

# Pension Administration Benchmarking Subscription (PABS)

NHS Business Services Authority



## NHS BUSINESS SERVICES AUTHORITY PENSION ADMINISTRATION BENCHMARKING SUBSCRIPTION ("PABS") SERVICES AGREEMENT

PABS Services Agreement dated as of 25 April 2023 between CEM Benchmarking UK Limited, a company incorporated under the laws of England with company number 07736482 whose registered office is at Stanhope House Mark Rake, Bromborough, Wirral, Merseyside, CH62 2DN ("**Service Provider**") and NHS Business Services Authority, whose office address is Stella House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne NE15 8NY ("**Service Recipient**").

**WHEREAS** Service Recipient wishes to receive certain pension administration benchmarking subscriptions from Service Provider, and Service Provider wishes to provide certain pension administration benchmarking subscriptions to Service Recipient, during the Term in consideration of the Service Fee;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party, the Parties hereby agree as follows:

### CLAUSE 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Defined Terms

For the purposes of this Agreement, the following capitalised terms and expressions have the meanings set out below unless the context otherwise requires:

- (a) "**Effective Date**" means the date of this Agreement;
- (b) "**Event of Default**" has the meaning set out in Clause 4.3;
- (c) "**Force Majeure**" means any delay or failure by a Party to perform its obligations as required by this Agreement (other than the obligation to pay money when due) only if and to the extent that (i) such delay or failure to perform is caused by a reason or circumstance beyond such Party's control; and (ii) such Party could not have foreseen the specific reason or circumstance which caused the delay or failure at the time of the execution of this Agreement;
- (d) "**Indemnified Activities**" has the meaning set out in Clause 5.1;
- (e) "**Indemnified Parties**" has the meaning set out in Clause 5.1;
- (f) "**Liabilities**" has the meaning set out in Clause 5.1;
- (g) "**PABS Services**" has the meaning set out in Clause 2.1.
- (h) "**Parties**" mean collectively, Service Recipient and Service Provider and "**Party**" shall mean any of them;

- (i) **"Reporting Period"** means the applicable reporting period set out in Schedule A, being either annually or quarterly;
- (j) **"Service Fee"** means for the period during which this Agreement is in force and PABS Services are provided the service fees prescribed in Schedule A to this Agreement for such PABS Services performed;
- (k) **"Service Provider"** has the meaning ascribed to such term in the preamble to this Agreement;
- (l) **"Service Recipient"** has the meaning ascribed to such term in the preamble to this Agreement;
- (m) **"Term"** the duration of this Agreement as set out in Clause 4.1 (subject to earlier termination in accordance with the terms of this Agreement);
- (n) **"VAT"** means value added tax or any equivalent tax chargeable in the United Kingdom; and

## 1.2 Headings

The division of this Agreement into clauses, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## 1.3 Clauses

Unless otherwise specified, all references to clause numbers are references to clauses of this Agreement and all references to paragraph numbers are references to paragraphs of the relevant Schedule.

## 1.4 Use of Term "Include", "Including" or "Includes"

Wherever the words "include", "including" or "includes" are used in this Agreement, they are not intended to be limiting and they shall be deemed to be followed by the words "without limitation".

## 1.5 Incorporation of Schedules

The Schedules attached to this Agreement shall form an integral part of this Agreement.

## 1.6 Companies and Persons

A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.

## 1.7 Legislation and legislative provisions

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 from time to time and

shall include all subordinate legislation made from time to time under that legislation or legislative provision.

## CLAUSE 2 PABS SERVICES

### 2.1 Provision of Services

Subject to the terms and conditions of this Agreement, Service Provider shall provide or cause to be provided to Service Recipient, during the Term, the pension administration benchmarking services described in Schedule A to this Agreement (the “**PABS Services**”).

### 2.2 Standard of Care

Service Provider shall perform the PABS Services in a professional manner consistent with industry practices applicable to leading providers of similar services and Service Provider shall select personnel who are appropriately experienced and qualified to fulfil its obligations under this Agreement. The provision of PABS Services shall be subject to the provision of information and instructions by Service Recipient as reasonably requested by Service Provider.

## CLAUSE 3 SERVICE FEES

### 3.1 Service Fees

- (a) In consideration of the PABS Services performed by Service Provider in accordance with this Agreement during the Term, Service Recipient shall pay to Service Provider the Service Fees (as set out in Schedule A), plus any applicable VAT thereon.
- (b) Service Recipient shall also reimburse Service Provider its reasonable out-of-pocket expenses. Such reasonable expenses shall include, without limitation: travel expenses; and other reasonable expenditures related to providing the PABS Services under this Agreement.

### 3.2 Payment of Service Fees

- (a) Service Provider shall invoice the Service Recipient for the Service Fees as set out in Schedule A and such invoices shall be, subject to Clause 3.2(b), payable in full within thirty (30) calendar days of receipt of same by Service Recipient.
- (b) If Service Recipient fails to dispute any invoice for Service Fees within thirty (30) days of the date on which such invoice has been delivered to Service Recipient, then Service Recipient will be deemed to have irrevocably agreed to the amount of the Service Fees set out in the relevant invoice. In the event of a dispute with respect to any invoice for Service Fees, Service Recipient shall pay the undisputed portion of the invoice in accordance with the above and the portion in dispute shall become due and payable within ten (10) days following final determination of the dispute together with interest at an annual rate of interest from the date such amount was initially due as stated in the applicable invoice. The parties shall seek to resolve all such disputes expeditiously and in good faith.

- (c) In addition to Service Provider's termination rights under Clause 4.2(a), if payment in full of any invoice not received by Service Provider by the end of the thirty (30) calendar days period provided for in Clause 3.2(a), Service Provider shall, upon ten (10) days' prior written notice, have the right without prejudice to its other rights and remedies, at its sole discretion and without prior notice, to suspend all or any portion of the PABS Services until such time as Service Recipient has paid in full all amounts then overdue.
- (d) Notwithstanding the other provisions of this Clause 3, Service Provider may, at any time and at its sole discretion, without prior notice, change its invoicing cycle and elect to issue invoices to Service Recipient in respect of the Service Fees at revised intervals (whether monthly, quarterly, annually or otherwise).

## CLAUSE 4 TERM AND TERMINATION

### 4.1 Term

This Agreement and the obligations of Service Provider to provide PABS Services to Service Recipient will commence on the Effective Date and, unless terminated earlier pursuant to Clause 4.2, will continue for an initial period of one year ("**Initial Period**") and thereafter will automatically renew for further periods of one year each (each a "**Renewal Period**") unless terminated by either Party giving the other not less than 30 days' notice to end on the last day of the Initial Period or then current Renewal Period.

### 4.2 Termination

This Agreement may be terminated as follows:

- (a) if a Party commits an Event of Default, then the non-defaulting Party may terminate this Agreement at any time thereafter by sending the defaulting Party a written termination notice describing the Event of Default in reasonable detail and specifying the date on which the Agreement is terminated, which date can be the date of the termination notice;
- (b) upon the written mutual agreement of the Parties;
- (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

The expiry or earlier termination of this Agreement shall not discharge, affect or otherwise modify in any manner the rights and obligations of the Parties hereto which have accrued or been incurred prior to such termination, including, without limitation, any obligation to pay any and all Service Fees up to and including the date of expiry or earlier termination of this Agreement.

#### 4.3 Events of Default

Each of the following events shall constitute an “**Event of Default**” under this Agreement:

- (a) Service Recipient defaults in payment of the Service Fees or any portion of same that is not in dispute, or any other payments which are due and payable by Service Recipient pursuant to this Agreement, and such default is not cured within ten (10) days following receipt by Service Recipient of written notice of such default; or
- (b) either Party is in default of any of its material obligations to the other Party pursuant to this Agreement (other than as set out in Clauses 4.3(a)), and fails to cure such default within ten (10) days after receipt of written notice from the non-defaulting Party specifying the default with reasonable specificity and demanding that it be rectified, provided that if such default is not capable of being cured within ten (10) days after receipt of such written notice and the Party in default has diligently commenced rectifying the default within such ten (10) day period, there shall be no right to terminate this Agreement before the expiry of such longer period reasonably acceptable to the non-defaulting Party.

### CLAUSE 5 INDEMNIFICATION AND LIMITATION OF LIABILITY

#### 5.1 Indemnification of Service Provider

Service Recipient shall indemnify and hold harmless Service Provider, its affiliates and their respective officers, directors, members, partners, employees, agents and representatives (collectively, the “**Indemnified Parties**”) from and against any losses, claims, damages, demands and liabilities (collectively, “**Liabilities**”) to which any of the Indemnified Parties may become subject related to or arising in any manner out of any activities performed or PABS Services furnished pursuant to this Agreement, failure of Service Recipient to comply with the provisions of this Agreement (the “**Indemnified Activities**”), except to the extent a court of competent jurisdiction shall have determined by final non-appealable judgment that such Liabilities resulted directly from the negligence or wilful misconduct of Service Provider in performing the PABS Services. In addition, Service Recipient shall promptly reimburse the Indemnified Parties for all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable fees, costs and expenses of legal counsel), as incurred, in connection with (i) the investigation of, preparation for, responding to, serving as a witness in respect of, or defending, pursuing, settling or otherwise becoming involved in, any pending or threatened investigative, administrative, judicial, or regulatory or other claim, action or proceeding or any arbitration or investigation in any jurisdiction related to or arising in any manner out of any Indemnified Activities, whether or not in connection with pending or threatened litigation to which Service Provider (or any other Indemnified Party) or Service Recipient is, or is threatened to be, a party and/or (ii) enforcing any Indemnified Party(ies)’s right under the Agreement.

## 5.2 Limitation of Liability

Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for: (a) death or personal injury caused by negligence; and (b) fraud or fraudulent misrepresentation.

The Service Recipient assumes sole responsibility for results obtained from the use of the PABS Services, and for conclusions drawn from such use. Neither the Service Provider nor the other Indemnified Parties shall have any liability for any damage caused by errors or omissions in any information, instructions or scripts provided by the Service Recipient in connection with the PABS Services, or any actions taken by the Service Provider at the Service Recipient's direction.

The Service Provider will not be liable, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information; and
- (f) any indirect or consequential loss.

The Service Provider's total liability arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to one year's Service Fees paid or payable under this Agreement.

The Service Provider have given commitments as to compliance of the PABS Services with the relevant specification in Clause 2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

## CLAUSE 6 MISCELLANEOUS

### 6.1 Status of the Parties

The relationship of the Parties under this Agreement shall be that of independent contractor engaged to perform certain services pursuant to this Agreement and neither Party undertakes by this Agreement or otherwise to perform any obligation of the other Party, howsoever arising, except as expressly set forth herein. This Agreement shall not be deemed to constitute a partnership, joint venture, agency (except to the extent specifically provided in this Agreement) or other form of joint enterprise between the Parties and persons engaged by any Party in performance of its respective obligations hereunder shall not by sole reason of this Agreement be deemed to be employees, subcontractors, agents or other representatives of the other Party. In addition, Service Provider acknowledges that in providing the PABS Services, Service Provider's role is limited to providing

benchmarking information and Service Provider is not, and shall not be deemed to be, providing advice or guidance on Service Recipient's (or any other person's) pension administration.

## **6.2 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by both Parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) or a future waiver of the same provisions, nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver. No failure on the part of the Parties to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

## **6.3 Assignment**

Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either Party without the prior written consent of the other Party. Notwithstanding any other provision of this Agreement, Service Provider shall have the right to assign and transfer all or part of this Agreement and any of its rights thereunder to one or more of its Affiliates provided that Service Provider remains jointly and severally bound with its permitted assignee by the terms and conditions of this Agreement so assigned and transferred.

## **6.4 Survival**

The provisions contained in Clause 5 and this Clause 6 shall survive the expiry or earlier termination of this Agreement and shall continue in full force and effect indefinitely.

## **6.5 Notices**

Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email (or an address substituted in writing by the party to be served).

Any notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; or (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or (c) if sent by email, at 9.00 am on the first business day after posting.

This Clause 6.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **6.6 Governing Law and Jurisdiction**

This Agreement shall be governed by, and shall be interpreted and enforced in accordance with the laws of England. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of England & Wales with respect to any matter arising under or relating to this Agreement.



## **6.7 Third Party Beneficiaries**

The Parties intend that this Agreement shall not benefit or create any right, remedy or cause of action in favour of, any person other than the Parties hereto, the Indemnified Parties, and their respective successors and permitted assigns and no person, other than the Parties hereto, the Indemnified Parties, and their respective successors and permitted assigns, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

## **6.8 Rights Cumulative**

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

## **6.9 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties relating thereto. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth herein, and none of the Parties has relied or is relying on any other information, discussion or understanding in entering into and performing its obligations under this Agreement.

## **6.10 Force Majeure**

The obligations of Service Provider under this Agreement with respect to any PABS Services will be suspended during the period of a Force Majeure. Service Provider shall promptly notify Service Recipient if there is Force Majeure. Such notice shall describe the Force Majeure, the corrective action to be taken and the estimated time of the Force Majeure interruption. Service Provider shall take all reasonable steps to eliminate an event of Force Majeure and, if possible, shall perform its obligations under this Agreement as far as practicable, but nothing herein shall require Service Provider to complete its obligations if an event of Force Majeure renders completion impossible.

## **6.11 Confidentiality**

Service Provider acknowledges it collects sensitive information from Service Recipient and other clients. Service Recipient's data will be treated in the same confidential manner as data received from all other clients who participate in Service Provider's subscriptions and/or services. Service Recipient's data may be used both during the Term and after termination for benchmarking and research but only in a manner that preserves confidentiality by combining Service Recipient's responses with many others. Service Provider may disclose Service Recipient's fund by name in client reports if Service Recipient's fund is part of the peer group used as the basis for the report. This disclosure will not be linked to Service Recipient's data or results. From time to time, Service Provider may provide access to data on an unnamed basis, and under a strict confidentiality agreement, for academic research.

## **6.12 Data Protection**

In this Clause the following definitions will apply:

"DP Laws" means all laws that relate to data protection, privacy, the use of information relating to individuals, and / or the information rights of individuals and all laws implementing them, in each case as may be replaced, superseded, extended or amended, including, without limitation, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as well as any formal or informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator, and/or relevant industry body, in each case in any relevant jurisdiction(s).

"Personal Data" has the meaning given under DP Laws and refers to the data which is provided or otherwise made available to the Service Provider by or on behalf of the Service Recipient.

The terms "controller", "process" and "processor" have the same meanings as described in DP Laws and cognate terms shall be construed accordingly.

Service Recipient hereby acknowledge and agrees that it:

- Has all necessary rights and, to the extent applicable, consents, to provide the Personal Data to Service Provider and to enable the Service Provider to process that Personal Data to perform its obligations under this Agreement; and
- Is responsible for ensuring its own compliance with all DP Laws.

Where Service Provider acts as a controller in respect of the Personal Data, Service Provider acknowledges and agrees that it shall comply with the DP Laws in respect of such activity and processing and agrees that it is responsible for ensuring its own compliance with all DP Laws.

### 6.13 Counterparts

This Agreement may be executed by one or more of the Parties hereto on any number of separate counterparts (including counterparts by pdf email) and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

### 6.14 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereto, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*[ Signature Page Follows ]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above mentioned.

**CEM BENCHMARKING UK LIMITED**

Name: [REDACTED]  
Title: Director

**NHS BUSINESS SERVICES AUTHORITY**

Name: [REDACTED]  
Title: Senior Commercial Manager

<b>Signed</b>	<b>For and on behalf of CEM Benchmarking UK Limited</b>	<b>For and on behalf of NHS Business Services Authority</b>

## Schedule A

### PENSION ADMINISTRATION BENCHMARKING SUBSCRIPTION (PABS) SERVICES DESCRIPTION

<b>Description of PABS Services</b>	<p>Service Provider will provide the following:</p> <p><b>Data Collection</b></p> <ul style="list-style-type: none"> <li>• Six to ten (6-10) weeks written notice to Service Recipient for data requirements;</li> <li>• A standard PABS survey questionnaire with expected timelines;</li> <li>• Assistance in understanding PABS data requirements; and</li> <li>• A data review and discussion of unusual or outlying data items.</li> </ul> <p><b>Report Production</b></p> <ul style="list-style-type: none"> <li>• A customised electronic draft report featuring results of the benchmarking within twelve (12) weeks of receiving complete data from Service Recipient and agreed peer group. (If one or more peers fail to provide data within the timeframe, Service Provider will discuss options with Service Recipient.); and</li> <li>• Updates to the draft report as appropriate based on feedback from Service Recipient.</li> </ul> <p><b>Report Delivery</b></p> <ul style="list-style-type: none"> <li>• An electronic version of the final report;</li> <li>• Once available, a digital dashboard replicating report findings;</li> <li>• A virtual meeting to present benchmarking results to Board/Management teams;</li> <li>• Insights and research authored by Service Provider;</li> <li>• Three (3) attendee invitations for Service Recipient to Service Provider's annual Global Pension Administration Conference; and</li> <li>• Access to the online Peer Intelligence Network ("PIN").</li> </ul> <p>Please note Service Provider does not advise on pension fund management. Decisions on actions arising from Service Provider's analysis are Service Recipient's alone.</p> <p>Service Recipient will provide the following:</p> <p>Information on Service Recipient's activities, costs, services, and performance in a manner prescribed by Service Provider prior to the end of the notice period provided by Service Provider.</p>
<b>Services Fees</b>	<p>The total cost for Services is £32,000 per annum plus VAT. Service Recipient will be billed the annual subscription fee once the draft benchmarking report has been digitally delivered.</p>
<b>Services Fees increases</b>	<p>The Services Fees will increase annually in line with the prevailing rate of inflation at the calendar year end.</p>

#### Exclusions from the Services Fees

- Service Recipient shall be responsible for its own out-of-pocket travel costs and expenses in attending the conference including, but not limited to, airfare, ground transportation and hotels.
- In person meetings with Service Provider will be charged on a time and disbursements basis.
- There may be a separate charge for any work arising from:
  - An additional benchmarking report with comparisons against a different peer group(s), at cost of £11,000 plus VAT per report;
  - Customisation of peer groups, i.e., to compare only with a subset of participants.

All work that is outside of the Services Fee but associated with PABS will be governed by this Agreement. Service Provider will communicate any supplementary fees to the Service Recipient and gain Service Recipient's agreement before starting work.