

**Dated**

**06/04/2022**

**NHS Business Services Authority**

**and**

**CEM Benchmarking UK Ltd**

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**CONTRACT**

**relating to the procurement of  
Pensions Benchmarking Services  
(Contract Reference 22\_04\_01)**

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## Section 1 – Order Form

**This Contract** is made on 6<sup>th</sup> April 2022

### **Between**

**NHS Business Services Authority** of Stella House, Goldcrest Way, Newburn Riverside,  
Newcastle upon Tyne NE15 8NY (**Authority**); and

**CEM Benchmarking UK Ltd** (No. 07736482) whose registered office is at Stanhope House,  
Mark Rake, Bromborough, Wirral, CH62 2DN (**Contractor**)

(each a **Party** and together the **Parties**).

### **Whereas**

The Authority is a Special Health Authority and an Arm's Length Body of the Department of Health which is responsible for the management of the NHS Pension Scheme and the NHS Injury Benefits Scheme.

On 28 March 2022 the Authority received a proposal for the provision of a pensions benchmarking service in relation to the administration of the NHS Pension Schemes.

The Contractor is a leading provider of pensions benchmarking services and has recognised clients and data sets to use for benchmarking.

The Duration of this contract is 12 months, with a Start Date of 1<sup>st</sup> June 2022 and an End date of 31<sup>st</sup> May 2023

The Value of this contract is [REDACTED] and will be paid in full upon receipt of an invoice from CEM Benchmarking.

The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**It is agreed as follows**

## **NHS BUSINESS SERVICES AUTHORITY**

### **TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES**

#### **1. INTERPRETATION**

- 1.1. In the Contract the following words shall have the following meanings unless the context otherwise requires:

**“Acceptance Tests”** means the acceptance tests, if any, provided for in the Purchase Order;

**“Authorised Officer”** means an individual who is designated by the Authority as its official representative for the purposes of liaison and communication with the Contractor and general management of the Contract, as may be named in the purchase order

**“Authority”** means the NHS Business Services Authority whose principal office is Stella House, Goldcrest Way, Newburn Riverside Business Park, Newcastle upon Tyne, NE15 8NY;

<b>“Authority Materials”</b>	means any materials and/or equipment made available to the Contractor by the Authority to enable the Contractor's performance of the Services;
<b>“Background IPR”</b>	means any Intellectual Property Rights owned by, licensed by a third party to, or controlled by the Contractor prior to the date of the Contract and Intellectual Property Rights later developed or acquired by the Contractor otherwise than pursuant to the performance of the Contract;
<b>"Bribery Act"</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the Act and/or subordinate legislation made under it;
<b>"Change Request"</b>	means a written request for a Contract Change;
<b>"Commercially Sensitive Information"</b>	means information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, could cause the Contractor significant commercial disadvantage or material financial loss;
<b>“Conditions”</b>	means these terms and conditions as amended from time to time;
<b>“Confidential Information”</b>	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights of either party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation.
<b>“Contract”</b>	means the contract between the Authority and the Contractor for the supply and purchase of the Requirements incorporating these Conditions and the Purchase Order;
<b>"Contract Change"</b>	means any variation to the Contract;
<b>"Contract Manager"</b>	means the person specified as such on the Purchase Order or as notified by the Contractor to the Authority in writing from time to time;
<b>“Contract Period”</b>	has the meaning given to it in condition 20;
<b>“Contract Price”</b>	means the price payable for the Requirements as detailed on the Purchase Order;

<b>“Contract Requirements”</b>	means the description of the Requirements (including any Service Levels) and other requirements relating to the Requirements or Delivery submitted with the Purchase Order (or, if no such description is submitted with the Purchase Order, the description of the Requirements submitted with any documentation inviting the Contractor to tender for the appointment to provide the Requirements to the Authority);
<b>"Contracting Authority"</b>	means any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended);
<b>“Contractor”</b>	means the entity detailed as such on the Purchase Order;
<b>"Controller"</b>	has the meaning given in Data Protection Legislation and "Joint Controllers" has the meaning given in Article 26 GDPR;
<b>“COVID-19”</b>	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
<b>“Crisis”</b>	means pandemics, epidemics (including, without limitation, COVID-19 and its other forms), global health emergencies including but not limited to viral outbreaks, chemical contamination or plague, notifiable infectious diseases as listed under the Health Protection (Notification) Regulations 2010, and other crisis situations;
<b>“Crisis Guidance”</b>	means any health and safety guidance introduced by the relevant bodies including the Crown, the World Health Organization, and the Foreign and Commonwealth Office in the event of any Crisis relevant to the supply of the Goods or Services (including but not limited to COVID-19);
<b>“Crown”</b>	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including government ministers, government departments (and authorities), government and particular bodies (including arm's length bodies established to carry out the functions of government ministers and government departments (and authorities)) and government agencies (or any of them as the context requires);
<b>" Processor"</b>	has the meaning given in Data Protection Legislation;
<b>"Data Protection Legislation"</b>	the GDPR, the Data Protection Act 2018 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the European Data Protection Board, the Information Commissioner or the Crown in relation to such Laws;
<b>"Data Subject"</b>	has the meaning given in Data Protection Legislation;

<b>"Data Subject Rights Request"</b>	a request made by a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access his or her Personal Data and Articles 15 to 22 of GDPR;
<b>"Default"</b>	<p>means any breach of the obligations of the relevant party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement</p> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Contractor, of its subcontractors, agents, servants, advisers or any Staff, in connection with or in relation to the subject matter of the Contract and in respect of which such party is liable to the other;</p>
<b>"Deliverables"</b>	means any documents, information, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials prepared by, or on behalf of, the Contractor pursuant to the Contract;
<b>"Delivery"</b>	means delivery of the Goods by the Contractor to the Authority in accordance with condition 3.3.5 (and "Deliveries" and "Delivered" shall be construed accordingly);
<b>"Effective Date"</b>	means the date of the Purchase Order;
<b>"EIRs"</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>"Equipment"</b>	means materials and/or equipment used by the Contractor in the performance of the Services;
<b>"Fair Deal Employees"</b>	means any Transferring Employee who is on the date of the Contract entitled to protection under the revised New Fair Deal set out in the HM Treasury guidance: "Fair Deal for staff pensions: staff transfers from central government" issued in October 2013;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
<b>"Force Majeure"</b>	means any event beyond the reasonable control of and without the fault or negligence of the party in question which materially and adversely affects the performance by a party of any obligation hereunder. Force Majeure shall expressly

include, without limitation, to the extent that they fall under the scope of the above-mentioned definition:

- (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either party's ability to perform its obligations under this Contract;
- (b) acts of terrorism;
- (c) flood, storm or other natural disasters;
- (d) fire;
- (e) any Crisis;
- (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;
- (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Contractor to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Contractor having used all reasonable legal means to resist such requisition or impoundment;
- (g) the need for compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;
- (h) industrial action which directly and materially affects the ability of the Contractor to provide the Requirements, but which is not confined to the workforce of the Contractor or the workforce of any subcontractor, agent, servant or adviser; and
- (i) a failure in the Contractor's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure in accordance with this definition had it been suffered by one of the parties to the Contract;

**“Foreground IPR”**

means any Intellectual Property Rights developed or acquired pursuant to the performance of the Services;

**“Fraud”**

means any offence under any Law in respect of fraud in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown, parliament or any Contracting Authority;

**"GDPR"**

the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council);

**“Good Industry Practice”**

means the exercise of that degree of skill, diligence, prudence, risk management, quality management and

foresight which would reasonably and ordinarily be expected from a skilled and experienced person or entity engaged in the provision of goods and/or services similar to those detailed in the Requirements under the same or similar circumstances as those applicable to the Contract, including in accordance with any codes of practice published by relevant trade associations;

**“Goods”**

means the goods, if any, that the Contractor is required to supply and, if applicable, install under the Contract;

**"Information"**

has the meaning given under section 84 of FOIA;

**“Insolvency Event”**

means each and any of the following in relation to the Contractor:

- (i) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (ii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (iii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company);
- (iv) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (v) a person becomes entitled to appoint a receiver over all or any of the assets of the Contractor or a receiver is appointed over all or any of the assets of the Contractor;
- (vi) the Contractor (being an individual) is the subject of a bankruptcy petition or order;
- (vii) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 30 days;

- (viii) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (ix) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this definition;

**“Intellectual Rights”**

**Property**

means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions as may exist now or in the future;

**“Key Personnel”**

means those persons named in the Purchase Order or otherwise identified by either of the parties as being key personnel;

**"Law"**

means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;
- (b) any applicable European Union directive, regulation, decision or law;
- (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;
- (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;
- (e) requirements set by any regulatory body;
- (f) any applicable guidance (including Crisis Guidance), direction or determination with which either of the parties is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Contractor by the Authority; and
- (g) any applicable code of practice,

in each case as applicable in England and Wales or in the jurisdiction in which the Goods and/or Services are provided and/or manufactured;

**“Location”**

means the location for the performance of the Services and/or Delivery of the Goods as set out in the Purchase Order or as otherwise agreed in writing between the Authority and the Contractor;

**“Losses”**

means all damage, loss, liabilities, claims, actions, expenses (including the cost of legal and professional services), proceedings, demands and charges whether arising under statute, contract or at common law, and Loss shall be construed accordingly;

**"Personal Data"**

has the meaning given in Data Protection Legislation;

**"Process"**

has the meaning given in Data Protection Legislation and “Processed” and “Processing” shall be construed accordingly;

**"Prohibited Act"**

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by or connected to the Authority a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) committing any offence:
  - (i) under the Bribery Act (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the United Kingdom;

**"Purchase Order"**

means an order for the Requirements (including any Special Terms and Conditions) which is issued by the Authority to the Contractor;

<b>“Regulatory Body”</b>	means the government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to investigate, or influence the matters dealt with in the Contract or any affairs of the Authority;
<b>“Replacement Contractor”</b>	means the person or persons appointed by the Authority to undertake the Services, if any, on expiry of the Contract Period;
<b>“Request for Information”</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>"Requirements"</b>	means the Goods and/or Services, as applicable;
<b>“Restricted Country”</b>	any third country or international organisation as described in the GDPR (but excluding any of England, Scotland, Wales and Northern Ireland, if they leave the European Union);
<b>“Returning Employees”</b>	means those Staff listed in a schedule to be agreed by the parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any subcontractor) wholly and/or mainly in the provision of Services immediately before the end of the Contract Period;
<b>“Services”</b>	means the services, if any, that the Contractor is required to perform under the Contract;
<b>“Service Levels”</b>	means the service levels applicable to the Services set out in the Purchase Order;
<b>"Special Terms and Conditions"</b>	means any additional and/or alternative terms and conditions detailed on the Purchase Order and forming part of the Contract;
<b>“Staff”</b>	means employees, directors, officers, independent contractors and agents of the Contractor or any of its subcontractors or agents employed or engaged in any way in the performance of the Contractor’s obligations under the Contract;
<b>“Staff Vetting Procedures”</b>	means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority;
<b>“Transferring Employees”</b>	means the Staff who are wholly or mainly assigned to the Services immediately before expiry of the Contract Period and whose contract of employment will transfer to either the Authority or the Replacement Contractor on expiry of the Contract Period pursuant to TUPE;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

<b>"Variation Procedure"</b>	means the procedure for varying the Contract set out at condition 2.2;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2. In the Contract:

- 1.2.1. the masculine includes the feminine, and the neuter includes the masculine and the feminine;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;
- 1.2.4. references to "includes", "including", "in particular" or "for example" shall be construed without limitation to the generality of the preceding words;
- 1.2.5. references to the Contractor shall include its Staff;
- 1.2.6. the word "indemnify" in the Contract will mean to indemnify and keep indemnified the indemnified party from and against all costs (including the costs of enforcement and re-procuring a supplier of the Requirements as well as the Requirements themselves), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the indemnified party incurs or suffers and "indemnity", "indemnities" and "indemnifies" have a corresponding meaning; and
- 1.2.7. the headings in the Contract shall not affect its interpretation.

1.3. If any conflict arises between these Conditions and the Purchase Order then the following order of precedence shall prevail:

- 1.3.1. the Purchase Order;
- 1.3.2. the Conditions.

2. **CONTRACT TERMS**

2.1. **Basis of Contract**

- 2.1.1. Where a Purchase Order is issued by the Authority (either by way of a hard copy or electronically at the Authority's option) and it refers to these Conditions, the Contract is made between the Authority and the Contractor on the date of that Purchase Order.
- 2.1.2. The Contractor shall supply, and the Authority shall purchase, the Requirements on the terms of the Contract, and the Contractor

acknowledges that the Contract contains the only terms on which the Authority is prepared to purchase the Requirements from the Contractor.

2.1.3. The Contract shall supersede any terms and conditions which the Contractor purports to apply to its supply of the Requirements to the Authority (including any terms contained in invoices or delivery notes, or for any quotation or tender for the Requirements).

2.1.4. Any actions or work undertaken by the Contractor prior to the receipt of a Purchase Order covering the relevant Requirements shall be undertaken at the Contractor's risk and expense and the Contractor shall only be entitled to invoice for Requirements where subject to and following the issue of a valid Purchase Order.

## 2.2. Variation

2.2.1. No variation to the Contract will be effective unless agreed in writing and signed by the Authorised Officer and the Contractor. Agreed variations shall be appended to the Contract.

2.2.2. The Authority may, by notice in writing to the Contractor at any time during the Contract Period, vary the Contract Requirements without affecting the continuation of the Contract.

2.2.3. The Authority's notice to vary shall give details of the variation and the date on which the Authority requires it to take effect.

2.2.4. Within 5 days of receipt of the Authority's notice to vary, the Contractor shall either sign the notice and return it to the Authority or contact the Authority to discuss the variation.

2.2.5. The Contractor acknowledges to the Authority that the Authority's requirements for the Requirements may change during the Contract Period and the Contractor shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Purchase Order, as may be requested by the Authority from time to time.

2.2.6. If the Contractor contacts the Authority to discuss the variation, the parties shall work together to agree any proposed variation and once the variation has been agreed it shall be implemented and (if applicable) the Contract Price shall be adjusted in accordance with condition 4.2.

## 3. **PERFORMANCE/DELIVERY AND RISK**

### 3.1. Performance/Delivery at Location

The Contractor shall perform at and/or Deliver to (as applicable) the Requirements at the Location in accordance with the instructions set out in the Purchase Order or as otherwise set out in these Conditions or agreed by the parties in writing.

3.2. Where there is an outbreak of a Crisis, the Contractor shall take such steps as may be required to comply with relevant Crisis Guidance, including social distancing when

Delivering the Requirements at the Location, with such steps to be agreed in advance between the parties.

### 3.3. Time of Performance/Delivery

- 3.3.1. The time of performance and/or Delivery shall be set out on the Purchase Order (or as otherwise set out in these Conditions or agreed in writing by the parties) and if no time for performance and/or Delivery is expressly agreed then performance shall commence and/or Delivery shall be made within 14 days of receipt by the Contractor of the Purchase Order (and it shall be the Contractor's responsibility to gain the requisite authorities to access the Location within this timeframe).
- 3.3.2. The Authority may alter an agreed time of performance and/or Delivery provided that a minimum of 3 days' notice is given to the Contractor in writing and the Contractor must achieve such altered time for performance and/or Delivery unless agreed otherwise in writing by the Authority.
- 3.3.3. Failure by the Contractor to perform the Services and/or make Delivery within the time agreed shall entitle the Authority to terminate the relevant Purchase Order and/or the Contract. In the event of a failure by the Contractor the Authority reserves the right to apply an appropriate deduction to the Contract price.
- 3.3.4. If the Authority requires next day or short notice Deliveries, which are not provided for in the Contract Requirements, the Contractor may charge the Authority any reasonable additional costs directly incurred by the Contractor pursuant to that Delivery.
- 3.3.5. Delivery shall occur when the Goods have either been:
  - 3.3.5.1. unloaded at the Location if the Contractor is responsible for Delivery but not installation; or
  - 3.3.5.2. installed at the Location and (if applicable) passed the Acceptance Tests if the Contractor is responsible for installation; or
  - 3.3.5.3. collected by the Authority when the Authority is responsible for collecting the Goods; or
  - 3.3.5.4. delivered, unloaded, installed, or collected at any other time or place as previously agreed in writing by the parties in accordance with condition 3.2,as applicable.

### 3.4. Instalments

- 3.4.1. Provision of Requirements in instalments may be rejected by the Authority unless the Authority has previously agreed in writing to accept instalments.
- 3.4.2. If the Authority agrees in writing to accept provision of the Requirements by instalments, the Contract will be construed as a single Contract for all instalments.

- 3.4.3. If the Contractor fails to provide any instalment(s) of the Requirements the Authority may, at its option, treat the whole Contract as repudiated and terminate the Contract.

3.5. Adequacy of Location, Equipment and Authority Materials

3.5.1. The Contractor shall:

- 3.5.1.1. satisfy itself (in liaison with the Authorised Officer, if appropriate) that the Location is suitable for the performance of the Services, Delivery and, if any Goods are being installed by the Contractor, installation of the Goods and that access to and from the Location and the site on which the Services will be performed and/or the Goods will be Delivered and/or installed at is satisfactory and adequate;
- 3.5.1.2. satisfy itself that the Equipment and Authority Materials are of satisfactory quality and suitable for use in the performance of the Services and/or Delivery and/or installation of the Goods; and
- 3.5.1.3. maintain all Equipment and Authority Materials on the Location in a safe, clean and serviceable condition.

3.5.2. If the Goods are being installed by the Contractor, the Contractor shall be responsible for the complete installation of the Goods, including off-loading, erection, electrical and mechanical connections, testing and commissioning.

3.5.3. Any access to the Location granted to the Contractor and its Staff shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include any relationship of landlord and tenant) in the Location. The Contractor warrants that it shall carry out all such reasonable further acts to give effect to this condition 3.5.3.

3.5.4. Unless otherwise agreed by the parties in writing, any Authority Materials:

- (a) shall be provided at the Authority's sole discretion;
- (b) must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
- (c) shall be used by the Contractor at the Contractor's risk and the Contractor shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such Authority Materials or other items caused by the Contractor (fair wear and tear exempted).

3.6. Delivery Note

3.6.1. Unless otherwise agreed in writing by the Authority, a delivery note shall accompany each Delivery.

- 3.6.2. All delivery notes shall be clearly marked with the Authority's order number, the name and address of the Authority and the description and quantity of the Goods.

3.7. Risk

- 3.7.1. Risk and property in the Goods shall pass to the Authority when the Goods have been Delivered in accordance with condition 3.3.5 (except if the Goods have been paid for by the Authority before Delivery when the property, but not the risk, in the Goods shall pass to the Authority on payment).
- 3.7.2. All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor whether or not they are situated at the Location.
- 3.7.3. The Contractor shall be liable for any loss or damage caused to the Goods prior to Delivery.
- 3.7.4. The Contractor shall be liable for, and indemnify the Authority in respect of, any loss or damage to the Authority Materials whilst the Authority Materials are in its possession or control.

4. **PRICE AND PAYMENT**

4.1. Price of the Requirements

- 4.1.1. The Contract Price for the Requirements is specified in the Purchase Order.
- 4.1.2. The Purchase Order shall detail any discounts which are or may be due to the Authority (for example discounts for early settlement).
- 4.1.3. If any sum (not being the Contract Price) is expressed to be payable under the Contract then that sum will be payable in accordance with this condition 4.
- 4.1.4. The Contract Price (and any sum payable in addition to the Contract Price) is exclusive of value added tax but inclusive of any other applicable import or export sales tax or duties and the cost of any import or export licences.
- 4.1.5. The Contract Price includes the cost of all labour costs, travel costs, accommodation expenses, materials, consumables, packaging, packaging materials, addressing, labelling, loading, Delivery, installation of the Goods (if applicable), guarantees, warranties, royalties and licence fees unless otherwise stated in the Purchase Order.

4.2. Variation to the Contract Price

- 4.2.1. The Contractor may (subject to conditions 4.2.2 and 4.2.3) vary the Contract Price only if the Contract is varied under condition 2.2 in such a way as to affect the Contract Price.
- 4.2.2. If agreement between the parties cannot be reached on the adjustment to the Contract Price within 3 months from the date the variation is made, the

dispute shall be referred to dispute resolution in accordance with condition 29.

- 4.2.3. Until the adjusted Contract Price is agreed, the Authority shall continue to pay the Contractor at the rate current prior to the variation. When the adjusted Contract Price is agreed, the Contractor shall pay (or be entitled to recover from the Contractor as the case may be) such sum, if any, as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually being paid when the adjusted price was agreed. This sum shall be calculated from the date of the variation until the date the adjusted Contract Price is agreed.

#### 4.3. Payment

- 4.3.1. Invoices shall be clearly marked with the Authority's Purchase Order number (except if this is not applicable in which case the invoice must be marked with the name of the contract and the Authorised Officer), the name and address of the Authority and the description and quantity of the Requirements and the period to which they relate.

- 4.3.2. Unless stated otherwise in the Purchase Order:

4.3.2.1. where the Purchase Order confirms that the payment profile for the Contract is monthly in arrears, the Contractor shall invoice the Authority, within 14 days of the end of each calendar month, the Contract Price in respect of the Requirements provided in compliance with the Contract in the preceding calendar month; or

4.3.2.2. where condition 4.3.2.1 does not apply, the Contractor shall invoice the Authority for the Requirements at any time following completion of the Requirements in compliance with the Contract.

- 4.3.3. Invoices may be submitted by the Contractor to the Authority by way of a hard copy (to: Accounts Payable, NHS Business Services Authority, 3rd Floor, Bridge House, 152 Pilgrim Street, Newcastle upon Tyne NE1 6SN) or electronically (to: [nhsbsa.accountspayable@nhs.net](mailto:nhsbsa.accountspayable@nhs.net)) at the Authority's option.

- 4.3.4. If any sum of money is recoverable from or payable by the Contractor under the Contract to the Authority the same may be deducted by the Authority from any sum due to the Contractor or from any sum which at any time may become due to the Contractor under the Contract or under any other contract between the Authority and the Contractor.

- 4.3.5. If the Authority fails to make payment in accordance with this condition 4.3, the Contractor shall be entitled to charge interest on undisputed late payments at a rate of 3% per annum above the base rate of the Bank of England from time to time in force.

- 4.3.6. The Authority shall not be responsible for the payment of any charges for any additional goods and/or services which are supplied in excess of the

Requirements ordered under a Purchase Order or any variation of it, unless authorised in writing by a further Purchase Order.

- 4.3.7. No payment of or on account of the Contract Price shall constitute any admission by the Authority as to proper performance by the Contractor of its obligations.
- 4.3.8. Where the Contractor submits an invoice to the Authority in accordance with condition 4, the Authority will consider and verify that invoice in a timely fashion.
- 4.3.9. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 4.3.10. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
  - 4.3.10.1. provisions having the same effect as conditions 4.3.8 of the Contract; and
  - 4.3.10.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as conditions 4.3.8 of the Contract.
- 4.3.11. In this condition 4, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

#### 4.4. Must match

- 4.4.1. If the Authority is able to obtain from any third party more favourable commercial terms with respect to the supply of any goods or services used by the Contractor in the provision of the Requirements, then the Authority may:
  - (a) require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
  - (b) subject to condition 4.4.3 enter into a direct agreement with that third party in respect of the relevant item.
- 4.4.2. If the Authority exercises either of its options pursuant to condition 4.4.1, then the Contract Price shall be reduced by an amount that is agreed in accordance with condition 4.4.3.2 and condition 2.2.
- 4.4.3. The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
  - 4.4.3.1. the Authority making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Requirements; and

4.4.3.2. any reduction in the Contract Price taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

4.4.4. The Contractor confirms that the Contract Price represents its lowest available price for the Requirements as at the date of the Purchase Order, and agrees to reduce the Contract Price in order to reflect any reduction, during the Contract Period, of its lowest available price for goods and/or services equivalent to the Requirements.

## 5. **IDENTIFICATION, PACKAGING AND CONTAINERS**

### 5.1. **Identification**

All Goods that customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be Delivered with all of those marks, tabs, brands, labels or other devices intact.

### 5.2. **Packaging**

The Goods shall be securely packed in trade packages in accordance with Good Industry Practice and any Crisis Guidance and the following details shall be shown on the outside of every package unless otherwise specified in the Purchase Order:

5.2.1. a description of the Goods which shall include the weight of the Goods where available and the Authority's Purchase Order number;

5.2.2. the quantity of the Goods in the package (if available);

5.2.3. any special directions for storage;

5.2.4. handling instructions;

5.2.5. the expiry date of the contents (if available);

5.2.6. the batch number; and

5.2.7. the name of the manufacturer of the Goods and the Contractor.

## 6. **SUPPLY OF REQUIREMENTS**

### 6.1. **Quality**

6.1.1. The Requirements shall:

6.1.1.1. be supplied strictly in accordance with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority; and

6.1.1.2. conform to all Laws applicable to:

6.1.1.2.1. the performance of any Services by the Contractor; and

6.1.1.2.2. the manufacture, supply and (if applicable) installation of any Goods provided by the Contractor to the Authority,

under the Contract.

- 6.1.2. The Goods shall, in addition to the requirement set out in condition 6.1.1:
  - (a) be new; and
  - (b) be of first class quality and fit for their purpose.
- 6.1.3. The Authority may inspect the manner in which the Contractor supplies the Services at the Location at any time.
- 6.1.4. The Contractor shall adhere to the Authority's Supplier Code of Conduct as amended from time to time.
- 6.1.5. All Services and other work performed by the Contractor pursuant to the Contract shall be undertaken in accordance with Good Industry Practice and any Crisis Guidance.
- 6.1.6. The Contractor shall, as reasonably required by the Authority, cooperate with any other suppliers to the Authority and/or any other third parties as may be relevant in the provision of the Requirements.

## 6.2. Guarantee

- 6.2.1. The Contractor guarantees that the Goods will be defect free and comply with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority for a minimum period of 12 months commencing on the date of Delivery (the "Guarantee Period").
- 6.2.2. During the Guarantee Period the Contractor shall, free of charge, replace or repair (at the Authority's option) any Goods which are found to be defective or which do not comply with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority.
- 6.2.3. Any Goods which are replaced or repaired in accordance with condition 6.2.2 shall be guaranteed in accordance with condition 6.2.1 except that the Guarantee Period shall be deemed to commence on the date on which the Goods are replaced or repaired.
- 6.2.4. The Contractor will assign to the Authority, upon request, the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part or parts of the Goods.

## 6.3. Spare Parts

The Contractor shall make available to the Authority, its agents or contractors any necessary spare parts and components to ensure that the Goods can be maintained in safe working operation for a period of not less than 10 years from the date of Delivery and shall be in a position to offer a maintenance service to the Authority if so required.

## 6.4. Disaster recovery and business continuity

The Contractor warrants that it will implement and maintain throughout the term of the Contract business continuity and disaster recovery plans to ensure continuity of the

Requirements including the Services (if any) in accordance with any Crisis Guidance and Good Industry Practice. The Contractor will:

- 6.4.1. provide copies of its business continuity and disaster recovery plans to the Authority from time to time and in particular when any adjustment is made to the plans and, in any event, on written request of the Authority;
- 6.4.2. regularly test its business continuity and disaster recovery plans (and in any event no less frequently than once every 6 months) to ensure that those plans are adequate to ensure continuity of the Services and provide a written summary of the results of those tests to the Authority on completion of the tests;
- 6.4.3. update its business continuity and disaster recovery plans from time to time as maybe required to ensure that those plans are adequate and comply with any changes to legislation; and
- 6.4.4. update its business continuity and disaster recovery plans from time to time to ensure compliance with any Crisis Guidance which may be introduced in the event of a Crisis.

6.5. Consents and registrations

- 6.5.1. The Contractor shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Requirements are in place and maintained during the Contract Period.
- 6.5.2. If the Requirements, or any part of them, are regulated by any regulatory body, the Contractor shall ensure that it has in place and maintains such registrations during the Contract Period. The Contractor shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of the Requirements.

7. **INSPECTION, REJECTION AND ACCEPTANCE**

7.1. Inspection and rejection of Service

- 7.1.1. The Services shall be inspected by or on behalf of the Authority within a reasonable time of their completion and may be rejected by the Authority if they are found:
  - (a) not to comply with any term, whether expressed or implied, of the Contract and in particular the Contract Requirements; or
  - (b) to incorporate Goods which are damaged or defective in any way or of an incorrect quantity.
- 7.1.2. If the Contractor fails to perform the Services in accordance with the Contract (other than as a direct result of an act or omission by the Authority) the Contractor shall, if the Authority so requires, at the Contractor's own expense, re-perform the Services in accordance with the requirements of the Contract within the reasonable timescales specified by the Authority.

- 7.1.3. The Authority shall not be liable to pay for any rejected Services or for any re-performed Services.

7.2. Inspection and rejection of the Goods

When the Contractor does not install the Goods:

- 7.2.1. the Goods shall be inspected by or on behalf of the Authority within a reasonable time of their Delivery and may be rejected by the Authority if they are found:

- (a) to be damaged or defective in any way;
- (b) to be of an incorrect quantity; or
- (c) not to comply with any term, whether expressed or implied, of the Contract and in particular the Contract Requirements.

- 7.2.2. the whole of or part of any Delivery may be rejected if a reasonable sample of the Goods taken from that Delivery is found not to conform in every material respect with the Contract. The Authority will, at its discretion, either not be liable to pay for such Goods or reserve the right to request a replacement.

7.3. Acceptance Tests

When the Contractor installs the Goods:

- 7.3.1. Upon completion of installation of the Goods the Contractor shall notify the Authority that installation is complete and that the Goods are ready for submission to the Acceptance Tests. The Authority shall be entitled to carry out the Acceptance Tests following completion of installation of the Goods.

- 7.3.2. If the Goods fail the Acceptance Tests then the Acceptance Tests shall be repeated. If the Goods pass the Acceptance Tests then the Goods will be deemed to have been accepted.

- 7.3.3. The Authority may reject the Goods or any part of them and require replacement / re-installation at the Contractor's cost. If the Goods fail the Acceptance Tests more than twice and/or if following installation they are found:

- (a) to be damaged or defective in any way;
- (b) to be of an incorrect quantity; or
- (c) not to comply with any term, whether expressed or implied, of the Contract and in particular the Contract Requirements.

7.4. Rejection of Goods

- 7.4.1. Goods rejected by the Authority shall be removed (and the Location made good to the standard it was in prior to Delivery) by the Contractor at its own expense within 14 days from the date of the Authority's notification of rejection. If the Contractor fails to make good the Location and/or remove the rejected Goods within such period the Authority may make good the

Location and/or return the rejected Goods at the Contractor's risk and expense (including the costs of de-installation) and/or charge the Contractor for the cost of storage from the date of rejection.

- 7.4.2. The Authority's right of rejection shall continue irrespective of whether the Authority has accepted the Goods. In particular, taking delivery, inspection, use of the Goods or payment by the Authority for the Requirements or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Authority may have against the Contractor. Acceptance by the Authority is without prejudice to its other rights and remedies.

## 8. **PERFORMANCE OF CONTRACT**

### 8.1. **Staff**

- 8.1.1. The Contractor shall ensure that all Staff supplying the Requirements shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Requirements.

- 8.1.2. The Contractor will employ sufficient Staff to ensure that it complies with its obligations under the Contract. This will include the Contractor providing a sufficient reserve of trained and competent Staff to provide the requirements during Staff holidays or absence.

- 8.1.3. The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Location:

8.1.3.1. any member of Staff; or

8.1.3.2. any person employed or engaged by any member of Staff;

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- 8.1.4. At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Location, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- 8.1.5. The Staff, engaged within the boundaries of the Location, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Location. The relevant policies relating to this are available on the Authority website (<https://www.nhsbsa.nhs.uk/our-policies/policies-and-procedures>). It is the Contractor's responsibility to proactively monitor this website for additions, amendments and notices for the Contract Period.

- 8.1.6. The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of any Services and/or installation of any Goods. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a

basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 8.1.7. The Authority may require the Contractor to ensure that any person employed in the provision of any Services and/or the installation of any Goods has undertaken a Disclosure and Barring Service check as required under the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a conviction relevant to the Requirements, or is found by the Contractor to have a conviction relevant to the Requirements (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise) is employed or engaged in the provision of any part of the Services and/or installation of the Goods.
- 8.1.8. If the Contractor fails to comply with condition 8.1.3 within 2 months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 8.2. The decision of the Authority as to whether any person is to be refused access to the Location and as to whether the Contractor has failed to comply with condition 8.1.3 shall be final and conclusive.
- 8.3. Key Personnel
  - 8.3.1. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Requirements to the Authority.
  - 8.3.2. The Key Personnel shall not be released from supplying the Requirements without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances. If any member of the Key Personnel is released, they shall be replaced as soon as possible by the Contractor.
  - 8.3.3. Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Requirements.
  - 8.3.4. The Authority shall not unreasonably withhold its agreement under conditions 8.3.2 and 8.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
  - 8.3.5. The Contractor shall make every effort to ensure that retention levels of Staff are high.
- 8.4. Crisis events

- 8.4.1. In the event of a Crisis, the Contractor shall take steps to ensure that all members of Staff and all persons employed in the provision of any Goods or Services:
- 8.4.1.1. are updated on actions being taken to reduce risks of exposure in the workplace;
  - 8.4.1.2. comply with Crisis Guidance issued from time to time including any social distancing guidance for, in particular but not only, any vulnerable persons or persons at high risk; and
  - 8.4.1.3. have provided their contact numbers and emergency contact details to the Contractor and those details are up to date.
- 8.4.2. In the event of a Crisis, the Contractor shall:
- 8.4.2.1. comply with any Crisis Guidance;
  - 8.4.2.2. ensure managers know how to spot symptoms of a Crisis and are clear on any relevant processes, for example sickness reporting and sick pay, and procedures in case a member of Staff or person employed in the provision of the Services is potentially infected and needs to take the appropriate action;
  - 8.4.2.3. make sure there are places to wash hands for 20 seconds with soap and water, and encourage all members of Staff and persons employed in the provision of the Services do so regularly; and
  - 8.4.2.4. provide hand sanitiser and tissues for Staff and persons employed in the provision of the Services, and encourage them to use them.
- 8.4.3. In the event of a Crisis, the Contractor shall, on the Authority's written request, confirm that it has complied with the provisions of conditions 8.4.1 – 8.4.2. Where the Authority is not satisfied that the Contractor has complied with conditions 8.4.1 – 8.4.2, the dispute resolution procedure at condition 29 will apply.
- 8.4.4. The Contractor is required to have in place a policy aimed at dealing with a Crisis event (including, without limitation, for combatting the Spread of Contagious Disease) and shall produce a copy on demand by the Authority.
- 8.4.5. The Contractor shall notify the Authority immediately if the Contractor has reason to suspect that any of its Staff may have been exposed to a contagious disease, or if there has been any other Crisis or occurrence which may jeopardise the delivery of the Services to the Authority by the Contractor.
- 8.4.6. The Contractor warrants that its Staff are required to notify the Contractor immediately, if they have any reason to suspect they may have been exposed to a contagious disease or if they become aware that any other Crisis event may have occurred.

- 8.4.7. If a Crisis interferes with the delivery of the Services, the Authority may reduce the scope of the Services, without becoming liable for any Losses that may be incurred by the Contractor as a consequence of such reduction in the Services including, but not limited to, Losses arising from any redundancies among the Contractor's staff.

## 9. **INTELLECTUAL PROPERTY**

### 9.1. **Licence of Authority's Intellectual Property Rights**

- 9.1.1. Save as set out in this condition 9.1, nothing in the Contract gives the Contractor any right to use or exploit the Intellectual Property Rights of the Authority.

- 9.1.2. The Authority grants the Contractor a non-exclusive, royalty free, non-transferable licence to use any specifications, materials and/or other data provided by the Authority to the Contractor in connection with the Purchase Order or otherwise in connection with the Requirements ("Authority IPR") for the sole purpose of performing its obligations under the Contract and for the term of the Contract only.

- 9.1.3. All Authority IPR will:

- 9.1.3.1. at all times remain the property of the Authority;
- 9.1.3.2. be delivered up to the Authority immediately on request (and immediately on termination of the Contract without request);
- 9.1.3.3. be used by the Contractor solely for the purpose of providing the Requirements; and
- 9.1.3.4. be held by the Contractor at the Contractor's risk;

and the Contractor will:

- 9.1.3.5. not delete or remove any proprietary notices contained within or relating to the Authority IPR;
- 9.1.3.6. perform secure back-ups of all Authority IPR and shall ensure that up-to-date back-ups are securely stored off-site and, where applicable, in accordance with its business continuity and disaster recovery plans. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority on request;
- 9.1.3.7. ensure that any system on which the Contractor holds any Authority IPR including back-up data, is a secure system;
- 9.1.3.8. take responsibility for preserving the integrity of Authority IPR and preventing the corruption or loss of Authority IPR; and
- 9.1.3.9. deliver the Authority IPR to the Authority on request in the format reasonably required by the Authority.

- 9.1.4. The Contractor shall indemnify the Authority against any liabilities incurred by the Authority arising from the Contractor's unlicensed use of the Authority IPR (including from an infringement of any third party Intellectual Property Right by that use).
- 9.1.5. The parties acknowledge and agree that if any Intellectual Property Rights are created either out of or in connection with the Contractor's use of the Authority IPR, then those Intellectual Property Rights shall vest in the Authority exclusively.
- 9.1.6. The Contractor shall at the request and cost of the Authority (whether during or after termination of the Contract) sign and execute all such deeds and documents and do all such acts and things as the Authority may reasonably require to apply for, obtain and vest and maintain in the name of the Authority alone (including by way of assignment) any Intellectual Property Rights in respect of the Authority IPR (including any Intellectual Property Rights created either out of or in connection with the Contractor's use of the Authority IPR) and defend any proceedings in respect of such applications.

## 9.2. Contractor's Intellectual Property

- 9.2.1. The Contractor grants the Authority a non-exclusive, perpetual, royalty free, transferable licence to use the Background IPR (with a right to grant sub-licences) to the extent required to enable the Authority to use the Deliverables for whatever purpose it wishes (and in particular to enable the Authority to carry out future procurement related activity). Save as set out in this condition 9.2.1 the Authority shall have no rights in or to the Background IPR.
- 9.2.2. All Foreground IPR in the Deliverables shall vest in and be owned exclusively by the Authority and the Contractor hereby assigns to the Authority all Foreground IPR in the Deliverables together with all rights to apply for registration of any related Intellectual Property Rights. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Deliverables.
- 9.2.3. The Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior written approval of the Authority, use or disclose any Foreground IPR in the Deliverables.

## 9.3. Infringement of Intellectual Property Rights by the Requirements

- 9.3.1. The Contractor warrants that the provision of the Services and the Authority's use, exploitation and/or resale (including by sublicense of the Intellectual Property Rights in the Deliverables and Goods if applicable) of the Deliverables and Goods shall not infringe any third party rights (including Intellectual Property Rights).
- 9.3.2. If the provision of the Services under the Contract or the use of the Goods and/or the Deliverables by the Authority is found to infringe the Intellectual Property Rights of a third party the Contractor shall, at its own expense, promptly take either or both of the following actions:

9.3.2.1. use all reasonable efforts to procure (for the benefit of the Authority) the right to continue performing the Services and/or the right for the Authority to continue to use any infringing Goods or Deliverables; or

9.3.2.2. modify or replace any infringing Services, Goods or Deliverables so that there is no further infringement, provided that such modification or replacement shall be effected by the Contractor with the minimum of interruption to the Authority's business and the operation or performance of the Requirements in accordance with the Contract.

9.3.3. The Contractor shall indemnify, and keep indemnified, the Authority against any liabilities incurred by the Authority arising from:

9.3.3.1. the manufacture, supply, delivery or use of the Requirements or other articles (including the Deliverables) by the Contractor; and

9.3.3.2. the Authority's use, exploitation, resale (including by sublicense of the Intellectual Property Rights in the Goods and Deliverables if applicable) of the Goods and any Deliverables;

including pursuant to an infringement of any third party Intellectual Property Rights by that use, exploitation, resale, sublicense, manufacture, supply or delivery by the Authority or any sub-licensee.

9.3.4. Condition 9.3.3 shall not apply if the liabilities incurred arise as a direct consequence of the Contractor's use of or compliance with any drawings, specifications and/or other data provided by the Authority to the Contractor.

#### 9.4. Further assurance and moral rights

9.4.1. The Contractor shall at the request and cost of the Authority (whether during or after termination of the Contract), sign and execute all such deeds and documents and do all such acts and things as the Authority may reasonably require to apply for, obtain and vest and maintain in the name of the Authority alone (including by way of assignment) any Intellectual Property Rights which vest in and/or are assigned to the Authority in accordance with this condition 9 and defend any proceedings to oppose the vesting of any such Intellectual Property Rights in the name of the Authority.

9.4.2. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Staff during the performance of the Contract.

#### 10. AUDIT AND RECORDS

10.1. Subject to any statutory requirement and condition, the Contractor shall keep secure and maintain for the Contract Period and 6 years afterwards, or such longer period as may be agreed between the parties, full and accurate records of all matters relating to the Contract including the Requirements supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.

- 10.2. Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of 21 years from the date of expiry or earlier termination of the Contract.
- 10.3. The Authority shall have the right to audit the Contractor's compliance with the Contract. The Contractor shall promptly provide any information or document the Authority may require in electronic form for the purposes of auditing the Contractor's compliance with its obligations under the Contract. The Contractor shall cooperate with such audit and inspection and assist the Authority or its authorised representative if requested. Should the Authority wish to do so, the Contractor shall permit or procure permission for the Authority or its authorised representative during normal business hours, access to any premises and facilities, books and records reasonably required to audit the Contractor's compliance with its obligations under the Contract.
- 10.4. Should the Contractor subcontract any of its obligations under the Contract, the Authority shall have the right to audit and inspect such third party. The Contractor shall promptly procure any information or document the Authority may require from such third party in electronic form for the purposes of conducting such audit. The Contractor shall cooperate with such audit and inspection and assist the Authority or its authorised representative if requested. Should the Authority wish to do so, the Contractor shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any 12 months, having given advance written notice of no less than 1 Working Day, access to any premises and facilities, books and records used in the performance of the Contractor's obligations under the Contract that are subcontracted to such third party.
- 10.5. The Contractor shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract for the purposes of:
- 10.5.1. the examination and certification of the Authority's accounts; or
  - 10.5.2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 10.6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as they consider necessary. Condition 10 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3)(d) and 6(5) of the National Audit Act 1983.
- 10.7. The Contractor shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of the Contract.
- 10.8. The Contractor shall promptly and at its own expense provide all reasonable information as may be reasonably requested by the Authority to evidence the Contractor's compliance with the requirements of the Contract.

## **11. HEALTH AND SAFETY AND ACCESS TO AUTHORITY PREMISES**

- 11.1.1. The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract (including, but not limited to, any Crisis related safety incident). The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 11.1.2. While on the Authority's premises or at any time when working with or in proximity to any employees or agents of the Authority or working with any equipment or items owned or controlled by the Authority, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there. In a Crisis, the Contractor shall comply with any relevant Crisis Guidance or Law in relation to working with or in proximity to other persons.
- 11.1.3. The Contractor shall notify the Authority immediately in the event of any incident or near miss occurring in the performance of its obligations under the Contract on either the Authority's or the Contractor's premises or at any time when working with or in proximity to any employees or agents of the Authority or working with any equipment or items owned or controlled by the Authority where that incident causes any personal injury or damage to property which could give rise to personal injury or creates a reasonably foreseeable risk of personal injury or damage to property.
- 11.1.4. The Contractor shall comply with the requirements of all applicable Law, guidance, and Crisis Guidance relating to health and safety, which may apply to Staff and other persons working on the Authority's premises in the performance of its obligations under the Contract.
- 11.1.5. The Contractor shall ensure that its Staff display on their clothing at all times when they are on the Authority's premises the form of identification requested by the Authority (and if applicable the Contractor shall provide such identification if it is not provided by the Authority).
- 11.1.6. All Staff shall report to the Authorised Officer on arrival and departure from the Authority's premises. Visits to the Authority's premises are not permitted without the consent of the Authorised Officer.
- 11.1.7. The Contractor shall cause as little interference as possible with other activities on the Authority's premises. The Contractor shall remove from the Authority's premises any of the Staff if the Authority so requests.
- 11.1.8. The Contractor will, and will procure that its Staff will, comply with any instructions issued by the Authority to the Contractor or the Contractor's Staff whilst on the Authority's premises.
- 11.1.9. The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) and any other health and safety documents (as considered relevant by the Authority) which may be requested from time to time are made available to the Authority on request.

- 11.1.10. The Contractor shall promptly inform the Authority of any amendments, revisions or other changes which are made to its health and safety policy statement or other health and safety documents during the Contract Period.
- 11.1.11. The Contractor shall immediately upon receipt of any information, instruction, application or other communication relating to health and safety matters concerning the Authority, the Requirements or the Location (including inspections, claims, investigations, prosecutions or other proceedings) disclose full details to the Authority.

## 12. **PREVENTION OF CORRUPTION AND FRAUD**

- 12.1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Effective Date:

- 12.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 12.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 12.2. The Contractor shall not during the Contract Period:

- 12.2.1. commit a Prohibited Act; and/or
- 12.2.2. do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, subcontractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 12.3. The Contractor shall during the Contract Period:

- 12.3.1. establish, maintain and enforce, and require that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- 12.3.2. keep appropriate records of its compliance with its obligations under condition 12.3.1 and make such records available to the Authority on request.

- 12.4. The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of condition 12.1 and/or 12.2, or has reason to believe that it has or any of the Staff have:

- 12.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 12.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 12.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- 12.5. The Contractor will not offer services, gifts or benefits to the Authority's employees in an attempt to influence that employee's conduct in representing the Authority.
- 12.6. If the Contractor makes a notification to the Authority pursuant to condition 12.4, the Contractor shall respond promptly and at its own expense to the Authority's enquiries, co-operate with any investigation, and:
  - 12.6.1. allow the Authority to audit any books, records and/or any other relevant documentation in accordance with condition 10; and
  - 12.6.2. promptly provide any information or document the Authority may require in electronic form for the purposes of conducting such audit.
- 12.7. If the Contractor is in Default under conditions 12.1 and/or 12.2, the Authority may by notice:
  - 12.7.1. require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - 12.7.2. immediately terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Requirements and any additional expenditure incurred by the Authority throughout the Contract Period; or
  - 12.7.3. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this condition 12.
- 12.8. Any notice served by the Authority under condition 12.7 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

### 13. **ENVIRONMENTAL CONSIDERATIONS**

- 13.1. The Contractor shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Requirements. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Purchase Order. Without prejudice to the generality of the foregoing, the Contractor shall:
  - 13.1.1. comply with the Authority's environmental policy, available on the Authority website ([www.nhsbsa.nhs.uk](http://www.nhsbsa.nhs.uk)), in relation to any stated environmental and social requirements, characteristics and impacts of the Requirements on the Contractor's supply chain;
  - 13.1.2. maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the

Requirements being provided and as proportionate to the nature and scale of the Contractor's business operations; and

- 13.1.3. maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in condition 13.1.2.
- 13.2. The Contractor shall meet all reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this condition 13.
- 13.3. The Contractor shall promptly notify the Authority of any environmental hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any environmental hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 13.4. While on the Authority's premises or at any time when working with or in proximity to any employees or agents of the Authority or working with any equipment or items owned or controlled by the Authority, the Contractor shall comply with any environmental measures implemented by the Authority in respect of Staff and other persons working there. . In a Crisis, the Contractor shall comply with any relevant Crisis Guidance or Law in relation to working with or in proximity to other persons.
- 13.5. The Contractor shall comply with the requirements of all applicable Law and guidance relating to the environment, which may apply to Staff and other persons working on the Authority's premises in the performance of its obligations under the Contract.
- 13.6. The Contractor shall ensure that its environmental policy statement and any other environmental documents (as considered relevant by the Authority) which may be requested from time to time are made available to the Authority on request.

#### 14. **EQUALITY, DIVERSITY AND HUMAN RIGHTS**

##### 14.1. The Contractor shall:

- 14.1.1. perform its obligations under the Contract (including those in relation to the Requirements) in accordance with:
  - 14.1.1.1. the Equality Act (2010) and any other applicable equality Law (whether in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation;
  - 14.1.1.2. the Authority's equality and diversity policy available on the Authority website ([www.nhsbsa.nhs.uk](http://www.nhsbsa.nhs.uk)); and
  - 14.1.1.3. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

- 14.1.2. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 14.2. The Contractor shall (and shall use its reasonable endeavours to procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.
- 14.3. The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 15. **CONFIDENTIALITY**
- 15.1. For the purposes of this condition 15, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 15.2. Except to the extent set out in this condition 15 or where disclosure is expressly permitted elsewhere in the Contract, the Recipient shall:
  - 15.2.1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 15.2.2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in the Contract or without obtaining the owner’s prior written consent;
  - 15.2.3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Contract; and
  - 15.2.4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
- 15.3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
  - 15.3.1. the Recipient is required to disclose the Confidential Information by Law, provided that condition 16 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
  - 15.3.2. the need for such disclosure arises out of or in connection with:
    - 15.3.2.1. any legal challenge or potential legal challenge against the Authority arising out of or in connection with the Contract;
    - 15.3.2.2. the examination and certification of the Authority’s accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and

effectiveness with which the Authority is making use of any Services provided under the Contract; or

15.3.2.3. the conduct of a Crown review in respect of the Contract; or

15.4 The Authority may share information with NHS Protect, other NHS organisations and government agencies for the purposes of the prevention, detection, investigation and prosecution of fraud or any other unlawful activity affecting the NHS.

15.5 The Contractor may disclose the Confidential Information of the Authority on a confidential basis only to:

15.5.1. Contractor Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Contractor's obligations under the Contract;

15.5.2. its auditors; and

15.5.3. its professional advisers for the purposes of obtaining advice in relation to the Contract including for the purpose of responding to any Crisis.

Where the Contractor discloses Confidential Information of the Authority pursuant to this condition 15.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in the Contract by the persons to whom disclosure has been made.

15.6. The Authority may disclose the Confidential Information of the Contractor:

15.6.1. on a confidential basis to the Crown for any proper purpose of the Authority or of the Crown;

15.6.2. to Parliament and/or any Parliamentary Committees or if required by any Parliamentary reporting requirement;

15.6.3. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions including for the purpose of responding to any Crisis;

15.6.4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in condition 15.6.1 (including any benchmarking organisation) for any purpose relating to or connected with the Contract;

15.6.5. on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this condition 15.

15.7. Nothing in this condition 15 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## 15.8. Transparency

- 15.8.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Authority shall determine whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.8.2. Notwithstanding any other provision of the Contract, the Contractor hereby gives its consent for the Authority to publish to the general public the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to the Contract agreed from time to time.
- 15.8.3. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Contract.

## 16. **FREEDOM OF INFORMATION**

- 16.1. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
  - 16.1.1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - 16.1.2. transfer to the Authority all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 16.1.3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 16.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 16.2. Information "belonging to the Authority" means information;
  - 16.2.1. given to the Contractor by the Authority to be able to meet its obligations under the Contract;
  - 16.2.2. used to measure the Contractor's performance of the Contract;
  - 16.2.3. required to meet the Authority's legal obligations outside of FOI;
  - 16.2.4. that the Authority is entitled to audit; and or
  - 16.2.5. the Contractor is required to hand back to the Authority at the end of the Contract

- 16.3. The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Authority 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.
- 16.4. The Contractor shall ensure that all information relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 16.5. Notwithstanding any other terms of the Contract, the Contractor consents to the publication of the Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Code of Practice on Access to Government Information and EIRs.
- 16.6. In preparing a copy of the Contract for publication under condition 16.5, the Authority may consult with the Contractor to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 16.7. The Contractor shall at its own expense assist and cooperate with the Authority to enable the Authority to publish the Contract.
- 16.8. Where any information is held by any subcontractor in connection with the Contract, the Contractor shall procure that such subcontractor shall comply with the relevant obligations set out in this condition 16 as if such subcontractor were the Contractor.

17. **LIMITATION OF LIABILITY, INSURANCE, AND INDEMNITY**

17.1. **Liability**

- 17.1.1. Nothing in the Contract limits either party's liability for death or personal injury, for fraud or fraudulent misrepresentation, or for any other liability to the extent it may not be excluded or limited by law.
- 17.1.2. Subject to condition 17.1.1, neither party shall be liable (including in negligence) to the other for any special, indirect, consequential or pure economic loss, loss of turnover, profits (save as incorporated into the Contract Price) or goodwill, whether or not the loss in question would arise in the ordinary course of events or was in the contemplation of the parties as at the date of the Contract, is reasonably foreseeable or otherwise. Nothing in this condition 17.1.2 shall limit the Contractor's liability in relation to any of the indemnities given by it to the Authority under the Contract (in accordance with condition 1.2.6).
- 17.1.3. Subject to conditions 17.1.1 and 17.1.2:

- (a) the Authority's liability (including in negligence) to the Contractor under the Contract is limited (in aggregate) to payment of the Contract Price; and
- (b) the Contractor's liability (including in negligence) to the Authority under the Contract is limited (in aggregate) to two times the Contract Price.

## 17.2. Insurance

- 17.2.1. The Contractor shall take out at its own expense and maintain in force, for a period of 6 years after the Contractor ceases to have any obligations under this Contract, adequate insurance to meet its liabilities under the Contract. In particular, the Contractor shall maintain the insurances set out in condition 17.2.4 and shall produce (on request) a copy of the relevant insurance policy and renewal receipts for inspection by the Authority.
- 17.2.2. The Contractor shall not allow its insurance cover to be cancelled or to be allowed to lapse during the term of the Contract and shall give the Authority 30 days prior written notice before such insurance is cancelled or is altered in its scope or coverage (unless the scope or coverage is being enhanced).
- 17.2.3. The provisions of this condition 17.2 in no way limits the Contractor's liability under the Contract.
- 17.2.4. The Contractor shall maintain the following insurances for no less than the following amounts:
  - 17.2.4.1.1. public liability insurance of £2,000,000 (two million pounds);
  - 17.2.4.1.2. employers liability insurance of £5,000,000 (five million pounds);
  - 17.2.4.1.3. professional indemnity insurance of £5,000,000 (five million pounds); and
  - 17.2.4.1.4. product liability insurance of £2,000,000 (two million pounds).

## 17.3. Indemnity

- 17.3.1. The Contractor shall indemnify the Authority fully and keep the Authority indemnified at all times against any claim or demand by any employee or agent of the Contractor arising out of their employment by the Contractor and deployment on the provision of the Services (except for any claim relating to any act or omission of the Authority (or its employees or agents)).

## 18. DATA PROTECTION

- 18.1. Should Personal Data be Processed under the Contract, then with respect to the parties' rights and obligations under the Contract, the parties acknowledge that the Authority is a Data Controller and that the Contractor is a Data Processor.
- 18.2. The Contractor shall:

- 18.2.1. Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under the Contract;
- 18.2.2. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;;
- 18.2.3. not disclose or transfer the Personal Data to any third party or Staff unless necessary for the provision of the Requirements and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under the Contract);
- 18.2.4. take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that the Staff:
  - 18.2.4.1. are aware of and comply with the Contractor's duties under this condition 18 and condition 15;
  - 18.2.4.2. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by the Contract; and
  - 18.2.4.3. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Data Protection Legislation);
- 18.2.5. notify the Authority within 5 Working Days if it receives:
  - 18.2.5.1. from a Data Subject (or third party on their behalf):
    - 18.2.5.1.1. a Data Subject Rights Request (or purported Data Subject Rights Request);
    - 18.2.5.1.2. a request to rectify, block or erase any Personal Data; or
    - 18.2.5.1.3. a complaint relating to the Authority's obligations under the Data Protection Legislation;
  - 18.2.5.2. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - 18.2.5.3. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- 18.2.6. provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in condition 18.2.5, including by promptly providing:

- 18.2.6.1. the Authority with full details and copies of the complaint, communication or request;
  - 18.2.6.2. where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Rights Request within the relevant timescales set out in the Data Protection Legislation; and
  - 18.2.6.3. the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
  - 18.2.6.4. if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this condition 18 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 18.2.7. take all measures required pursuant to Article 32 GDPR and ensure that, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it shall implement and at all times keep in place appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the following measures as appropriate:
- 18.2.7.1. the pseudonymisation and encryption of Personal Data;
  - 18.2.7.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - 18.2.7.3. the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
  - 18.2.7.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;
- 18.2.8. comply with the following conditions for engaging another Processor (a "Sub-Processor"):
- 18.2.8.1. the Contractor shall not engage a Sub-Processor without prior specific or general written authorisation of the Authority. In the case of general written authorisation, the Contractor shall inform the Authority of any intended changes concerning the addition or replacement of Sub-Processors, thereby giving the Authority the opportunity to object to such changes; and
  - 18.2.8.2. where the Contractor engages a Sub-Processor for carrying out specific Processing activities on behalf of the Authority, the same data protection obligations as set out in this

Contract and in Data Protection Legislation shall be imposed on that Sub-Processor by way of a contract (if not directly imposed by Data Protection Legislation), in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of Data Protection Legislation. Where that Sub-Processor fails to fulfil its data protection obligations, the Contractor shall remain fully liable to the Authority for the performance of that Sub-Processor's obligations;

- 18.3. The Contractor shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Effective Date, the Contractor or any subcontractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:
- 18.3.1. the Contractor shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Variation Procedure and conditions 18.3.2 to 18.3.4;
  - 18.3.2. the Contractor shall set out in its Change Request details of the following:
    - 18.3.2.1. the Personal Data which will be transferred to and/or Processed in any Restricted Countries;
    - 18.3.2.2. the Restricted Countries which the Personal Data will be transferred to and/or Processed in; and
    - 18.3.2.3. any subcontractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
    - 18.3.2.4. how the Contractor will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the Data Protection Legislation;
  - 18.3.3. in providing and evaluating the Change Request, the parties shall ensure that they have regard to and comply with then-current Authority, the Crown and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
  - 18.3.4. the Contractor shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
    - 18.3.4.1. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into the Contract or a separate data processing agreement between the parties; and

18.3.4.2. procuring that any subcontractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

18.3.4.2.1. a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

18.3.4.2.2. a data processing agreement with the Contractor on terms which are equivalent to those agreed between the Authority and the subcontractor relating to the relevant Personal Data transfer,

and in each case which the Contractor acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

18.4. The Contractor shall use its reasonable endeavours to assist the Authority to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of the Authority's obligations under the Data Protection Legislation to the extent the Contractor is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

18.5. The Contractor will, at the choice of the Authority, delete or return all the Personal Data to the Authority after the end of the provision of services relating to Processing, and delete existing copies unless European Law requires storage of the Personal Data;

18.6. The provisions of conditions 18.2 and 18.3 shall apply during the Contract Period and indefinitely after its expiry.

18.7. The Contractor shall indemnify the Authority against any liabilities incurred by the Authority arising from the Contractor's breach of this condition 18.

## 19. **TUPE**

19.1. Where the Requirements do not include Services, the Authority and Contractor agree that conditions 19.2 and 19.3 apply to the Contract.

19.2. The Authority shall not have any liability howsoever arising for any member of Staff or former member of Staff as a result of the parties entering into the Contract.

19.3. The Contractor shall indemnify the Authority against all liabilities suffered or incurred by the Authority as a result of any claim or demand made or brought against the Authority by or on behalf of any member of Staff or former member of Staff on the grounds that his/her employment and/or any liabilities in connection with his/her employment, its termination or cessation howsoever arising (including as a result of its termination by the Authority or as a result of any claim that there has been a breach of informing and consulting requirements) have or should have transferred from the Contractor (or any of its subcontractors) to the Authority pursuant to TUPE or otherwise.

19.4. Where the Requirements include Services, the Authority and Contractor agree that the following provisions of this condition 19 will apply to any personnel which are affected by TUPE.

19.5. Relevant Transfers

The parties hereby acknowledge that, pursuant to TUPE, there will be a relevant transfer on the date that the Contract commences and that contracts of employment (except in relation to any terms disapplied through operation 10(2) of TUPE) for Transferring Employees will transfer from the Authority to the Contractor and take effect as if originally made between the Contractor and such employees (save for those who object pursuant to Regulation 4(7) of TUPE).

19.6. Authority's Obligations and Indemnities

19.6.1. The Authority shall indemnify and keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities in respect of any Transferring Employee (or where applicable any employee representative as defined in TUPE) which the Contractor may suffer or incur as a result of or in connection with:

19.6.1.1. any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Authority in respect of any Transferring Employee on or before the date of commencement of the Contract;

19.6.1.2. any failure by the Authority to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Contractor to comply with its duties under Regulation 13 of TUPE; and

19.6.1.3. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.

19.6.2. The Authority shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of commencement of the Contract (including bonuses or commission which are payable after the commencement date but attributable in whole or in part to the period on or before the commencement date), and will indemnify/keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor may incur in respect of the same.

## 19.7. Contractor's Obligations and Indemnities

- 19.7.1. The Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the date of commencement of the Contract (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the commencement date but which are attributable in whole or in part to the period after the commencement date) and will indemnify/keep indemnified and hold the Authority harmless from and against all actions, suits, claims, damages, costs and expenses and other liabilities which the Authority may incur as a result of the same.
- 19.7.2. Not later than 12 months prior to the end of the Contract Period or, where the Contract Period is shorter than 12 months, promptly following the Authority's request, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- 19.7.2.1. the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of applicable Laws and their employment status and employer;
  - 19.7.2.2. the identity, date of commencement of employment or engagement, age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in condition 19.7.2.1;
  - 19.7.2.3. the terms and conditions of employment/engagement of the Staff referred to in condition 19.7.2.1 their job titles and qualifications;
  - 19.7.2.4. details of any disciplinary or grievance proceedings ongoing (or those within the previous two years) or circumstances likely to give rise to such proceedings and details of any claims current or threatened (or those within the previous two years);
  - 19.7.2.5. details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union; and
  - 19.7.2.6. details of such individuals on long-term sickness absence, maternity or other statutory leave or absence from work.
- 19.7.3. At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to condition 19.7.2.

- 19.7.4. At the time of providing the information disclosed pursuant to conditions 19.7.2 and 19.7.3 the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.
- 19.7.5. The Authority may use the information it receives from the Contractor pursuant to conditions 19.7.2 and 19.7.3 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- 19.7.6. The Contractor shall indemnify and keep indemnified and hold the Authority and the Crown (each for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities in respect of any Transferring Employee (or where applicable any employee representative as defined in TUPE) which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:
- 19.7.6.1. the provision of information pursuant to conditions 19.7.2 and 19.7.3;
  - 19.7.6.2. any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any subcontractor in respect of any Transferring Employee on or before the end of the Contract Period;
  - 19.7.6.3. any failure by the Contractor or any subcontractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of TUPE;
  - 19.7.6.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any subcontractor to comply with any legal obligation to such trade union, body or person; and
  - 19.7.6.5. any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees;
  - 19.7.6.6. any claim or demand arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or before the end of the Contract Period which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993).

- 19.7.7. If the Contractor becomes aware that the information it provided pursuant to conditions 19.7.2 and 19.7.3 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.
- 19.7.8. This condition 19 applies during the Contract Period and indefinitely thereafter.
- 19.7.9. The Contractor undertakes to the Authority that, during the twelve months prior to the end of the Contract Period the Contractor shall not (and shall procure that any subcontractor shall not) without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 19.7.9.1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement) (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
  - 19.7.9.2. terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 19.7.9.3. transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the
  - 19.7.9.4. delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services));
  - 19.7.9.5. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## 20. **TERM AND TERMINATION**

### 20.1. **Contract Period**

The Contract shall remain in force for the period specified in the Purchase Order (the "Contract Period").

### 20.2. **Termination for an Insolvency Event**

The Authority may terminate the Contract if the Contractor suffers an Insolvency Event.

### 20.3. Termination for change of control

The Authority may terminate the Contract if there is a change or proposed change in the entity which controls the Contractor and the Authority, acting reasonably, believes that change may adversely affect the business of the Authority.

### 20.4. Termination for breach

20.4.1. The Authority may terminate the Contract if:

- (a) the Contractor commits a material breach of the Contract which is not capable of remedy; or
- (b) the Contractor commits a material breach of the Contract which is capable of remedy but fails to remedy that breach within 30 days of receipt of a notice from the Authority requiring it to remedy that breach; or
- (c) an event occurs which entitles the Authority to terminate the Contract (in whole or in part) as provided for in the Contract.

20.4.2. For the purposes of condition 20.4.1 the following breaches are deemed to be material breaches by the Contractor which are not capable of remedy:

- (a) the failure by the Contractor to comply with condition 9 (Intellectual Property);
- (b) the failure by the Contractor to comply with condition 12 (Prevention of Corruption and Fraud);
- (c) the failure by the Contractor to comply with condition 15 (Confidentiality);
- (d) the failure by the Contractor to comply with condition 16 (Freedom of Information);
- (e) the failure by the Contractor to comply with condition 17.2 (Insurance);
- (f) the failure by the Contractor to comply with condition 18 (Data Protection);
- (g) the Contractor suffers an event which means it is unable to lawfully supply the Requirements, or part of the Requirements (for example loss of a relevant licence);
- (h) the Contractor fails to meet any of the Service Levels; and
- (i) the failure by the Contractor to comply with any condition of the Contract, or any provision which is expressed to be of the essence or which failure expressly or impliedly gives the Authority a right to terminate the Contract.

20.4.3. The Contractor may terminate the Contract on the grounds of material breach in circumstances where the Authority has not paid an undisputed invoice within 90 days of the date for payment stated on the invoice.

20.5. Termination for convenience

The Authority may terminate any part of the Contract at any time by giving the Contractor 3 months' written notice.

20.6. Termination in a Crisis

The Authority may terminate any part of the Contract at any time during a Crisis by giving the Contractor 1 month written notice.

20.7. Consequences of termination

20.7.1. Neither the expiry nor the termination of the Contract shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue either to the Authority or to the Contractor.

20.7.2. The right of either party to terminate the Contract pursuant to this condition 20 and/or any other provision of the Contract is without prejudice to that party's other rights and remedies.

20.7.3. On termination of the Contract:

- (a) the Authority will pay the Contractor all monies properly due and/or incurred by the Contractor at the date of termination;
- (b) the Contractor shall promptly refund to the Authority any monies paid in advance on a pro-rata basis;
- (c) each party shall return to the other party all property belonging to the other party then in its possession or control;
- (d) the Contractor shall vacate the Location leaving it in good condition and repair; and
- (e) the Contractor shall immediately deliver up to the Authority all data, including Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Requirements.

20.7.4. The Contractor shall cooperate fully with the Authority or, as the case may be, any replacement supplier at all times during any re-procurement and handover period prior to and following the expiry or earlier termination of the Contract. This cooperation shall extend to providing access (on a free of charge basis) to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or transition without disruption to routine operational requirements.

20.7.5. The conditions in the Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination

including without limitation conditions 6, 7, 8, 9, 10, 12, 15, 16, 17, 18, 19, 20 and 22.

21. **REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to the Authority for breach of the Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

22. **NOTICES AND COMMUNICATIONS**

22.1. Any notice or request required or permitted to be given or made under the Contract shall be in writing.

22.2. Such notice or request shall be deemed to have been served:

22.2.1.1. if sent by email, when the sender receives a reply confirming delivery;

22.2.1.2. if delivered by hand, at the time and date of delivery;

22.2.1.3. if sent by fax, at the time and date of the successful fax transmission report;

22.2.1.4. if sent by recorded delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt); and

22.2.1.5. if sent by registered airmail, five days from the date of posting;

provided that, where in the case of delivery by hand, email or transmission by fax, such delivery or transmission occurs either after 4.00 pm on a Working Day, or on a day other than a Working Day, service will be deemed to occur at 9.00 am on the next Working Day.

23. **RELATIONSHIP OF PARTIES**

23.1. Nothing in the Contract is intended or shall be construed to create a relationship or agency or partnership between the parties.

23.2. Except as expressly authorised in the Contract, neither party shall have any authority to act or make representations on behalf of the other party, and nothing in the Contract shall impose any liability on either party in respect of any liability incurred by the other party to a third party.

23.3. The Contractor's status shall be that of an independent contractor and it is expressly understood that the Contractor is not an employee or servant of the Authority.

24. **FORCE MAJEURE**

24.1. Neither party to the Contract will be deemed to be in breach of the Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in condition 24.2.

- 24.2. If a party's performance of its obligations under the Contract is affected by a Force Majeure:
- 24.2.1. it will give written notice to the other party, specifying the nature and extent of the Force Majeure, within 3 days of becoming aware of the Force Majeure,(or, where there is an event of Force Majeure that involves a Crisis, as soon as reasonably possible) and will, at all times, use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, to mitigate its severity;
  - 24.2.2. subject to the provisions of condition 24.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and
  - 24.2.3. it will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- 24.3. Subject to condition 24.4, if the Force Majeure in question continues for more than 3 months the party not subject to the Force Majeure may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.
- 24.4. Where there is an event of Force Majeure that involves a Crisis, the representatives authorised to represent the parties detailed at condition 29.10 shall attempt in good faith to agree any additional measures that may be required to ensure ongoing performance of the obligations of the parties. If the Force Majeure event in question continues for more than 6 months, the party not subject to the Force Majeure may give written notice to the other to terminate the Contract in accordance with the process in condition 24.3.

25. **TRANSFER AND SUB-CONTRACTING**

- 25.1. The Contractor may not assign or transfer the Contract or any of its rights or obligations, (including by way of subcontracting) without the prior written consent of the Authority. Any attempt to assign, transfer or subcontract without consent shall be in material breach of the Contract.
- 25.2. If the Authority permits the Contractor to subcontract any or all of its obligations under the Contract, the Contractor shall:
- 25.2.1. remain primarily liable for performance of the Contract;
  - 25.2.2. procure that its subcontractors sign up to terms no less stringent than those set out in the Contract which are relevant to the performance of the subcontractor in question; and
  - 25.2.3. ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 25.3. The Authority may upon notice to the Contractor assign, transfer or subcontract the Contract or any of its rights or obligations, in whole or in part, to a third party.

26. **WAIVER**

No waiver of any provision of the Contract shall be effective unless it is agreed to by both parties in writing. No waiver of any default shall constitute a waiver of any subsequent default.

27. **SEVERABILITY**

If any provision of the Contract is or becomes illegal, void or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiation to remedy such invalidity.

28. **THIRD PARTY RIGHTS**

- 28.1. The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

29. **DISPUTE RESOLUTION**

- 29.1. If any dispute arises out of the Contract (a "Dispute") the parties will attempt to resolve it by negotiating in good faith. Subject to condition 29.9 the procedures set out in the rest of this condition will be followed prior to the issue of any proceedings or in relation to any Dispute concerning matters of procedure and management. The representatives authorised to represent the parties in relation to a Dispute are detailed at condition 29.10.
- 29.2. Any Dispute which the parties fail to resolve within 2 Working Days of its first notification by one party to the other will be referred to the Level 1 representatives for resolution.
- 29.3. If the relevant Dispute remains unresolved within 2 Working Days of its referral to the Level 1 representatives the Dispute will be referred to the Level 2 representatives for resolution.
- 29.4. If the relevant Dispute remains unresolved within 2 Working Days of its referral to the Level 2 representatives the Dispute will be referred to the Level 3 representatives for resolution.
- 29.5. If negotiations fail to resolve such Dispute the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") model mediation procedure, as amended from time to time.
- 29.6. To initiate mediation a party shall give notice in writing (a "Mediation Notice") to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation.
- 29.7. The mediation shall commence within 28 days of the Mediation Notice being served.
- 29.8. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour.

Thereafter paragraph 9 (or equivalent paragraph in any post-2014 Edition) of the CEDR model mediation procedure will apply. Neither party will commence legal proceedings against the other until thirty days after such mediation of the dispute in question has failed to resolve the dispute.

29.9. The dispute resolution procedure set out in this condition 29 will not prevent the affected party from:

29.9.1. seeking injunctive relief in the case of any breach or threatened breach by the other party of any obligation of confidentiality or any infringement by the other party to the Contract of the affected party's Intellectual Property Rights; or

29.9.2. commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions.

29.10. The authorised representatives are as follows:

LEVEL	AUTHORITY	CONTRACTOR
LEVEL 1	Authorised Officer	Contract Manager
LEVEL 2	Head of Commercial Services	Assistant Director or equivalent
LEVEL 3	Director of Finance, Commercial and Estates	Director or equivalent

### 30. **CHOICE OF LAW AND JURISDICTION**

Subject to condition 29, the parties shall accept the non-exclusive jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.

### 31. **ENTIRE AGREEMENT**

31.1. The Contract and other documents (if any) referred to in it which are incorporated into and form part of the Contract contain all the terms which the parties have agreed in relation to the subject matter of the Contract and those documents and supersede any prior written or oral agreements, representations or understandings between the parties.

31.2. The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on their behalf, other than as expressly set out in the Contract and the documents referred to in condition 31.1. To the extent that any such warranties, statements, promises or representations have been given, the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

31.3. Nothing in this condition 31 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

32. **TAXATION**

- 32.1. Where the Contractor or Key Personnel are liable to be taxed in the UK in respect of consideration received under this contract, the Contractor shall, and ensure that the Key Personnel shall, at all times comply with the Income Tax (Earnings and Pension) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 32.2. Where the Contractor or Key Personnel are liable for National Insurance Contributions (NICs) in respect of consideration received under the Contract, the Contractor shall, and ensure that the Key Personnel shall, at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 32.3. The Authority may, at any time during the term of the Contract, request the Contractor to provide information which demonstrates:
- 32.3.1. how the Contractor or the Key Personnel comply with conditions 32.1 and 32.2; or why
- 32.3.2. conditions 32.1 and 32.2 are not applicable to the Contractor or the Key Personnel.
- 32.4. Where applicable, a request under condition 32.3 above may specify the information which the Contractor or the Key Personnel must provide and the period within which that information must be provided.
- 32.5. The Authority may terminate this Contract if:
- 32.5.1. in the case of a request mentioned in condition 32.3 above:-
- 32.5.1.1. the Contractor or the Key Personnel fails to provide information in response to the request within 20 days, or
- 32.5.1.2. the Contractor or the Key Personnel provides information which is inadequate to demonstrate either compliance with conditions 32.1 and 32.2 or why those conditions do not apply to either the Contractor or the Key Personnel;
- 32.5.2. in the case of a request mentioned in condition 32.4 above the Contractor fails to provide the specified information within twenty 20 days, or
- 32.5.3. it receives information which demonstrates that, at any time when conditions 32.1 and 32.2 apply to the Contractor, the Contractor is not complying with those conditions.
- 32.6. The Authority may supply any information which it receives under condition 32.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

## Principal Signatory Details

**For the Buyer:**

Title: Senior Commercial Manager

Name: Jonathan Whitley

Email: jonathan.whitley@nhs.net

**For the Supplier:**

Title: Director of CEM Benchmarking UK Limited

Name: John Simmonds

Email: JohnS@cembenchmarking.com

This Contract has been duly executed by the Parties on the date which appears at the head of its page 1.

<b>Signed</b>	For and on behalf of the Supplier	For and on behalf of the Buyer
	<b>Signed via DocuSign on 13/04/2022</b>	<b>Signed via DocuSign on 07/04/2022</b>

## **SECTION 2 - REQUIREMENTS**

### **1. Pension Administration Benchmarking Survey (PABS)**

- 1.1. The Authority would like to participate in PABS. This Contract provides confirmation of the Requirements that the Contractor will provide.

### **2. Background**

- 2.1. The Contractor shall produce detailed benchmarking reports comparing the costs incurred and services delivered to members by pension schemes. The Authority will submit data to the Contractor and those details are compared with a Peer Group of other Contractor clients.
- 2.2. The Authority does not seek advice from the Contractor on pension scheme management and does not require recommendations for changes to current practice. The Contractor is required to collect and provide comparative information. Any decisions on actions arising from the received analysis will be made by the Authority.

### **3. Scope of Services**

- 3.1. The Contractor will:

- a. Attend regular Board Meetings with the Authority relating to the Services
- b. Issue a standard survey questionnaire to the Authority.
- c. Assist the Authority in understanding the Contractor's data requirements, answering the Authority's questions by telephone or at meetings at the Authority's premises as required.
- d. Review the Authority's data and discuss with the Authority unusual or outlying data items as required.
- e. Discuss and agree with the Authority a suitable Peer Group of schemes to benchmark against.
- f. Prepare a draft report, customised for the Authority, with the results of the benchmarking.
- g. Discuss the draft report with the Authority at a meeting at the Authority's premises, to ensure the Authority has a full understanding of the results.
- h. Update the data in the report as appropriate based on feedback from the draft report.

- i. Issue a final report (“PABS Report”) – both electronically and two hard copies.
- j. Present the results to the Authority’s Board, as required.

3.2. The Authority understands that whilst our benchmarking report will be customised for the Authority, the Contractor’s analysis will be based on the Contractor’s standard methodology and the report will be based on the Contractor’s standard template.

3.3. In addition to the benchmarking report, the Authority will be entitled to:

3.3.1. A workshop at the Authority’s premises to:

- 3.3.1.1. Present the benchmarking results to management, staff and other relevant stakeholders.
- 3.3.1.2. Share insights on emerging global practices in pension administration.
- 3.3.1.3. Facilitate breakout groups to discuss how the Authority might use the benchmarking results.

3.3.2. Contractor research reports on pension administration issues issued in the year following the date of this agreement.

3.3.3. Send three delegates to the Contractor’s annual World Peer Conference which is held annually in May in the United States of America (US).

#### 4. Delivery Milestones

4.1. The following table shows the key deliverables and dates upon which they will be delivered: -

Deliverable	Date Required
Prepare a draft report, customised for the Authority, with the results of the benchmarking.	Within 4 weeks of receiving clean data from the Authority and its peers.
Issue a final report (“PABS Report”) – both electronically and two hard copies.	Within 2 weeks of receiving feedback on draft reports from the Authority and its peers.

## **5. Authority Requirements**

5.1. To enable delivery of the benchmarking report, the Authority will provide:

- 5.1.1. Information on its activities, costs, services and performance in a manner prescribed by the Contractor.
- 5.1.2. Information on the activities, costs, services and performance of other pension schemes
- 5.1.3. Data that relates to the most recent completed fiscal year (or such other timeline as we jointly agree).

5.2. The Authority may provide additional information to support the research from time to time. You will be under no obligation to do so and will receive the research in any event.

## **6. Duration**

- 6.1. The Duration of this contract is 12 months. The Start Date is the 1st June 2022 and the End date is the 31st May 2023
- 6.2. This covers the benchmarking cycle, i.e., it includes one benchmarking report and attendance at the annual conference during the subscription period.

## **7. Termination**

- 7.1. This agreement will continue as the basis of a relationship between the Authority and the CEM Benchmarking until or unless it the Authority decides not to participate any further i.e., it will remain in place and both parties will jointly be governed by its terms unless the Authority decides to terminate the agreement
- 7.2. Termination of this contract should be provided via written notice to the CEM Benchmarking.

## **8. Limitations**

- 8.1. The Contractor cannot guarantee that specific schemes will form part of the Peer Group. The Contractor will discuss and agree a suitable Peer Group with the Authority before producing the PABS Report.
- 8.2. A Peer Group will not be used where the composition of the Peer Group might enable the results of another scheme to be identified individually (i.e., a very small Peer Group or a Peer Group with one scheme with very different characteristics to the others).

- 8.3. The Contractor may roll-forward historic data for some Peer Group members where it allows the production of a better Peer Group (i.e., where a particular comparator has not provided data recently).

## **9. Confidentiality**

In accordance with clause 15.2.2, the Authority acknowledges and accepts that the data supplied for the purpose of the Contract may be used for the purpose of producing benchmarking reports for other pension schemes. The Contractor's other clients will also know when the Authority is in their peer group but the analysis is presented anonymously and others will not be able to relate any data or results specifically to the Authority.

## SECTION 3 – CONTRACT PRICE

### 1. Contract Price

1.1. The Contract Price for the services described in Section 2 - Requirements is as follows: -

- [REDACTED] for 2022/23

1.2. The following are excluded from the Contract price: -

- 1.2.1. The Authority's expenses in attending the World Peer Conference, for example travel, accommodation and other ancillary expenses.
- 1.2.2. The cost of any additional delegates attending the conferences (i.e. any more than the 3 provided for).
- 1.2.3. Costs relating to premises to hold the workshop e.g., room hire and catering.

1.3. The following are chargeable if required: -

- 1.3.1. Additional hard copies of the Report (i.e. more than 2 as described in the Requirements) are available on request free of charge.
- 1.3.2. Additional Benchmarking report with comparisons against a different Peer Group would be charged at [REDACTED] per report.