the Provider's performance with NIoT as set out in the Specification and this agreement. The Provider is not paid separately for attending such meetings.
- 4.7. The Provider will liaise with the NIoT's Authorised Representative in respect of the day-to-day management of this agreement and the delivery of the Services and will promptly comply with all reasonable requests or directions of NIoT's Authorised Representative.
- 4.8. The Provider may not assign or sub-agreement the Agreement in whole or in part to any third party without the NIoT's prior written agreement. Should the Provider breach the terms of this provision, it shall remain liable to the NIoT as if it had performed the Services and as provided in these Conditions.
- 4.9. The Provider confirms that it does not fall within any of the categories set out below:

Commercial organisations, charities, HEIs and consultants	Schools, trusts and ITT Providers
<ul style="list-style-type: none"> a) has unmanageable conflicts of interest or reputational risk to the Department; or the NIoT; and b) has unresolved performance issues on any agreement they have with the Department or the NIoT. 	<ul style="list-style-type: none"> a) is not graded 'Good' or 'Outstanding' for overall effectiveness by Ofsted; b) has unmanageable conflicts of interest or poses a reputational risk to NIoT and/or Department; c) has unresolved performance issues; d) does not demonstrate sustained high performance for all pupils; e) Does not demonstrate fidelity to the ITT, ECF and NPQ frameworks as appropriate.

5. Service standards

- 5.1. Without prejudice to this agreement, the Provider shall provide the Services, or procure that they are provided:
 - 5.1.1. with reasonable skill and care and in accordance with Best Industry Practice;
 - 5.1.2. in all respects in accordance with NIoT's and the Department's policies; and
 - 5.1.3. in accordance with all applicable Law.

6. Compliance

- 6.1. The Provider shall ensure that all Necessary Consents are in place to provide the

Services and NIoT shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

- 6.2. Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Provider has notified NIoT in writing.
- 6.3. The Provider shall (and shall procure that the Provider's personnel shall) perform its obligations under this agreement in accordance with:
 - 6.3.1. all applicable Law regarding health and safety; and
 - 6.3.2. the Health and Safety Policy whilst at NIoT premises.
- 6.4. The Provider shall notify NIoT as soon as practicable of any health and safety incidents or material health and safety hazards at Provider premises of which it becomes aware, and which relate to or arise in connection with the performance of this agreement. The Provider shall instruct its personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 6.5. Without limiting the general obligation set out in clause 5, the Provider shall (and shall procure that its personnel shall):
 - 6.5.1. perform its obligations under this agreement (including those in relation to the Services) and each Collaboration in accordance with:
 - all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - NIoT's equality and diversity policy as provided to the Provider from time to time;
 - any other requirements and instructions which NIoT reasonably imposes in connection with any equality obligations imposed on NIoT at any time under applicable equality law; and
 - 6.5.2. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as NIoT requests so as to enable NIoT to comply with its obligations under the Human Rights Act 1998.

7. Prime Contract

- 7.1. The Provider acknowledges that NIoT is providing services under the Prime Contracts to the Department and Schools, and that the Services pursuant to this

agreement are provided in support of the services provided by NIoT to the Department and Schools under the Prime Contract.

- 7.2. The Provider shall not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur under this agreement that will cause NIoT to be in breach of its obligations under the Prime Contract.
- 7.3. The Provider shall on request provide NIoT with such information, explanations, documents and reasonable assistance as NIoT may reasonably require in order for it to comply with its obligations under the Prime Contract.
- 7.4. If the Prime Contract expires or terminates, NIoT shall be entitled to terminate this agreement immediately on providing written notice to the Provider as per clause 12.

8. Inspection

- 8.1. the NIoT (or its authorised representative(s)) shall have the right to inspect the provision of the Services at regular intervals and for the duration under which the Provider provides the Services.
- 8.2. the NIoT hereby reserves the right to withhold payment for any Services which are not to the reasonable standard and specification requested under these Conditions.

9. Staff

- 9.1. At all times, the Provider shall ensure that:
 - 9.1.1. each of the Provider personnel is suitably qualified, adequately trained and capable of providing the applicable Services pursuant to this agreement in respect of which they are engaged;
 - 9.1.2. there is an adequate number of Provider personnel to provide the Services pursuant to this agreement properly;
 - 9.1.3. only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services pursuant to this agreement; and
 - 9.1.4. all of the Provider personnel comply with all NIoT's policies including those that apply to persons who are allowed access to the applicable NIoT Premises.

10. Safeguarding

- 10.1. The Provider shall make arrangements for ensuring that the Services pursuant to this agreement are provided with a view to safeguarding and promoting the welfare of children receiving education or training. In doing so, the Provider shall have regard to any guidance published, from time to time, by the Secretary of State for Education, which sets out the expectations in relation to safeguarding practice within schools. References to 'must' in any such guidance shall be treated as 'should' for the purposes of this agreement, save for any references to legal requirements arising from the Safeguarding Vulnerable Groups Act 2006 in respect of referrals to the Disclosure and Barring Service. Failure to do so may constitute a Serious Breach.
- 10.2. The Provider must carry out appropriate Disclosure and Barring Service checks on all applicants, including relevant checks for those from outside the UK, for employment where such applicants would be employed to work in regulated activity relating to children or vulnerable adults (as defined by the Safeguarding Vulnerable Groups Act 2006) if successful, and must seek additional information about an applicant's conduct. The Provider must carry out all such checks and obtain the results prior to any Staff being engaged in regulated activity relating to children and vulnerable adults.
- 10.3. The Provider shall not employ or engage, or continue to employ or engage, any person who is subject to a prohibition order made under section 141B of the Education Act 2002 to carry out teaching work (as defined in regulation 3 of the Teachers' Disciplinary (England) Regulations 2012) without written agreement from the NIoT's Authorised Representative.
- 10.4. If the Provider enters into any Sub-Agreements in respect of the delivery of the Services pursuant to this agreement it shall include provisions equivalent to this clause 10 in its agreement with the relevant Sub-Contractor.
- 10.5. The Provider must be able to demonstrate that it, and any Sub-Contractors, have robust record-keeping procedures in respect of safeguarding through checks on recordkeeping undertaken.
- 10.6. A breach by the Provider and/or its Sub-Contractors of this clause 10 constitutes a Serious Breach.

11. Sub-Contracting and assignment

- 11.1. Subject to clause 11.3, the Provider shall not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Provider sub-agreement the whole or any part of its obligations under this agreement except with the express prior written consent of NIoT, such consent not to be

unreasonably withheld.

11.2. If the Provider enters into any Sub-contract in connection with this agreement it shall:

11.2.1. remain responsible to NIoT for the performance of its obligations under this agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the act's omissions and neglects of its Sub-Contractors;

11.2.2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

11.2.3. provide a copy, at no charge to NIoT, of any such Sub-Agreement on receipt of a request for such by NIoT's Authorised Representative.

11.3. NIoT shall be entitled to novate (and the Provider shall be deemed to consent to any such novation) this agreement to:

11.3.1. the Department; or

11.3.2. any other body which substantially performs any of the functions that previously had been performed by NIoT.

12. Termination

12.1. NIoT may terminate this agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

12.1.1. if the Provider is in breach of any material obligation under this agreement which is not a Service Failure, provided that if the breach is capable of remedy, NIoT may only terminate this agreement under this clause 12.1 if the Provider has failed to remedy such breach either:

12.1.1.1. within the period specified in the notice or

12.1.1.2. within 21 days of receipt of notice from NIoT (a Remediation Notice);

12.1.2. if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010;

12.1.3. NIoT reasonably believes that the circumstances set out in regulation 73(1) of the Public Agreements Regulations 2015 apply;

12.1.4. the Prime Contract expires or is terminated;

12.1.5. the Department require NIoT to terminate this agreement under the terms of

any Prime Contract; or

12.1.6. the Department require the removal or replacement of the Provider under the terms of the Prime Contract.

12.2. NIoT may terminate this agreement in accordance with the provisions of clause 15.

12.3. If this agreement is terminated by NIoT pursuant to this clause 12, such termination shall be at no loss or cost to NIoT and the Provider hereby indemnifies NIoT against any such losses or costs which NIoT may suffer because of any such termination.

13. Termination payment default

13.1. If at any time undisputed Charges for three calendar months in any Agreement Year have been overdue for payment for a period of 60 days or more, NIoT will have committed a Termination Payment Default.

13.2. The Provider may terminate this agreement in the event that NIoT commits a Termination Payment Default by giving 60 days' written notice to NIoT. If NIoT remedies the Termination Payment Default in the 60-day notice period, the Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

14. Termination on notice

14.1. Without affecting any other right or remedy available to it, NIoT may terminate this agreement at any time by giving 90 days' written notice to the Provider.

14.2. The Provider may terminate this agreement at any time by giving 90 days' written notice to NIoT.

15. Force Majeure

15.1. Provided it has complied with the remaining provisions of this clause 15, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

15.2. The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

15.3. The Affected Party shall:

- 15.3.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement or a Collaboration; and
- 15.3.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 15.4. An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Provider cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Provider should have foreseen and provided for the cause in question.
- 15.5. 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 such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 15.6. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three months, the party not affected by the Force Majeure Event may terminate this agreement immediately upon giving written notice to the Affected Party.

16. Consequences of termination

- 16.1. On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the Provider shall co-operate fully with NIoT, the Department and other education bodies to ensure an orderly migration of the Services to NIoT or, at NIoT's request, a replacement Provider or the Department or other education body.
- 16.2. On termination or expiry of this agreement the Provider shall procure that all data and other material belonging to NIoT (and all media of any nature containing information and data belonging to NIoT or relating to the Services), shall be delivered to NIoT forthwith and the Provider's Authorised Representative shall certify full compliance with this clause 16.
- 16.3. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.

- 16.4. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the Termination Date.

17. Data processing

- 17.1. Both parties will comply with all applicable requirements of the Data Protection Legislation, including UK GDPR. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.2. The parties acknowledge that for the purposes of the Data Protection Legislation:
- 17.2.1. NIoT is the Controller;
 - 17.2.2. the Provider is the Processor;
 - 17.2.3. NIoT is permitted to share all Personal Data and Special Categories of Personal Data with the Department;
 - 17.2.4. Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 17.3. Without prejudice to the generality of clause 17.1, NIoT and the Provider will ensure that each party has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data between the parties for the duration and purposes of this agreement. Such notices shall also make clear that NIoT shall be permitted to share all Personal Data and Special Categories of Personal Data with the Department.
- 17.4. Without prejudice to the generality of clause 17.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- 17.4.1. process that Personal Data only on the documented written instructions of NIoT which are set out in Schedule 1, unless the Provider is required by Domestic Law to otherwise process that Personal Data. Where the Provider is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify NIoT of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Provider from so notifying NIoT;
 - 17.4.2. ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by NIoT, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data,

appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

17.4.3. not transfer any Personal Data outside of the UK unless the prior written consent of NIOT has been obtained and the following conditions are fulfilled:

- NIOT or the Provider has provided appropriate safeguards in relation to the transfer;
- the Data Subject has enforceable rights and effective remedies;
- the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- the Provider complies with the reasonable instructions notified to it in advance by NIOT with respect to the processing of the Personal Data;

17.4.4. notify NIOT immediately if it receives:

- a request from a Data Subject to have access to that person's Personal Data;
- a request to rectify, block or erase any Personal Data;
- receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

17.4.5. assist NIOT in responding to any request from a Data Subject and in ensuring compliance with NIOT's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

17.4.6. notify NIOT without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

17.4.7. at the written direction of NIOT, delete or return Personal Data and copies thereof to NIOT on termination or expiry of this agreement unless required by Domestic Law to store the Personal Data;

17.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for audits by NIOT or NIOT's

designated auditor pursuant to clause 28 and immediately inform NIOT if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

- 17.5. The Provider shall indemnify NIOT against any losses, damages, cost or expenses incurred by NIOT arising from, or in connection with, any breach of the Provider's obligations under this clause 17.
- 17.6. Where the Provider intends to engage a Sub-Contractor pursuant to clause 11 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
 - 17.6.1. notify NIOT in writing of the intended processing by the Sub-Contractor;
 - 17.6.2. obtain prior written consent from NIOT to the processing;
 - 17.6.3. enter into a written agreement incorporating terms which are substantially like those set out in this clause 17.
- 17.7. Either party may, at any time on not less than thirty (30) Working Days' written notice to the other party, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 17.8. The provisions of this clause 17 shall apply during the continuance of this agreement and indefinitely after the expiry or termination of this agreement.

18. Freedom of information

- 18.1. The Provider acknowledges that NIOT and the Department is, and counterparties to the Prime Contract may be, subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Provider shall:
 - 18.1.1. provide all necessary assistance and cooperation as requested by NIOT and the Department to enable them to comply with their obligations under the FOIA and EIRs;
 - 18.1.2. transfer to NIOT and the Department all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 18.1.3. provide NIOT and the Department with a copy of all Information belonging to NIOT requested in the Request For Information which is in its possession or control in the form that NIOT requires within 5 Working Days (or such other period as NIOT may reasonably specify) of the NIOT's request for such Information; and

- 18.1.4. not respond directly to a Request for Information unless authorised in writing to do so by NIOT.
- 18.2. The Provider acknowledges that NIOT and the Department may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. NIOT shall take reasonable steps to notify the Provider of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) NIOT, subject to any instruction from the Department shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 18.3. Notwithstanding any other term of this agreement, the Provider consents to:
 - 18.3.1. the disclosure of this agreement in full to the Department; and
 - 18.3.2. the publication of this agreement in their entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 18.4. NIOT shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but NIOT and the Department shall have the final decisions in its absolute discretion. The Provider shall assist and co-operate with NIOT, and the Department, to enable NIOT, and the Department, to publish this agreement.
- 18.5. Note that these obligations are also placed on NIOT in enabling a Provider to comply with its obligations under FOIA and EIRs.

19. Confidentiality

- 19.1. Subject to clause 19.3, each party shall keep the other party's Confidential Information confidential and shall not:
 - 19.1.1. use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
 - 19.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 19.
- 19.2. The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- 19.2.1. which the other party confirms in writing is not required to be treated as Confidential Information;
 - 19.2.2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - 19.2.3. which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;
 - 19.2.4. which is in or enters the public domain other than through any disclosure prohibited by this agreement;
 - 19.2.5. which a party can demonstrate was lawfully in its possession prior to receipt from the other party;
 - 19.2.6. which NIoT is required to disclose to the counterparty to a Prime Contract, or which the counterparty to a Prime Contract is permitted to publish or share with third parties; or
 - 19.2.7. which is disclosed by NIoT on a confidential basis to any central government or regulatory body.
- 19.3. A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
- 19.3.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 19.3.2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause 19 as if they were a party to this agreement;
 - 19.3.3. and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 19.3.
- 19.4. The provisions of this clause 19 shall survive for a period of six years from the Termination Date.

20. Intellectual property

- 20.1. Each party shall keep ownership of its own Existing IPR.

- 20.2. The Provider gives NIOT a non-exclusive, perpetual, royalty-free, irrevocable, transferable UK-wide licence to use, change and sub-license the Provider's Existing IPR to enable it to:
- 20.2.1. receive and use the Services pursuant to this agreement;
 - 20.2.2. make use of the Services pursuant to this agreement by a Replacement Provider; and
 - 20.2.3. comply with its obligations under the Prime Contract.
- 20.3. Any New IPR created under this agreement and any Collaboration will be owned by NIOT.
- 20.4. Where a party acquires ownership of IPR incorrectly under this agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other party on request and at its own cost.
- 20.5. The Provider does not have any right to use NIOT's IPR, including any use of the other party's names, logos or trademarks, other than as set out in this clause 20 or as agreed in writing.
- 20.6. The Provider shall indemnify NIOT against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services pursuant to this agreement.
- 20.7. The Provider hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
- 20.8. The Provider warrants:
- 20.8.1. that the Provider's Intellectual Property Rights comprise its own original work including where its Intellectual Property Rights were created by or on behalf of the Provider;
 - 20.8.2. that NIOT's and the Department's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
 - 20.8.3. that the use of or exercise by NIOT of any of NIOT's or the Department's Intellectual Property Rights will not infringe the rights of any third party;
 - 20.8.4. that the Provider has not granted or assigned any rights of any nature in NIOT's or the Department's Intellectual Property Rights to any third party except to its Sub-Contractors as appropriate.

21. Insurance

- 21.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
 - 21.1.1. public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to each occurrence;
 - 21.1.2. employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to each occurrence;
 - 21.1.3. professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to in relation to each occurrence.
 - 21.1.4. and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.
- 21.2. The Provider shall give NIOT, on request, copies of all insurance policies referred to in this clause 27 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies and confirmation of any membership of the Risk Protection Arrangement.
- 21.3. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances in compliance with clause 27.1 NIOT may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 21.4. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under this agreement and/or a Collaboration.

22. Provider's warranties

- 22.1. The Provider acknowledges and confirms that, so far as the Provider is aware having made diligent enquiries:
 - 22.1.1. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with NIOT before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement; and
 - 22.1.2. it has entered into this agreement in reliance on its own due diligence.

- 22.2. The Provider shall promptly notify NIOT in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by NIOT which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 22.3. The Provider shall not be entitled to recover any additional costs from NIOT which arise from or be relieved from, any of its obligations because of, any matters or inaccuracies notified to NIOT by the Provider.
- 22.4. Nothing in this clause 22 shall limit or exclude the liability of either party for fraud or fraudulent misrepresentation.
- 22.5. The Provider warrants that its obligations under this agreement will be performed by appropriately qualified and trained personnel. NIOT will be relying upon the Provider's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Provider in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Provider as part of this agreement.
- 22.6. The Provider shall promptly notify NIOT if, at any time during the Term, its circumstances, knowledge or awareness change such that it will not be able to repeat the warranties in clauses 22.1 and 22.5 at the relevant time.
- 22.7. The Provider also warrants:
- 22.7.1. that it will comply with all laws, guidance, and policies (including the Mandatory Policies) in providing the Services;
 - 22.7.2. shall operate to a standard that complies with the Health and Safety Act 1974 as amended.
 - 22.7.3. it will promptly notify the NIOT of any health and safety hazard which has arisen, or the Provider is aware may arise, in providing the Services and take all necessary steps to ensure the health and safety of any person likely to be affected by any such health and safety hazard;
 - 22.7.4. that it will fully and promptly respond to all requests for information and/or requests for answers to questions regarding this agreement, any complaints and any disputes at the frequency, in the timeframes and in the format as may reasonably be requested by the NIOT from time to time;
 - 22.7.5. that all information included within the Provider's responses to any documents issued by the NIOT as part of the procurement relating to the award of this agreement and all accompanying materials is accurate;
 - 22.7.6. there is no pending or threatened actions or proceedings before any court or

administrative agency which would materially adversely affect the financial condition, business or operations of the Provider;

- 22.7.7. there are no material agreements existing to which the Provider is a party which prevent the Provider from entering or complying with this agreement;
- 22.7.8. that it has the ability, expertise, capacity, licences and permissions to enter and perform its obligations under this agreement;
- 22.7.9. that, in the case of a transfer of Services, it will provide such assistance and information to the NIOT as it may reasonably request to facilitate a smooth and efficient handover of the transferring employees to any Provider (including attendance at any meetings with transferring employees, trade unions and employee representatives); and
- 22.7.10. the Provider further warrants that it understands that the NIOT is entering into this agreement on the specific warranties detailed in this clause 22.

23. Indemnities

23.1. Subject to clause 23.2, the Provider shall indemnify and keep indemnified NIOT against all liabilities, costs, expenses, damages and losses incurred by NIOT arising out of or in connection with:

- 23.1.1. the Provider's breach or negligent performance or non-performance of this agreement;
- 23.1.2. any claim made against NIOT arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Provider or Provider Personnel;
- 23.1.3. the enforcement of this agreement.

23.2. The indemnity under clause 23.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by NIOT are directly caused (or directly arise) from the negligence or breach of this agreement by NIOT.

23.3. Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this agreement, then NIOT shall be entitled, where appropriate to:

- 23.3.1. require the Provider promptly to re-perform or replace the relevant part of the Services without additional charge to NIOT; or
- 23.3.2. if NIOT considers it would be impracticable or inappropriate to require

the Provider to act in accordance with clause 23.3.1, NIOT may assess the cost of remedying the failure (Assessed Cost) and deduct from any sums due to the Provider the Assessed Cost for the period that such failure continues.

24. Limitation of liability

- 24.1. Neither party shall be liable to the other party, whether in agreement, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement. For the purposes of this clause 24.1 losses suffered because of action taken by the Department or any counterparty to a Prime Contract against NIOT because of any act or omission by the Provider will not be deemed to be indirect or consequential loss and can be the subject of a claim under the Provider's indemnity.
- 24.2. For the avoidance of doubt the provisions of clause 24.1 shall not be taken as limiting the right of NIOT to claim for:
 - 24.2.1. any additional operational and/or administrative costs and expenses arising as a direct consequence of a breach; or
 - 24.2.2. any wasted expenditure or charges rendered unnecessary and/or incurred by NIOT arise as a direct consequence of a breach.
- 24.3. Notwithstanding the provisions of clause 24.1, but subject to clause 24.5, the Provider assumes responsibility for and acknowledges that NIOT may, amongst other things, recover:
 - 24.3.1. sums paid by NIOT to the Provider in respect of any Services not provided in accordance with this agreement;
 - 24.3.2. wasted expenditure;
 - 24.3.3. additional costs of procuring and implementing replacements for, or alternatives to, the Services including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - 24.3.4. any compensation or interest paid to a third party by NIOT; and
 - 24.3.5. losses incurred by NIOT arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Sub-Contractor, Provider Personnel, regulator or customer of NIOT, including the Department and any other counterparties to Prime Contracts) against NIOT caused by the act or omission of the

Provider.

24.4. Each party shall always take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

24.5. Subject to clause 24.1 and clause 24.3, the Provider's aggregate liability:

24.5.1. is unlimited in respect of:

24.5.1.1. the indemnities in clause 17.5 and clause 20.6;

24.5.1.2. any damage to NIOT's assets, equipment or IT systems;

24.5.1.3. the Provider's willful default; and

24.5.1.4. the losses referred to in clause 24.3.5 insofar as they relate to NIOT's liabilities to the Department or a counterparty to a Prime Contract or a party required by the Department under the Prime Contract to ensure performance by NIOT.

24.5.2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, shall be limited in each Agreement Year to the higher of £5,000,000 and 150% of the total Charges payable in such Agreement Year, save that if any of these other claims, losses or damages are incurred by NIOT as a result of the Provider's abandonment of this agreement, willful default, willful breach of a fundamental term or willful repudiatory breach of this agreement, the figure of £5,000,000 shall be increased to £8,000,000 and the figure of 150% shall be increased to 200%.

24.6. Subject to clause 24.1 and clause 24.3, NIOT's aggregate liability to the Provider for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which NIOT shall remain fully liable), shall be limited in any Agreement Year to payment of the Charges.

24.7. Notwithstanding any other provision of this agreement neither party limits nor excludes its liability for:

24.7.1. fraud or fraudulent misrepresentation;

24.7.2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or Sub-Contractors);

- 24.7.3. breach of any obligation as to title implied by statute; or
- 24.7.4. any other liability for which may not be limited under any applicable law.

25. Price and payment

- 25.1. The price for the Services is set out in **Appendix B – Pricing Schedule**.
- 25.2. Unless otherwise stated in Appendix B the agreement price;
 - 25.2.1. shall remain fixed for the initial duration under which the Services are provided; and thereafter any proposed price increases will be agreed between the parties in writing.
 - 25.2.2. is the entire price payable by the NIoT to the Provider in respect of their fulfilment of this agreement (including but not limited to import taxes, charges, royalties, license fees, travel costs, accommodation expenses and the cost of Provider personnel).
- 25.3. The Agreement price is exclusive of VAT, which, if properly chargeable, the NIoT shall only pay at the prevailing rate subject to receipt from the Provider of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item. The Provider shall indemnify NIoT against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on NIoT at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 25.4. The NIoT shall pay undisputed and correctly raised invoices within 30 days of receipt of the same. Should the Provider have informed NIoT that it has done anything that is or may be classed as a breach of this agreement or has or may put NIoT in breach of the Prime Contract then to the extent that invoice in full or in part relates to the breach it will be classed as disputed until such time as the breach is rectified or confirmed as not being a breach.
- 25.5. The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to NIoT pursuant to this agreement. Such records shall be retained for inspection by NIoT for seven years from the end of the Agreement Year to which the records relate.
- 25.6. Unless otherwise stated, full payment for the Services will be on completion and subject to inspection of the Services to the NIoT's reasonable satisfaction as provided under clauses 19.7 to 19.12 of these Conditions.
- 25.7. A Provider invoice is only valid if it:
 - 25.7.1. includes all appropriate references and other details reasonably

- requested by the NIoT;
- 25.7.2. includes a detailed breakdown of Services which have been delivered.
- 25.8. If there is a dispute between the Parties as to the amount invoiced, the NIoT shall pay the undisputed amount. The Provider shall not suspend the provision of the Services.
- 25.9. The NIoT shall within five (5) Working Days notify the Provider, setting out in reasonable detail the reasons for disputing the invoice, and in particular identifying which elements are disputed, and which are not disputed.
- 25.10. If the NIoT contests an invoice due to noncompliance to clause 4 and the Parties have not resolved the matter within twenty (20) Working Days of the date of notification under clause 4.5 the NIoT may refer the matter to dispute resolution under clause 27 (Dispute Resolution) and following the resolution of any dispute referred to dispute resolution, where applicable the NIoT shall pay any amount agreed or determined to be payable in accordance with clause 19 within 30 days of resolving the dispute. For the avoidance of doubt the Provider shall not be entitled to receive interest on any such settled amount.
- 25.11. The NIoT may retain, or set-off payment of any amount owed to it by the Provider if notice and reasons are provided.
- 25.12. The Provider must ensure that all Sub-Contractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the NIoT can publish the details of the late payment or non-payment.
- 25.13. The Provider's invoice for Services shall clearly set out where payment is to be made (which shall be by BACS and includes the Provider's bank account number, sort-code, email address of where to send the remittance advice note and contact telephone number).

26. Interest

- 26.1. Each party shall pay interest on any sum due under this agreement and each Collaboration, calculated as follows:
- 26.1.1. Rate: 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 26.1.2. Period: From when the overdue sum became due, until it is paid.

27. Dispute Resolution

- 27.1. In the case of a dispute, the Parties may escalate the dispute to an appropriate

senior representative of each Party.

- 27.2. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
- 27.3. The NIOT shall write to the Provider to notify them that the Agreement (and, where applicable, payment) is in dispute and provide details of the issues to be addressed.
- 27.4. The Provider will provide a response and address all issues including, where relevant, providing a timeline of when any failures will be corrected/fixed, within 30 days of receipt of the letter referred to in clause 27.3.
- 27.5. In resolving the dispute, consideration will be given as to whether mediation would be appropriate to an agreement by the Parties.
- 27.6. If the parties fail to reach an agreement within one month of the NIOT providing written notification of the dispute as per clause 27.3 above, either party may exercise any remedy it has under applicable law.

28. Audit

- 28.1. During the Term and for a period of seven years after the Termination Date, NIOT (acting by itself or through its Representatives) may conduct an audit of the Provider, including for the following purposes:
 - 28.1.1. to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Providers (including Sub-Contractors) of the Services;
 - 28.1.2. to review the integrity, confidentiality and security of any data relating to NIOT or any service users pursuant to this agreement;
 - 28.1.3. to review the Provider's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 17 (Data Protection) and clause 18 (Freedom of Information) and any other legislation applicable to the Services;
 - 28.1.4. to review any records created during the provision of the Services;
 - 28.1.5. to review any books of account kept by the Provider in connection with the provision of the Services;
 - 28.1.6. to carry out the audit and certification of NIOT's accounts, or any other examination which NIOT is required to undertake as a requirement of Law;
 - 28.1.7. in order to comply with its obligations under the Prime Contract; or

- 28.1.8. to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2. Except where an audit is imposed on NIOT by a regulatory body, under the terms of a Prime Contractor where NIOT has reasonable grounds for believing that the Provider has not complied with its obligations under this agreement, NIOT may not conduct an audit under this clause 28 more than twice in any calendar year.
- 28.3. NIOT shall use its reasonable endeavors to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 28.4. Subject to NIOT's obligations of confidentiality, the Provider shall on demand provide NIOT, the Department or its Agents or other education bodies and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 28.4.1. all information requested by the above persons within the permitted scope of the audit;
 - 28.4.2. reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 28.4.3. access to Provider Personnel.
- 28.5. NIOT shall endeavor to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a third party's intention, to conduct an audit.
- 28.6. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Provider in which case the Provider shall reimburse NIOT for all of NIOT's reasonable costs incurred in the course of the audit, including any liabilities of NIOT under the Prime Contracts.
- 28.7. If an audit identifies that:
 - 28.7.1. the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to NIOT about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 28.7.2. NIOT has overpaid any Charges, the Provider shall pay to NIOT the amount overpaid within 20 days. NIOT may deduct the relevant amount from the

Charges if the Provider fails to make this payment; and

28.7.3. NIOT has underpaid any Charges, NIOT shall pay to the Provider the amount of the under-payment less the cost of audit incurred by NIOT if this was due to a default by the Provider in relation to invoicing within 20 days.

28.8. The Provider shall keep or cause to be kept full and proper books of account in relation to the provision of the Services and the entries made therein shall be kept up-to-date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature in accordance with best accountancy practices. Such records shall be created and maintained on an open book basis and in such a manner to enable NIOT to comply with its obligations under the Prime Contracts. Such records shall be retained by the Provider for inspection by NIOT for seven years from expiry or termination of this agreement.

29. Modern slavery

29.1. In performing its obligations under the agreement, the Provider shall:

- 29.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- 29.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 29.1.3. ensure that itself and any sub-contractors shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

30. Gifts and payment

30.1. The Provider shall not offer or give, or agree to give, to any member, employee or representative of the NIOT any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other agreement with the NIOT or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement.

30.2. Without prejudice the Provider shall comply with the Bribery Act 2010 and the Criminal Finances Act 2017, any subordinate legislation made under those Acts and all other applicable laws, regulations, codes and sanctions relating to anti-

bribery and anti-corruption.

31. TUPE

- 31.1. Where the Transfer of Undertakings (Protection of Employment) Regulations 2006, apply in respect of the award of the Agreement the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Provider on the commencement of the agreement. For 9 months before the agreement expires the Provider shall give to the NIoT all employee information necessary for TUPE. The Provider shall allow the NIoT to use the information for the purposes of TUPE and of re-tendering. The Provider will cooperate with the re tendering of the agreement by allowing the body to whom the new agreement is awarded ("the Transferee") to communicate with and meet the affected employees and/or their representatives.
- 31.2. The Provider agrees to indemnify the NIoT fully and to always hold it harmless from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information above.
- 31.3. The Provider agrees to indemnify the NIoT from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the agreement is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

32. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

33. Severability

- 33.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 33.2. If any provision or part-provision of this agreement is deemed deleted under clause 33.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the

original provision.

34. Partnership or agency

- 34.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 34.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

35. Third party rights

- 35.1. This agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 35.2. The rights of the parties to terminate, rescind or agree to any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

36. Publicity

- 36.1. The Provider shall not:
 - 36.1.1. make any press announcements or publicise this agreement or its contents in any way; or
 - 36.1.2. use NIOT's name or logo in any promotion or marketing or announcement of orders, unless approved by its Director of Marketing & Communications,
- 36.2. Except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of NIOT, which shall not be unreasonably withheld or delayed.

37. Governing law and jurisdiction

- 37.1. This agreement and any dispute or claim (including non-agreemental disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the laws of England and Wales.

37.2. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-agreemental disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Signed by:

Date: xx/xx/xxxx

for and on behalf of **NIOT**

Signed by
(enter Name & Title)

Date: xx/xx/xxxx

for and on behalf of

The Provider