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Parties

- (1) DERBY CITY COUNCIL whose principal place of business is at the Contracting Body House, Corporation Street, Derby DE1 2FS (**Council**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Service Provider**)

BACKGROUND

- (A) The Contracting Body placed a contract notice [REFERENCE] on [DATE] in the UK e-notification service seeking expressions of interest from potential Service Providers for the provision of Services (divided into Lots) to Contracting Bodies under a framework agreement.
- (B) Following receipt of expressions of interest, the Contracting Body invited potential Service Providers (including the Service Provider) on [DATE] to tender for the provision of Day Opportunities services.
- (C) On the basis of the Service Provider's Tender, the Contracting Body selected the Service Provider to enter a framework agreement to provide services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (D) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Service Provider under the Framework Agreement.
- (E) The Contracting Body has selected the Service Provider to provide the Services and the Service Provider is willing and able to provide the Services in accordance with the terms and conditions of this Individual Agreement.

Definitions

In the Individual Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

Abuse: a single or repeated act, or lack of appropriate action, occurring within a relationship where there is an expectation of trust which causes or is likely to cause harm or distress to a Customer including but not limited to physical, emotional, verbal, financial, sexual or racial abuse, neglect of, or cruelty towards, Customers or abuse through misapplication of drugs.

Approval: the prior written approval of the Contracting Body.

Audit: an audit carried out pursuant to clause 27.

Auditor: the National Audit Office or an auditor appointed by the Contracting Body as the context requires.

Authorised Representative: the persons respectively designated as such by the Contracting Body and the Service Provider in the Framework Agreement.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, assets, affairs, developments, trade secrets, operations, processes, product information, know-how, designs or software, personnel and customers, clients, Service Providers of the Parties, including Personal Data, Intellectual Property Rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement, the terms of this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract Year: any 12-month period starting on the Service Commencement Date and on each anniversary of the Service Commencement Date.

Controller: as defined in the Data Protection Legislation.

CQC: the Care Quality Commission or any other organisation/body which takes over its functions.

Customer: means an individual who is receiving the Services from the Service Provider.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Default: any breach of the obligations of the relevant Party under the Individual Agreement (including fundamental breach or breach of a fundamental term or material breach as defined in clause 5.90 or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Individual Agreement and in respect of which such Party is liable to the other.

Dispute Resolution Procedure: the dispute resolution procedure in clause 47.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

Enhanced DBS Check: means a disclosure of information comprised in a standard Disclosure and Barring Service check (or any successor to the Disclosure and Barring Service) together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.

Environmental Information Regulations (EIRs): the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: the Service Provider's equipment, plant, materials and such other items supplied and used by the Service Provider in the performance of its obligations under the Individual Agreement.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Framework Agreement: the framework agreement for the provision of [NAME] Services between the Contracting Body and the Service Provider dated [DATE]

Good Industry Practice: using the standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Individual Agreement: the written agreement between the Contracting Body and the Service Provider consisting of the Service Request Form, the clauses of the Framework Agreement and these clauses (except that, for the purposes of clause 49.5 only, reference to "Individual Agreement" shall not include the Service Request Form) as varied from time to time.

Individual Agreement Period: the period from the Service Commencement Date to:

- a) the date of expiry set out in the Service Request Form;
- b) following an extension pursuant to **Error! Bookmark not defined.Error! Reference source not found.**, the date of expiry of the extended period; or
- c) such earlier date of termination or partial termination of the Individual Agreement in accordance with the Law or the provisions of the Individual Agreement.

Individual Agreement Price: the price (exclusive of any applicable VAT), payable to the Service Provider by the Contracting Body under the Individual Agreement in accordance to the rates set out in the Framework Agreement and thereafter in the Service Request Form, for the full and proper performance by the Service Provider of its obligations under the Individual Agreement.

Initial Individual Agreement Period: the period set out in clause 2.

Intellectual Property Rights: patents, [utility models,] rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trade marks [and service marks], business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition], rights in designs, [rights in computer software,] database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Service Provider is bound to comply.

Management Information: the management information specified in the Service Request Form.

Month: calendar month.

Order: the order placed by the Contracting Body to the Service Provider in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Premises, the timeframe and the Quality Standards.

Service Request Form: the document used to place an Order.

Parent Company: any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term **Holding Company** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Service Provider or the Contracting Body and Parties shall mean both the Service Provider and the Contracting Body.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Premises: the location where the Services are to be supplied, as set out in the Service Request Form.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Body a financial or other advantage as an inducement or reward for any 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 this Individual Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts relating to this Individual Agreement or any other contract with the Contracting Body;
 - (iii) at common law concerning fraudulent acts relating to this Individual Agreement or any other contract with the Contracting Body; or
 - (iv) of defrauding attempting to defraud or conspiring to defraud the Contracting Body (including offences by the Service Provider under Part 3 of the Criminal Finances Act 2017).

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK.

Property: means the property and personal belongings of the Customers.

Quality Standards: the quality standards (or equivalent) published by BSI, the British Standards Institution, ISO, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Service Request Form) and any other quality standards set out in the Service Request Form.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulatory Bodies: those 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 regulate, investigate, or influence the matters dealt with in the Individual Agreement or any other affairs of the Contracting Body.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Replacement Service Provider: any third party service provider appointed by the Contracting Body to supply any services that are substantially the same as or similar to any of the Services and which the Contracting Body receives in substitution for any of the Services following the expiry, termination or partial termination of the Individual Agreement.

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

Safeguarding Adults Policy: the Contracting Body's policy for safeguarding vulnerable adults as set out in the Framework Agreement.

Safeguarding Children Policy: the Contracting Body's policy for safeguarding children as set out in the Framework Agreement.

Service Commencement Date: the service commencement date set out in the Service Request Form.

Service Request Form: means the form at Annex A

Services: the Day services to be supplied as specified in the Service Request Form.

SQ Response: the response to the selection questionnaire issued by the Contracting Body and submitted by the Service Provider on [DATE].

Staff: all employees, staff, other workers, agents Service Providers and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Staff Vetting Procedures: the Contracting Body's procedures and departmental policies for the vetting of personnel for:

- a) eligibility to work in the UK;
- b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security;
- c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-Contract: any contract between the Service Provider and a third party under which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Tender: the document(s) submitted by the Service Provider to the Contracting Body for admission onto the Framework Agreement [as supplemented by the documents submitted to the Contracting Body in response to the Contracting Body's Order, including the Service Provider's Supplemental Tender].

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*S/2006/246*).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Variation: has the meaning given to it in clause 34.

VAT: value added tax [or any equivalent tax] chargeable in the UK [or elsewhere].

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

1. Interpretation

The interpretation and construction of the Individual Agreement shall be subject to the following provisions:

- (e) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (f) words importing the masculine include the feminine and the neuter;
- (g) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (h) unless expressly provided otherwise in this Individual Agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-

enacted and includes any subordinate legislation made under it, in each case from time to time;

- (i) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (j) reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (k) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (l) headings are included in the Individual Agreement for ease of reference only and shall not affect the interpretation or construction of the Individual Agreement;
- (m) the Schedules form part of the Individual Agreement and shall have effect as if set out in full in the body of the Individual Agreement and any reference to the Individual Agreement shall include the Schedules;
- (n) references in the Individual Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Individual Agreement so numbered; and
- (o) references in the Individual Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Individual Agreement so numbered;
- (p) reference to writing or written excludes fax but not email;
- (q) any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2. Initial Individual Agreement Period

The Individual Agreement shall take effect on the Service Commencement Date and shall expire automatically on the earlier of the date set out in the Service Request Form or expressly terminated by the Contracting Body, unless it is otherwise terminated in accordance with the provisions of the Individual Agreement.

3. Service Provider's status

At all times during the Individual Agreement Period the Service Provider shall be an independent service provider and nothing in the Individual Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Individual Agreement.

4. Council's obligations

Except as otherwise expressly provided, the obligations of the Contracting Body under the Individual Agreement are obligations of the Contracting Body in its capacity as a contracting counterparty and nothing in the Individual Agreement shall operate as an obligation on, or in any other way fetter or constrain, the Contracting Body in any other capacity, nor shall the exercise by the Contracting Body of its duties and powers in any other capacity lead to any liability under the Individual Agreement (howsoever arising) on the part of the Contracting Body to the Service Provider.

5. Mistakes in Information

The Service Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Contracting Body by the Service Provider in connection with the supply of the Services and shall pay the Contracting Body any extra costs occasioned by any discrepancies, errors or omissions therein.

Supply of services

6. Services

6.1 The Service Provider shall supply the Services during the Individual Agreement Period in accordance with the Contracting Body's requirements as set out in the Individual Agreement in consideration for the payment of the Individual Agreement Price. The Contracting Body may inspect and examine the manner in which the Service Provider supplies the Services at the Premises during normal business hours on reasonable notice.

6.2 The Service Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Contracting Body before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Individual Agreement.

6.3 The Service Provider shall:

- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
- (b) to the extent that the standard of Services has not been specified in the Individual Agreement, agree the relevant standard of the Services with the Contracting Body before the supply of the Services; and
- (c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

6.4 The Service Provider shall ensure that all Staff supplying the Services 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 Services.

6.5 Subject to the Contracting Body providing Approval in accordance with clause 10, timely supply of the Services shall be of the essence of the Individual Agreement, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

7. Service Pause

7.1 The Contracting Body may at any time request that the provision of the Services is temporarily paused.

7.2 Where an individual temporary pause of the Services has continued for more than two weeks- either Party may terminate the Individual Agreement in accordance with the provisions of clause 43.3.

7.3 Where the total amount time in which the Individual Agreement has been paused exceeds eight weeks in any Individual Agreement Year in aggregate, either Party may terminate the Individual Agreement in accordance with the provisions of clause 43.3.

7.4 Where the Services have been paused, fifty percent (50%) of the Individual Agreement Price shall be payable in respect of those Services for the period that the Individual Agreement was paused.

8. Registration

8.1 The Service Provider should maintain registration with the CQC, if applicable.

8.2 The Service Provider shall immediately inform the Contracting Body in writing of any change to its registration details or status with the CQC, or any other Regulatory Body or any failure by the Service Provider to attain or maintain required standards as outlined in the Individual Agreement and Framework Agreement.

8.3 The Service Provider shall comply with and ensure continued compliance with all the provisions of relevant Regulatory Bodies (including the CQC) which may be applicable to the Services from time to time during the course that the Services are being provided to the Contracting Body.

8.4 If the Service Provider is convicted of an offence under the Care Standards Act 2000, the Health and Social Care Act 2008 or any regulations made thereunder, this will amount to a material default and the Contracting Body may terminate this Individual Agreement and the provisions of clause 42 will apply.

9. Safeguarding children and vulnerable adults

9.1 The parties acknowledge that the Service Provider is carrying out a Regulated Activity with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

- 9.2 The Service Provider shall ensure that all individuals or Staff engaged in the provision of the Services are, without limitation:
- (a) subject to a valid Enhanced DBS & Barred List Check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - (b) the Service Provider shall monitor the level and validity of the checks under this clause 9.2 for each of the Service Provider Personnel and shall be subscribed to the DBS Update Service in accordance with the Framework Agreement.
- 9.3 The Service Provider shall not engage a person in an Enhanced DBS position pending the receipt of the Enhanced DBS Check or Enhanced DBS & Barred List Check.
- 9.4 The Service Provider warrants that at all times for the purposes of this Individual Agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 9.5 The Service Provider shall immediately notify the Contracting Body of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 9 have been met.
- 9.6 The Service Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Customers/children/vulnerable adults.
- 9.7 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Customers.
- 9.8 The Service Provider will comply with the Safeguarding Adults Policy and the Safeguarding Children Policy and will ensure all Staff are aware of their duty to comply with such policies.
- 9.9 The Service Provider shall co-operate and provide all necessary assistance to the Contracting Body in relation to any safeguarding issues that arise in relation to or in connection with this agreement or any Individual Agreement or the Services.
- 9.10 Any proven Improper Conduct on the part of the Staff shall be considered to be a breach of this Individual Agreement and may result in the immediate termination of this Individual Agreement. If this agreement is not terminated, the Service Provider agrees to any measures instigated by the Contracting Body, including:
- (a) the transfer of some of all of the Services to another Framework Provider; or

- (b) suspension of the Service Provider or any Service Provider Personnel subject to appropriate measures (to be agreed by the Contracting Body at its absolute discretion) being implemented to protect Customers; or
- (c) the termination of any arrangement between the Service Provider and any Subcontractor.

9.11 The Service Provider acknowledges and understands the Contracting Body's duties under section 26 and 29 of the Counter Terrorism and Security Act 2015 and shall co-operate and provide all necessary assistance to the Contracting Body to enable it to comply with such duties. For the avoidance of doubt no provision of this agreement (including but not limited to clause 22 (Confidentiality) and clause 23 (Data Protection)) shall prevent the Service Provider from sharing all relevant information pertinent to the safety of any vulnerable adult or child with the Contracting Body and the Service Provider shall ensure that all Service Provider Personnel are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

9.12 The parties recognise the importance of information sharing in the context of keeping vulnerable adults and children safe. For the avoidance of doubt no provision of this Individual Agreement (including but not limited to clause 22 (Confidentiality) and clause 23 (Data Protection)) shall prevent the Service Provider from sharing all relevant information pertinent to the safety of any vulnerable adult or child with the Contracting Body and the Service Provider shall ensure that all Staff are aware of the primary importance of information sharing in order to prevent harm and ensure the safety of any vulnerable adult or child.

9.13 The Service Provider must:

- (a) obtain two written satisfactory references for all Service Provider Personnel prior to any involvement in the delivery of the Services. Where the applicant has no previous employment, two satisfactory independent character references must be obtained validated and checked. The Service Provider will make the references available to the Contracting Body for purposes of inspection and audit. If a prospective Service Provider Personnel is to be engaged purpose of delivering the Services is currently or has previously been by employed by the Contracting Body at any time, the Service Provider must seek a reference from the Contracting Body, regardless of whether or not the Contracting Body are the preceding employers and in addition to other references sought; and
- (b) confirm the applicants legal right to work in the UK; and
- (c) notify the Contracting Body immediately if any Service Provider Personnel receives a conviction or a previous conviction become known to the Service Provider; and
- (d) have in place a regularly updated workforce development plan that includes appropriate competencies for Service Provider Personnel in relation to all competencies and training requirements, including safeguarding children and vulnerable adults at work; and
- (e) comply with any other reasonable requirement of the Contracting Body.

9.14 The Service Provider shall:

- (a) have a procedure approved by the Contracting Body for dealing with allegations or suspicions of Abuse;
- (b) ensure that all Staff are trained at induction in the proactive prevention of Abuse, in the identification of relevant incidents, in following the reporting procedures and training should be updated at least annually;
- (c) maintain a proactive approach to prevent Abuse;
- (d) adhere to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse;
- (e) have robust systems in place so that Staff are familiar with and follow the Safeguarding Adults Policy and Safeguarding Children Policy;
- (f) address issues around bullying and have in place an anti-bullying policy which should be linked to their safeguarding procedures as appropriate. Staff and Customers shall be made aware of this policy and that relevant training will be given to Staff.

10. Provision and removal of Equipment

10.1 Unless otherwise stated in the Service Request Form, the Service Provider shall provide all the Equipment necessary for the supply of the Services.

10.2 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Contracting Body shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Contracting Body's Default.

10.3 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

11. Arrangements with Customers

11.1 The Service Provider will allocate Staff for the Contracted Period at the Premises and ensure that this is spent with the Customer in accordance with the Service Request Form – particularly in relation to individual or 1:1 support, and/ or support that is shared between with other Customers.

11.2 If the Service Provider provides, as a personal arrangement, an additional service for payment at the request of the Customer, the Service Provider shall notify the Contracting Body in writing in advance of any such service starting. Service Providers must not promote any additional services for gain or encourage Customers to purchase additional services on a private basis.

11.3 The cost of any additional service referred to at clause 11.2 shall not be payable by the Contracting Body and shall be a personal arrangement between the Customer and the Service Provider outside the scope of this Individual Agreement and the Framework Agreement.

Staffing

12. Service Provider's Staff

- 12.1 The Service Provider shall ensure that all Staff used in the provision of the Services are properly qualified, skilled and experienced in the work they perform in accordance with the requirements of the Individual Agreement.
- 12.2 The Service Provider shall ensure that all Staff employed in the provision of the Services are at all times properly trained, instructed and, where appropriate, supervised
- 12.3 The Contracting Body may, by written notice to the Service Provider, refuse to allow:
- (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff,
- to provide the Services who, in the reasonable opinion of the Contracting Body, are not suitable for the provision of the Services. The Service Provider shall replace any such Staff and procure the replacement of any such person employed or engaged by any member of the Staff. The Service Provider shall ensure such persons are replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 12.4 The Service Provider shall have and maintain adequate disciplinary procedures for the Staff employed by it in the provision of the Service.
- 12.5 The Service Provider shall remove any member of Staff from any further contact with Customers immediately on request from the Contracting Body.
- 12.6 At the Contracting Body's written request, the Service Provider shall provide a list of the names of all persons who may be involved in providing the Services, specifying the capacities in which they are concerned with the Individual Agreement and giving such other particulars as the Contracting Body may reasonably request.
- 12.7 The Service Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Service Provider at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.
- 12.8 The Service Provider will maintain and keep up-to-date records of all Staff who have been or are about to be engaged in or in connection with the Services and, on request, provide reasonable information to the Contracting Body on the Staff. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 12.9 Staff records will include:

- (a) Full name;
- (b) Address;
- (c) Date of birth;
- (d) Gender;
- (e) Start date with the Service Provider;
- (f) Finish date with the Service Provider;
- (g) Brief details of qualifications, experience and training;
- (h) Enhanced Disclosure and Barring Service declaration before appointment;
- (i) Declaration of any criminal convictions, excluding minor motoring offences;
- (j) References (obtaining written references for all Staff from at least two sources (one being the last or most recent employer));
- (k) Ethnicity;
- (l) completed health declaration/Medical questionnaire;
- (m) Verification of identity;
- (n) proof of permission to work in the UK (if applicable);
- (o) Copy of driving licence (if appropriate);
- (p) Copy of car insurance (if appropriate);
- (q) Copies of education/training certificates received prior to appointment;
- (r) Supervision;
- (s) Appraisal;
- (t) Sickness;
- (u) Long term absence;
- (v) Training records.

12.10 The Service Provider shall ensure that all Staff have adequate supervision and support to provide the Services. The Service Provider shall have and maintain a clear and appropriate policy on the supervision of all Staff and be able to provide evidence that effective supervision takes place. The Service Provider's supervisory arrangements and ratio of supervisory staff to subordinate Staff must be fully effective and operational at all times.

12.11 The Service Provider shall ensure that its Staff carry out their duties and behave in an orderly, courteous and honest manner.

12.12 No Staff shall solicit or accept any gratuity or legacy in connection with his/her employment relating to this Service from any Customer.

- 12.13 All Staff shall be properly and presentably dressed and wearing work wear appropriate to the task to be performed, including protective clothing where appropriate.
- 12.14 All Staff shall carry an identity card at all times when providing the Services and will ensure that such identity card is visible to Customers and Council staff at all times.
- 12.15 The Service Provider shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 12.16 The Service Provider fully indemnifies the Contracting Body in respect of any claims brought by any former employee of the Service Provider.
- 12.17 The Service Provider shall ensure that an appropriate number of Staff (in any event being no less than the minimum number of Staff identified in the Service Request Form) will be assigned to any individual care or support package and arrangements will be in place to ensure continuity of support worker(s) as far as is reasonably practical. These arrangements must include planned mechanisms to provide cover for employees' holidays, sickness, staff turnover or any other absences.

13. TUPE

- 13.1 The parties agree that the provisions of ANNEX D shall apply to any Relevant Transfer of staff under this agreement.

Premises

14. Premises

- 14.1 The Service Provider shall keep and maintain the Premises in good order and condition .
- 14.2 In the event that the Service Provider intends to utilise the Premises for any other purpose other than the supply of the Services the Service Provider shall give reasonable notice to the Contracting Body of such alternative use in order that the Contracting Body may assess the impact on the Services of such alternate use of the Premises
- 14.3 Notwithstanding the provisions of clause 5.2 the Service Provider shall not utilise the Premises for any alternate use other than the Services if in the opinion of the Contracting Body such alternate use affects the provision of the Services

The Service Provider shall ensure the security of the Property while in its possession, either on the Premises or elsewhere during the supply of the Services..

15. Health and safety

- 15.1 The Service Provider shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of its obligations under the Individual Agreement.
- 15.2 The Service Provider shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Individual Agreement.
- 15.3 The Service Provider shall ensure that its health and safety policy (as required by the Health and Safety at Work etc Act 1974) is made available to the Contracting Body on request.

16. Payment and Individual Agreement Price

Individual Agreement Price

- 16.1 In consideration of the Service Provider's performance of its obligations under the Individual Agreement, the Contracting Body shall pay the Individual Agreement Price in accordance with clause 17.
- 16.2 The Contracting Body shall, in addition to the Individual Agreement Price and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Individual Agreement.

17. Payment and VAT

- 17.1 The Service Provider shall ensure that each invoice is submitted in accordance with the payment profile set out in the Service Request Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Contracting Body to substantiate the invoice. If it is an electronic invoice it must also comply with the standard on electronic invoicing. For these purposes “electronic invoice” means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 17.2 In the event that the Contracting Body introduces any sort of electronic portal or gateway for the submission processing or issuing of invoices in relation to the provision of the Services the Service Provider agrees to undertake such necessary steps in order to comply with the requirements of such portal or gateway.

- 17.3 Where the Service Provider submits an invoice (including an electronic invoice) to the Contracting Body in accordance with clause 17.1, the Contracting Body will consider and verify that invoice within 7 days.
- 17.4 All invoices are payable four (4) weeks in arrears. The Contracting Body shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Contracting Body has determined that the invoice is valid and undisputed.
- 17.5 Where the Contracting Body fails to comply with clause 17.4, the invoice shall be regarded as valid and undisputed 14 days after the date on which it is received by the Contracting Body.
- 17.6 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 17.2 to clause 17.5 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 17.2 to clause 17.5 of this agreement.

In this clause 17.6, "Sub-Contract" means a contract between two or more Service Providers, at any stage of remoteness from the Contracting Body 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 this agreement.

- 17.7 The Service Provider shall add VAT to the Individual Agreement Price at the prevailing rate as applicable.
- 17.8 The Service Provider shall indemnify the Contracting Body on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Contracting Body at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Individual Agreement. Any amounts due under this clause 17.8 shall be paid by the Service Provider to the Contracting Body not less than five Working Days before the date on which the tax or other liability is payable by the Contracting Body.
- 17.9 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Individual Agreement under clause 42 for failure to pay undisputed sums of money.

18. Recovery of sums due

- 18.1 Wherever under the Individual Agreement any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Contracting Body in respect of any breach of the Individual Agreement), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become

due to the Service Provider under the Individual Agreement or under any other agreement or contract with the Contracting Body.

- 18.2 Any overpayment by either Party, whether of the Individual Agreement Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 18.3 The Service Provider shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Contracting Body to the Service Provider.
- 18.4 All payments due shall be made within a reasonable time unless otherwise specified in the Individual Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

Statutory obligations and regulations

19. Conflicts of interest

- 19.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Body), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Contracting Body under the provisions of the Individual Agreement.
- 19.2 The Service Provider shall promptly notify the Contracting Body (and provide full particulars to the Contracting Body) if any conflict referred to in clause 19.1 arises or is reasonably foreseeable.
- 19.3 The Contracting Body reserves the right to terminate the Individual Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Contracting Body under the provisions of the Individual Agreement. The actions of the Contracting Body under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Body.

20. Prevention of bribery

- 20.1 The Service Provider shall (and shall procure that the Staff and Subcontractor(s) shall):
 - (a) not, in connection with this Individual Agreement, commit a Prohibited Act;
 - (b) not do, suffer or omit to do anything that would cause the Contracting Body or the Staff and Subcontractor(s) to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

- (c) comply with the Contracting Body's Anti-Bribery and Anti-Corruption Policy as updated from time to time;
- (d) notify the Contracting Body (in writing) if it becomes aware of any breach of clause 20.1(a) or clause 20.1(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Individual Agreement.

20.2 The Service Provider shall maintain appropriate and up to date records showing all payments made by the Service Provider in connection with this Individual Agreement and the steps taken to comply with its obligations under clause 20.1.

20.3 The Service Provider shall allow the Contracting Body and its Auditor to audit any of the Service Provider's records and any other relevant documentation in accordance with clause 27.

20.4 If the Service Provider, Staff or Subcontractor(s) breach this clause 20, the Contracting Body may by notice:

- (a) require the Service Provider to remove from performance of this Individual Agreement any Staff or Subcontractor(s) whose acts or omissions have caused the breach; or
- (b) immediately terminate this Individual Agreement.

20.5 Any notice served by the Contracting Body under clause 20.4 shall specify the nature of the Prohibited Act, the identity of the party who the Contracting Body believes has committed the Prohibited Act and the action that the Contracting Body has elected to take (including, where relevant, the date on which this Individual Agreement shall terminate).

20.6 Despite clause 47, any dispute relating to:

- (a) the interpretation of this clause 20; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Contracting Body and its decision shall be final binding and conclusive.

20.7 Any termination under this clause 20 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Body.

21. Discrimination

The Service Provider shall (and shall procure that the Staff and Sub-Contractor(s) shall) perform its obligations under this Individual Agreement (including those in relation to the Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

- (b) the Contracting Body's equality and diversity policy as provided to the Service Provider from time to time;
- (c) any other requirements and instructions which the Contracting Body reasonably imposes in connection with any equality obligations imposed on the Contracting Body at any time under applicable equality Law;

Information

22. Confidentiality

22.1 Subject to clause 22.2, the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their employees, officers, representatives, contractors, subcontractors or advisers from making any disclosure to any person of any matters relating thereto.

22.2 clause 22.1 shall not apply to any disclosure of information:

- (a) required by any applicable Law, a court of competent jurisdiction or regulatory authority, or to any disclosures required under the FOIA or the Environmental Information Regulations or which was available to the receiving party on a non-confidential basis before disclosure;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Individual Agreement;
- (c) that is reasonably required by the Contracting Body;
- (d) made pursuant to clause 9;
- (e) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 22.1;
- (f) by the Contracting Body of any document to which it is a party and which the parties to this Individual Agreement have agreed contains no Confidential Information;
- (g) to enable a determination to be made under clause 47;
- (h) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (i) by the Contracting Body to any other department, office or agency of the government, provided that the Contracting Body informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (j) by the Contracting Body relating to this Individual Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

22.3 The Parties shall not use the Confidential Information of the Parties for any purpose other than to exercise their rights and perform their obligations under or in connection with this Individual Agreement.

22.4 On or before the termination or expiry of the Individual Agreement, the Service Provider shall ensure that all documents and computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Contracting Body's employees, tax-payers or Customers, are delivered up to the Contracting Body or securely destroyed.

23. Data Protection

23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 26 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Body is the Controller and the Service Provider is the Processor. ANNEX C sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.

23.3 Without prejudice to the generality of clause 23.1, the Contracting Body will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement.

23.4 Without prejudice to the generality of clause 23.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of the Contracting Body (as set out in ANNEX C), unless the Service Provider is required by Domestic Law to otherwise process the Personal Data. Where the Service Provider is relying on Domestic Law as the basis for processing Personal Data, the Service Provider shall promptly notify the Contracting Body of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Service Provider from so notifying the Contracting Body;
- (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Contracting Body, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Contracting Body has been obtained and the following conditions are fulfilled:
 - (i) the Contracting Body or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Contracting Body with respect to the processing of the Personal Data;
- (d) notify the Contracting Body immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Contracting Body in responding to any request from a Data Subject and in ensuring compliance with the Contracting Body's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Contracting Body immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Contracting Body, delete or return Personal Data and copies thereof to the Contracting Body on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 26 and allow for audits by the Contracting Body or its designated auditor pursuant to clause 27 and immediately inform the Contracting Body if, in the opinion of the Service Provider, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Contracting Body against any losses, damages, cost or expenses suffered by the Contracting Body arising from or in connection with any breach by the Service Provider of its obligations under this clause 26.

23.5 Where the Service Provider intends to engage a Sub-Contractor pursuant to clause 32 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Contracting Body in writing of the intended processing by the Sub-Contractor;

- (b) obtain prior written consent from the Contracting Body to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 26.

23.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 26 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

23.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

24. Freedom of Information

24.1 The Service Provider acknowledges that the Contracting Body is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Contracting Body to enable the Contracting Body to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Contracting Body all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Contracting Body with a copy of all Information belonging to the Contracting Body requested in the Request for Information which is in its possession or control in the form that the Contracting Body requires within 5 Working Days (or such other period as the Contracting Body may reasonably specify) of the Contracting Body's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Contracting Body.

24.2 The Service Provider acknowledges that the Contracting Body may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Service Provider. The Contracting Body shall take reasonable steps to notify the Service Provider of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Individual Agreement) the Contracting Body shall be responsible for determining in its absolute discretion whether any Confidential Information and any other Information is exempt from disclosure in accordance with FOIA and the EIRs.

25. Publicity, media and official enquiries

- 25.1 Unless otherwise directed by the Contracting Body, the Service Provider shall not make any press announcements or publicise the Individual Agreement in any way without the Contracting Body's Approval.
- 25.2 The Contracting Body shall be entitled to publicise the Individual Agreement in accordance with any legal obligation on the Contracting Body or otherwise, including any examination of the Individual Agreement by the Auditor.
- 25.3 The Service Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Contracting Body or bring the Contracting Body into disrepute.

26. Intellectual Property Rights

- 26.1 In the absence of prior written agreement by the Contracting Body to the contrary, all Intellectual Property Rights created by the Service Provider, the Staff or Sub-contractors:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,

shall vest in the Contracting Body on creation.

- 26.2 The Service Provider shall indemnify the Contracting Body against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Contracting Body's acts or omissions.

27. Records and audit access

- 27.1 The Service Provider shall keep and maintain until six years after the end of the Individual Agreement Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Individual Agreement including the Services provided under it, the Individual Agreements entered into with the Contracting Body and the amounts paid by the Contracting Body.
- 27.2 The Service Provider shall keep the records and accounts referred to in clause 27.1 in accordance with good accountancy practice.
- 27.3 The Service Provider shall on request afford the Contracting Body, the Contracting Body's representatives and the Auditor such access to such records and accounts as they may require from time to time.

- 27.4 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) during the Individual Agreement Period and for a period of six years after the expiry of the Individual Agreement Period to the Contracting Body, the Contracting Body's representatives and the Auditor.
- 27.5 The Contracting Body shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Service Provider or delay the provision of the Services, except insofar as the Service Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Contracting Body.
- 27.6 Subject to the Contracting Body's rights of confidentiality, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- (a) all information requested by the Auditor within the scope of the Audit;
 - (b) reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 27.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 27, unless the Audit reveals a Default by the Service Provider in which case the Service Provider shall reimburse the Contracting Body for the Contracting Body's reasonable costs incurred in relation to the Audit.

Replacement of corrupted data

If, through any Default of the Service Provider, data transmitted or processed in connection with the Individual Agreement is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Contracting Body in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

Control of the Individual Agreement

28. Provision of information and meetings

- 28.1 The Service Provider shall submit Management Information on a quarterly and annual basis to the Contracting Body throughout the Individual Agreement Period in accordance with the KPI's in the Framework Agreement Specification].
- 28.2 The Authorised Representatives shall meet in accordance with KPI's in the Framework Agreement Specification and the Service Provider shall, at each meeting, present its previously circulated Management Information.

29. Monitoring of Individual Agreement performance

The Service Provider shall comply with the monitoring arrangements set out in the Service Request Form including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Individual Agreement.

30. Remedies in the event of inadequate performance

- 30.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Individual Agreement, then the Contracting Body shall take reasonable steps to investigate the complaint. The Contracting Body may, in its sole discretion, uphold the complaint, and may, acting reasonably:
- (a) Subject to clause 30.4, withhold a sum; or
 - (b) deduct a sum,
- in each case equal to a maximum of 50% of the Individual Agreement Price payable in respect of the Month in which the complaint arose.
- 30.2 The parties agree that a deduction made pursuant to clause 30.1(b) represents a genuine, reasonable and proportionate pre-estimate of the loss likely to be suffered by the Contracting Body.
- 30.3 Where the Contracting Body withholds a sum pursuant to clause 30.1(a) then that sum shall be paid to the Service Provider when, in the reasonable opinion of the Contracting Body, the matters complained of have been rectified and there has been no repeat of those matters for 3 Month(s).
- 30.4 If the Contracting Body is of the reasonable opinion that there has been a Default in respect of the Individual Agreement by the Service Provider, then the Contracting Body may, without prejudice to its rights under clause 42, do any of the following:
- (a) without terminating the Individual Agreement, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Individual Agreement;
 - (b) without terminating the whole of the Individual Agreement, terminate the Individual Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Individual Agreement Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Body or a third party to the extent that such costs exceed the payment which would otherwise have been

payable to the Service Provider for such part of the Services and provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

30.5 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Individual Agreement and such failure is capable of remedy, then the Contracting Body shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Working Days of the Contracting Body's instructions or such other period of time as the Contracting Body may direct.

30.6 If the Service Provider:

- (a) fails to comply with clause 30.5 and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory function; or
- (b) persistently fails to comply with clause 30.5,

the Contracting Body may terminate the Individual Agreement with immediate effect by giving the Service Provider notice in writing.

31. Rights and remedies

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

32. Transfer and sub-contracting

32.1 Subject to clause 32.2 neither party shall be entitled to assign, novate, transfer, mortgage, charge or otherwise deal in any other manner with or dispose of any or all of its rights and obligations under this Individual Agreement without the prior written consent of the other party, neither may the Service Provider subcontract the whole or any part of its obligations under this Individual Agreement except with the express prior written consent of the Contracting Body.

32.2 The Contracting Body shall be entitled to novate the Individual Agreement to any other body which substantially performs any of the functions that previously had been performed by the Contracting Body.

33. Waiver

33.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

33.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

34. Variation

- 34.1 Subject to the provisions of this clause 34, the Contracting Body may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order or is not in contravention of any Law. Such a change is hereinafter called a "Variation".
- 34.2 The Contracting Body may request a Variation by completing and sending the Variation form attached at ANNEX B (the **Variation Form**) to the Service Provider, giving sufficient information for the Service Provider to assess the extent of the Variation and any additional cost that may be incurred. The Service Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 34.3 If the Service Provider is unable to provide the Variation to the Services the Contracting Body may:
- (a) agree that the Parties continue to perform their obligations under the Individual Agreement without the Variation; or
 - (b) terminate the Individual Agreement with immediate effect, except where the Service Provider has already delivered part or all of the Order in accordance with the Service Request Form or where the Service Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 34.4 If the Parties agree the Variation, the Service Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Individual Agreement.

35. The Contracts (Rights of Third Parties) Act 1999

- 35.1 This Individual Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Individual Agreement.
- 35.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Individual Agreement are not subject to the consent of any other person.

36. Severance

- 36.1 If any provision or part-provision of this Individual Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Individual Agreement.

36.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Individual Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Liabilities

37. Liability, indemnity and insurance

37.1 Nothing in this Individual Agreement shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 17.8;
- (e) any claim under clause 39; or
- (f) any claim under the indemnity in clause 26.2;
- (g) any claim under the indemnity in clause 23.4(i);

37.2 The Service Provider shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Individual Agreement or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, fraud or fraudulent misrepresentation, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Body or by breach by the Contracting Body of its obligations under the Individual Agreement.

37.3 Subject to clause 37.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of revenue;
- (e) loss of or damage to goodwill;
- (f) loss of savings (whether anticipated or otherwise); or

(g) any indirect or consequential loss or damage.

37.4 The Contracting Body may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Body arising from the Service Provider's Default;
- (c) sums paid by the Contracting Body to the Service Provider pursuant to the Individual Agreement in respect of any Services not provided in accordance with the Individual Agreement;
- (d) the additional cost of any replacement services for the remainder of the Individual Agreement Period following termination of the Individual Agreement as a result of a Default by the Service Provider;
- (e) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Individual Agreement. These include consultancy costs and additional costs of management time.

37.5 Nothing in the Individual Agreement shall impose any liability on the Contracting Body in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Body to the Service Provider that may arise by virtue of either a breach of the Individual Agreement or by negligence on the part of the Contracting Body, or the Contracting Body's employees, servants or agents.

38. Insurances

38.1 The Service Provider shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the Individual Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

38.2 The Service Provider shall give the Contracting Body, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required

Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 38.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 38.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Individual Agreement.

39. Taxation, National Insurance and employment liability

The Parties acknowledge and agree that the Individual Agreement constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Contracting Body and keep the Contracting Body indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Contracting Body is alleged or determined to have assumed or been imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Individual Agreement.

40. Warranties and representations

- 40.1 The Service Provider warrants and represents to the Contracting Body that:
- (a) it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Individual Agreement;
 - (b) the Individual Agreement is executed by a duly authorised representative of the Service Provider;
 - (c) in entering the Individual Agreement the Service Provider, the Staff and Subcontractor(s) have not committed any Prohibited Act;
 - (d) the Service Provider, the Staff and Subcontractor(s) have not been nor are subject to any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act;
 - (e) the Service Provider, the Staff and Subcontractor(s) have not been nor are 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 other government contracts on the grounds of a Prohibited Act;
 - (f) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the

Contracting Body before execution of the Individual Agreement and it will promptly advise the Contracting Body of any fact, matter or circumstance of which it may become aware during the Individual Agreement Period which would render any such information, statement or representation to be false or misleading;

- (g) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Individual Agreement;
- (h) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Individual Agreement;
- (i) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- (j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Individual Agreement;
- (k) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

40.2 The Service Provider shall promptly notify the Contracting Body if, at any time during the Individual Agreement Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 44.1 at the relevant time.

Default, disruption and termination

41. Termination on insolvency and change of control

41.1 Without affecting any other right or remedy available to it, the Contracting Body may terminate this agreement with immediate effect by giving written notice to the Service Provider if:

- (a) the Service Provider 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;
 - (i) (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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
 - (ii) or being an individual is deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986;
 - (iii) or (being a partnership has any partner to whom any of the foregoing apply];

- (b) the Service Provider 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;
- (c) 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 Service Provider (being a company, limited liability partnership or partnership);
- (d) 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 Service Provider (being a company, partnership or limited liability partnership), or the Service Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of the assets of the Service Provider or a receiver is appointed over all or any of the assets of the Service Provider;
- (g) the Service Provider (being an individual) is the subject of a bankruptcy petition, application or order;
- (h) a creditor or encumbrancer of the Service Provider 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 Service Provider's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 41.1(a) to clause 41.1(h) (inclusive); or
- (j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

41.2 The Service Provider shall notify the Contracting Body immediately if the Service Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Contracting Body may terminate the Individual Agreement by giving notice in writing to the Service Provider with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Contracting Body becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

42. Termination on Default

- 42.1 Without affecting any other right or remedy available to it, the Contracting Body may terminate the Individual Agreement by giving written notice to the Service Provider with immediate effect if the Service Provider commits a material breach.
- 42.2 For the avoidance of doubt, for the purposes of the Individual Agreement, the following issues are considered to be material breaches (but nothing in this clause shall preclude any other breach from being considered a material breach):
- (a) minor repeated and/or serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974, and any subsequent health and safety regulations by the Service Provider;
 - (b) minor repeated and/or serious non-compliance with the Contracting Body and partnership's Multi-Agency Safeguarding policies and procedures and any subsequent policies and procedures produced by the Contracting Body in conjunction with partnership commissioning bodies.
 - (c) Minor repeated and/or serious non-compliance with the Contracting Body's quality assurance or contract management requirements
 - (d) performance of the Service without insurance cover as required under this Individual Agreement;
 - (e) non-compliance with the requirements of race relations, equal opportunities legislation and disability discrimination legislation by the Service Provider
 - (f) any episode of Abuse;
 - (g) the Service Provider is convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments;
 - (h) persistent use of unqualified or untrained Staff;
 - (i) Non-compliance with any relevant regulatory bodies including the CQC or any relevant legislation relating to the provision of the Services;
 - (j) the Service Provider is unable to provide the care required under the Care Standards Act 2000 and associated regulations and standards.
 - (k) the Service Provider is unable to provide the Service require to meet the governance and viability ratings, where applicable and other housing standards as set out in the Framework Agreement.
 - (l) Any breach constituting a termination breach in accordance with the Quality and Performance Standards at Annex One of the Framework Agreement
- 42.3 Without affecting any other right or remedy available to it, the Contracting Body may terminate the Individual Agreement by giving written notice to the Service Provider with immediate effect if:

- (a) the Service Provider repeatedly breaches any of the terms of this Individual Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Individual Agreement;
- (b) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (c) the Contracting Body terminates the Framework Agreement for any reason other than the Framework Agreement reaching the end of its term or in accordance with clause 18 (Termination for convenience) of the Framework Agreement
- (d) any warranty given by the Service Provider in clause 40 of this Individual Agreement is found to be untrue or misleading.

42.4 If the Contracting Body fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Contracting Body in writing of such failure to pay. If the Contracting Body fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Service Provider may terminate the Individual Agreement in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Contracting Body exercising its rights under clause 18.

43. Termination for convenience or following a pause of the Individual Agreement

43.1 Without affecting any other right or remedy available to it, the Contracting Body may terminate this Individual Agreement or terminate the provision of any part of this Individual Agreement at any time by giving thirty days' written notice to the Service Provider.

43.2 The Contracting Body shall be permitted to terminate this Individual Agreement or any part of this Individual Agreement on fourteen days' notice if the mental and/or physical condition of the Customer deteriorates, or the needs of the Customer change, to the extent that the Services as described in the Framework Agreement can no longer provide the appropriate support to meet that Customer's needs.

43.3 Without affecting any other right or remedy available to it, the either Party may terminate the Individual Agreement by giving written notice to the other Party with immediate effect if:

- (a) the right to terminate set out at clause 7.2 arises;
- (b) the right to terminate set out at clause 7.3 arises;

44. Termination upon the death of the Customer

44.1 The Individual Agreement shall terminate automatically upon the death of the Customer.

Consequences of termination or expiry

44.2 Where the Contracting Body terminates the Individual Agreement under clause 30.6, clause 41, clause 42 and then makes other arrangements for the supply of Services, the Contracting Body may recover from the Service Provider the cost reasonably incurred of making those other

arrangements and any additional expenditure incurred by the Contracting Body throughout the remainder of the Individual Agreement Period. The Contracting Body shall take all reasonable steps to mitigate such additional expenditure. Where the Individual Agreement is terminated under clause 30.6, clause 41, clause 42, no further payments shall be payable by the Contracting Body to the Service Provider until the Contracting Body has established the final cost of making those other arrangements.

44.3 Except as otherwise expressly provided in this Individual Agreement:

- (a) termination or expiry of the Individual Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Individual Agreement before termination or expiration and nothing in the Individual Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) the provisions of, clause 17, clause 18, clause 19, clause 20, clause 22, clause 23, clause 24, clause 26, clause 27, , clause 37, clause 38, clause 39, clause 40, , clause 45, clause 46, clause 47 and clause 51 shall remain in full force and effect and survive the termination or expiry of the Individual Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination or expiry.

45. Disruption

45.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Individual Agreement it does not disrupt the operations of the Contracting Body, its employees or any other Service Provider employed by the Contracting Body.

45.2 The Service Provider shall immediately inform the Contracting Body of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Individual Agreement.

45.3 In the event of industrial action by the Staff, the Service Provider shall seek the Contracting Body's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Individual Agreement.

45.4 If the Service Provider's proposals referred to in clause 45.3 are considered insufficient or unacceptable by the Contracting Body acting reasonably then the Contracting Body may:

- (a) require the Service Provider to provide alternative proposals; or
- (b) undertake the Services itself or procure the supply of the Services and charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Contracting Body (including any reasonable administration costs) in respect of the supply of any part of the Services by the Contracting Body or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Contracting Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

Subject to clause 45.5, nothing in this clause shall release the Service Provider from the proper performance of its obligations under the Individual Agreement.

45.5 If the Service Provider is temporarily unable to fulfil the requirements of the Individual Agreement owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

46. Recovery on termination

46.1 On the termination of the Individual Agreement for any reason or the expiry of the Individual Agreement, the Service Provider shall:

- (a) immediately return to the Contracting Body all Confidential Information, Personal Data and all information and documents relating to the Contracting Body's Intellectual Property Rights in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Contracting Body all Property (including materials, documents, information and access keys) provided to the Service Provider. Such Property shall be handed back in good condition and working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Services to any Replacement Service Provider and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Contracting Body for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Contracting Body or the Replacement Service Provider to conduct due diligence.

46.2 If the Service Provider fails to comply with clause 46.1(a) and clause 46.1(b), the Contracting Body may recover possession thereof and the Service Provider grants a licence to the Contracting Body or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted Service Providers or Sub-Contractors where any such items may be held.

46.3 The Service Provider shall provide all assistance under clause 46.1(c) and clause 46.1(d) free of charge.

47. Dispute resolution

47.1 If a dispute arises out of or in connection with this Individual Agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Appointed Representatives of the Parties shall attempt in good faith to resolve the Dispute;
- (b) if the Appointed Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Contracting Body and [SENIOR OFFICER TITLE] of the Service Provider who shall attempt in good faith to resolve it;
- (c) if the [SENIOR OFFICER TITLE] of the Contracting Body and [SENIOR OFFICER TITLE] of the Service Provider are for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 20 Working days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR.
- (d) unless otherwise agreed between the parties, the mediation will start not later than 20 Working Days after the date of the ADR notice.

47.2 The commencement of mediation shall not prevent the parties commencing or continuing [court or arbitration] proceedings.

47.3 If for any reason the Dispute is not resolved within 30 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 51.

48. Force majeure

Neither Party shall be in breach of this Individual Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three weeks, the party not affected may terminate this Individual Agreement by giving 14 days' written notice to the affected party.

49. Entire agreement

- 49.1 This Individual Agreement, the annexes and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 49.2 Each Party acknowledges that in entering into this Individual Agreement it does not rely on, [and shall have no remedies in respect of,] any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Individual Agreement.
- 49.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Individual Agreement.
- 49.4 Nothing in this clause shall limit or exclude any liability for fraud.
- 49.5 In the event of and only to the extent of any conflict between the Service Request Form, the clauses of this Individual Agreement and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Individual Agreement;
 - (b) the Service Request Form except Appendices 2 (Service Provider's Tender) and 3 (Supplemental Tender) to the Service Request Form;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Service Request Form, except Schedule 1, part 2, Appendix 2 (the Service Provider's Tender), and Appendix 3 to the Service Request Form (Supplemental Tender);
 - (d) any other document referred to in the clauses of the Individual Agreement; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Service Request Form (the Service Provider's Tender), and Appendix 3 to the Service Request Form (Supplemental Tender).
- 49.6 This Individual Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

50. Notices

- 50.1 Except as otherwise expressly provided within this Individual Agreement, a notice given to a party under or in connection with this Individual Agreement shall be in writing and sent to the party at the address or email address given in this agreement or as otherwise notified in writing to the other party.

50.2 This clause 54.2 sets out the delivery methods for sending a notice to a party under this Individual Agreement and, for each delivery method, the date and time when the notice is deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address;
- (b) if sent by pre-paid first class post or other next Working Day delivery service providing proof of postage, at 9.00am on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission.

50.3 If deemed receipt under clause 54.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

50.5 For the purposes of clause 54.1, the address of each Party shall be:

- (a) For the Contracting Body:

[NAME OF Council's REPRESENTATIVE]

Address: Derby City Council, the Contracting Body House, Corporation Street, Derby DE1 2FS

For the attention of: [POSITION OF CONTACT]

Email address: [EMAIL ADDRESS]

- (b) For the Service Provider:

[NAME OF SERVICE PROVIDER'S REPRESENTATIVE]

Address: [ADDRESS]

For the attention of: [POSITION OF CONTACT]

Email address: [EMAIL ADDRESS]

50.6 Either Party may change its address for service by serving a notice in accordance with this clause.

51. Governing law and jurisdiction

51.1 This Individual Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

51.2 [Each party irrevocably agrees that the courts of England and Wales shall have [exclusive OR non-exclusive] jurisdiction to settle any dispute or claim arising out of or in connection with this Individual Agreement or its subject matter or formation (including non-contractual disputes or claims).]

These Individual Agreement Call -Off terms and Conditions form part of any and all Individual Agreements entered into under the Framework Agreement

ANNEX A Completed Service Request Form

Completed Service Request Form

ANNEX B Variation Form

Variation Form

Call-off terms and conditions for services

[NAME OF LOT]

.....

No of Service Request Form being varied:.....

Variation Form No:.....

BETWEEN:

[NAME OF COUNCIL] (**the Contracting Body**)

and

[NAME OF SERVICE PROVIDER] (**the Service Provider**)

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE INDIVIDUAL AGREEMENT PRICE].
2. Words and expressions in this Variation shall have the meanings given to them in the Individual Agreement.
3. The Individual Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Contracting Body

Signature.....

Date.....

Name in capitals.....

Address.....

.....

Authorised to sign for and on behalf of the Service Provider

Signature.....

Date.....

Name in capitals.....

Address.....

.....

ANNEX C Data processing

1. The Service Provider shall comply with any further written instructions in respect of processing by the Contracting Body.

2. Any such further instructions shall be incorporated into this Annex.

3. Processing by the Service Provider

3.1 Scope

3.2 Nature

3.3 Purpose of processing

3.4 Duration of processing

3.5 Types of Personal Data

3.6 Categories of Data Subject.

ANNEX D TUPE

1. Definitions

In this Annex, the following definitions shall apply:

Acquired Rights Directive: the Contracting Body Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020.

Admission Agreement: the agreement to be entered into by which the Service Provider agrees to participate in the Schemes as amended from time to time;

Eligible Employee: any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Fair Deal Employees: those Transferring Former Service Provider Employees who originally transferred pursuant to a Relevant Transfer under TUPE (or the predecessor legislation to TUPE), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;

Former Service Provider: a Service Provider supplying services to the Contracting Body before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Service Provider (or any sub-contractor of any such sub-contractor);

New Fair Deal: the revised Fair Deal position set out in the HM Treasury guidance: "*Fair Deal for staff pensions: staff transfer from central government*" issued in October 2013;

Notified Sub-contractor: a Sub-contractor identified in ANNEX F to whom Transferring Former Service Provider Employees will transfer on a Relevant Transfer Date;

Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Contracting Body internally and/or by any third party;

Replacement Sub-contractor: a sub-contractor of the Replacement Service Provider to whom Transferring Service Provider Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);

Replacement Service Provider: any third party service provider of Services appointed by the Contracting Body from time to time (or where the Contracting Body is providing replacement Services for its own account, the Contracting Body);

Relevant Transfer: a transfer of employment to which TUPE applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Schemes: the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Service Provider by the Minister for the Cabinet Office);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Service Provider or any Sub-contractor to a Replacement Service Provider or a Replacement Sub-contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Service Provider's Provisional Personnel List or Service Provider's Final Personnel List, as the case may be, such information as the Contracting Body may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of TUPE;

Service Provider's Final Personnel List: a list provided by the Service Provider of all Service Provider Personnel who will transfer under TUPE on the Relevant Transfer Date;

Service Provider Personnel: all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or any Sub-contractor engaged in the performance of the Service Provider's obligations under this Agreement;

Service Provider's Provisional Personnel List: a list prepared and updated by the Service Provider of all Service Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Service Provider;

Transferring Former Service Provider Employees: in relation to a Former Service Provider, those employees of the Former Service Provider to whom TUPE will apply on the Relevant Transfer Date as contained in ANNEX E and accurate as at the date on which this Agreement is signed by both Parties; and

Transferring Service Provider Employees: those employees of the Service Provider and/or the Service Provider's Sub-contractors to whom TUPE will apply on the Service Transfer Date.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

2. Interpretation

Where a provision in this Annex imposes an obligation on the Service Provider to provide an indemnity, undertaking or warranty, the Service Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Contracting Body, Former Service Provider, Replacement Service Provider or Replacement Sub-contractor, as the case may be.

Transferring Former Service Provider Employees at commencement of Services

3. Relevant Transfers

3.1 The Contracting Body and the Service Provider agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Service Provider Employees; and
- (b) as a result of the operation of TUPE, the contracts of employment between each Former Service Provider and the Transferring Former Service Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of TUPE) shall have effect on and from the Relevant Transfer Date as if originally made between the Service Provider and/or Notified Sub-contractor and each such Transferring Former Service Provider Employee.

3.2 The Contracting Body shall procure that each Former Service Provider shall comply with all its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Former Service Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Service Provider shall make, and the Contracting Body shall procure that each Former Service Provider makes, any necessary apportionments in respect of any periodic payments.

4. Former Service Provider indemnities

4.1 Subject to paragraph 4.2, the Contracting Body shall procure that each Former Service Provider shall indemnify the Service Provider and any Notified Sub-contractor against any Employee Liabilities in respect of any Transferring Former Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any act or omission by the Former Service Provider arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Service Provider arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Service Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Former Service Provider is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Service Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Service Provider other than a Transferring Former Service Provider Employee for whom it is alleged the Service Provider and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or TUPE and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Former Service Provider in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Service Provider or any Sub-contractor to comply with regulation 13(4) of TUPE.

4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Service Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Service Provider or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Service Provider and/or any Sub-contractor to comply with its obligations under TUPE.

4.3 If any person who is not identified by the Contracting Body as a Transferring Former Service Provider Employee claims, or it is determined in relation to any person who is not identified by

the Contracting Body as a Transferring Former Service Provider Employee, that his/her contract of employment has been transferred from a Former Service Provider to the Service Provider and/or any Notified Sub-contractor pursuant to TUPE or the Acquired Rights Directive then:

- (a) the Service Provider shall, or shall procure that the Notified Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Contracting Body and, where required by the Contracting Body, to the Former Service Provider; and
- (b) the Former Service Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Service Provider and/or the Notified Sub-contractor or take such other reasonable steps as the Former Service Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

4.4 If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Service Provider and/or the Contracting Body, the Service Provider shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

4.5 If by the end of the 15 Working Day period specified in paragraph 4.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Service Provider and/or any Notified Sub-contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4.6 Subject to the Service Provider and/or any Notified Sub-contractor acting in accordance with the provisions of paragraph 4.3 to paragraph 4.5 and in accordance with all applicable proper employment procedures set out in Law, the Contracting Body shall procure that the Former Service Provider indemnifies the Service Provider and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 4.5 provided that the Service Provider takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.7 The indemnity in paragraph 4.6:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Service Provider and/or any Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

- (ii) any claim that the termination of employment was unfair because the Service Provider and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 4.3(a) is made by the Service Provider and/or any Notified Sub-contractor (as appropriate) to the Contracting Body and, if applicable, the Former Service Provider, within six months of the Effective Date.

4.8 If any such person as is described in paragraph 4.3 is neither re-employed by the Former Service Provider nor dismissed by the Service Provider and/or any Notified Sub-contractor within the time scales set out in paragraph 4.5, such person shall be treated as having transferred to the Service Provider or Notified Sub-contractor and the Service Provider shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

5. Service Provider indemnities and obligations

5.1 Subject to paragraph 5.2, the Service Provider shall indemnify the Contracting Body and/or the Former Service Provider against any Employee Liabilities in respect of any Transferring Former Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- (a) any act or omission by the Service Provider or any Sub-contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Service Provider or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Service Provider Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Service Provider or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Service Provider Employees to their material detriment on or after their transfer to the Service Provider or a Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Service Provider Employee but for their resignation (or decision to treat their employment as

terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Service Provider or a Sub-contractor to, or in respect of, any Transferring Former Service Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contracting Body and/or the Former Service Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Service Provider to the Service Provider or a Sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Service Provider Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to obligations under regulation 13 of TUPE, except to the extent that the liability arises from the Former Service Provider's failure to comply with its obligations under regulation 13 of TUPE.

5.2 The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Service Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Service Provider's failure to comply with its obligations under TUPE.

5.3 The Service Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under TUPE (including without limitation its obligation to inform and consult in accordance with regulation 13 of TUPE) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Service Provider Employees, on and from the Relevant Transfer Date

(including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Service Provider and the Former Service Provider.

- 5.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this Paragraph 5, to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider or the Contracting Body in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.5 Despite Paragraph 5.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

6. Information

The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and/or at the Contracting Body's direction, the Former Service Provider, in writing such information as is necessary to enable the Contracting Body and/or the Former Service Provider to carry out their respective duties under regulation 13 of TUPE. The Contracting Body shall procure that the Former Service Provider shall promptly provide to the Service Provider and each Notified Sub-contractor in writing such information as is necessary to enable the Service Provider and each Notified Sub-contractor to carry out their respective duties under regulation 13 of TUPE.

7. Principles of good employment practice

- 7.1 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Contracting Body relating to pensions in respect of any Transferring Former Service Provider Employee as set down in:
- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;
 - (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;
 - (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - (d) the New Fair Deal.

7.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 7.1 shall be agreed in accordance with the Change Control Procedure.

8. Procurement obligations

Notwithstanding any other provisions of this Annex, where in this Annex the Contracting Body accepts an obligation to procure that a Former Service Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Contracting Body's contract with the Former Service Provider contains a contractual right in that regard which the Contracting Body may enforce, or otherwise so that it requires only that the Contracting Body must use reasonable endeavours to procure that the Former Service Provider does or does not act accordingly.

Pensions

9. Protection of pensions

9.1 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in paragraph 10 to paragraph 16 in respect of any Transferring Former Service Provider Employees who transfer from the Former Service Provider to the Service Provider.

10. Participation in public sector pension scheme

10.1 The Service Provider undertakes to enter into the Admission Agreement.

10.2 The Service Provider and the Contracting Body undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Service Provider to participate in the Schemes in respect of the Fair Deal Employees.

10.3 The Service Provider shall bear its own costs and all costs that the Contracting Body reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Service Provider participating in the Schemes.

11. Future service benefits

11.1 If the Service Provider is rejoining the Schemes for the first time, the Service Provider shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

11.2 If staff have already been readmitted to the Schemes, the Service Provider shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the

relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Service Provider shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

- 11.3 The Service Provider undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Contracting Body, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Contracting Body in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 11.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

12. Funding

- 12.1 The Service Provider undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 12.2 The Service Provider shall indemnify and keep indemnified the Contracting Body on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Service Provider to or in respect of the Schemes.

13. Provision of information

The Service Provider and the Contracting Body respectively undertake to each other:

- (a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- (b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

14. Indemnity in respect of Fair Deal Employees

The Service Provider undertakes to the Contracting Body to indemnify and keep indemnified the Contracting Body on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date 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) or the Schemes.

15. Employer obligation under pensions legislation

The Service Provider shall comply with the requirements of [Part 1 of] the Pensions Act 2008, sections 257 and 258 of the Pensions Act 2004, and the Transfer of Employment (Pension Protection) Regulations 2005.

16. Subsequent transfers

The Service Provider shall:

- (a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- (b) provide all such co-operation and assistance as the Schemes and the Replacement Service Provider and/or the Contracting Body may reasonably require to enable the Replacement Service Provider to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- (c) for the period either
 - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or
 - (ii) after the date which is [two (2) years] prior to the date of expiry of this Agreement, ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Service Provider or the Contracting Body, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Contracting Body (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

Employment exit provisions

17. Pre-service transfer obligations

17.1 The Service Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Contracting Body of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and

- (d) receipt of a written request of the Contracting Body at any time (provided that the Contracting Body shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Service Provider's Provisional Personnel List, together with the Staffing Information in relation to the Service Provider's Provisional Personnel List and it shall provide an updated Service Provider's Provisional Personnel List at such intervals as are reasonably requested by the Contracting Body.

- 17.2 At least 28 Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Contracting Body or at the direction of the Contracting Body to any Replacement Service Provider and/or any Replacement Sub-contractor:
 - (a) the Service Provider's Final Personnel List, which shall identify which of the Service Provider Personnel are Transferring Service Provider Employees; and
 - (b) the Staffing Information in relation to the Service Provider's Final Personnel List (insofar as such information has not previously been provided).
- 17.3 The Contracting Body shall be permitted to use and disclose information provided by the Service Provider under paragraph 17.1 and paragraph 17.2 for the purpose of informing any prospective Replacement Service Provider and/or Replacement Sub-contractor.
- 17.4 The Service Provider warrants, for the benefit of the Contracting Body, any Replacement Service Provider, and any Replacement Sub-contractor that all information provided pursuant to paragraph 17.1 and paragraph 17.2 shall be true and accurate in all material respects at the time of providing the information.
- 17.5 From the date of the earliest event referred to in paragraph 17.1(a), paragraph 17.1(b) and paragraph 17.1(c), the Service Provider agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Service Provider's Provisional Personnel List and shall not without the approval of the Contracting Body (not to be unreasonably withheld or delayed):
 - (a) replace or re-deploy any Service Provider Personnel listed on the Service Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Service Provider Personnel (including any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Service Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Contracting Body or, at the direction of the Contracting Body, any Replacement Service Provider and any Replacement Sub-contractor of any notice to terminate employment given by the Service Provider or relevant Sub-contractor or received from any persons listed on the Service Provider's Provisional Personnel List regardless of when such notice takes effect.

17.6 During the Term, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body any information the Contracting Body may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

17.7 The Service Provider shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Contracting Body, any Replacement Service Provider and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Service Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Service Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the Service Transfer Date, the Service Provider shall provide, and shall procure that each Sub-contractor shall provide, to the Contracting Body or, at the direction of the Contracting Body, to any Replacement Service Provider and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Service Provider's Final Personnel List who is a Transferring Service Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

18. TUPE exit provisions

- 18.1 The Contracting Body and the Service Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Service Provider and/or a Replacement Sub-contractor. Such change in the identity of the Service Provider of such services may constitute a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Contracting Body and the Service Provider further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Service Provider and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Service Provider Employee.
- 18.2 The Service Provider shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Service Provider Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Service Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Service Provider and/or the Sub-contractor (as appropriate); and (ii) the Replacement Service Provider and/or Replacement Sub-contractor.
- 18.3 Subject to paragraph 18.4, the Service Provider shall indemnify the Contracting Body and/or the Replacement Service Provider and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Service Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:
- (a) any act or omission of the Service Provider or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Service Provider or any Sub-contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees which the Service Provider or any Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Service Provider or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider to the Contracting Body and/or Replacement Service Provider and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Service Provider or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-contractor other than a Transferring Service Provider Employee for whom it is alleged the Contracting Body and/or the Replacement Service Provider and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or TUPE and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Contracting Body and/or Replacement Service Provider to comply with regulation 13(4) of TUPE.

18.4 The indemnities in paragraph 18.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Service Provider and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Service Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Service Provider and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

- (b) arising from the Replacement Service Provider's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under TUPE.

18.5 If any person who is not a Transferring Service Provider Employee claims, or it is determined in relation to any person who is not a Transferring Service Provider Employee, that his/her contract of employment has been transferred from the Service Provider or any Sub-contractor to the Replacement Service Provider and/or Replacement Sub-contractor pursuant to TUPE or the Acquired Rights Directive, then:

- (a) the Contracting Body shall procure that the Replacement Service Provider shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Service Provider; and
- (b) the Service Provider may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Service Provider and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

18.6 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider or a Sub-contractor, the Contracting Body shall procure that the Replacement Service Provider shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

18.7 If after the 15 Working Day period specified in paragraph 18.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Contracting Body shall advise the Replacement Service Provider and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

18.8 Subject to the Replacement Service Provider and/or Replacement Sub-contractor acting in accordance with the provisions of paragraph 18.5 to paragraph 18.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Service Provider shall indemnify the Replacement Service Provider and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 18.7 provided that the Replacement Service Provider takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

18.9 The indemnity in paragraph 18.8:

- (a) shall not apply to:

- (i) in any case in relation to any alleged act or omission of the Replacement Service Provider and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Service Provider and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 18.5(a) is made by the Replacement Service Provider and/or Replacement Sub-contractor to the Service Provider within six months of the Service Transfer Date.

18.10 If any such person as is described in paragraph 18.5 is neither re-employed by the Service Provider or any Sub-contractor nor dismissed by the Replacement Service Provider and/or Replacement Sub-contractor within the time scales set out in paragraph 18.5 to paragraph 18.7, such person shall be treated as a Transferring Service Provider Employee and the Replacement Service Provider and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

18.11 The Service Provider shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Service Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Service Provider and/or any Sub-contractor; and
- (b) the Replacement Service Provider and/or the Replacement Sub-contractor.

18.12 The Service Provider shall, and shall procure that each Sub-contractor shall, promptly provide to the Contracting Body and any Replacement Service Provider and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Contracting Body, the Replacement Service Provider and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of TUPE. The Contracting Body shall procure that the Replacement Service Provider and/or Replacement Sub-contractor, shall promptly provide to the Service Provider and each Sub-contractor in writing such information as is necessary to enable the Service Provider and each Sub-contractor to carry out their respective duties under regulation 13 of TUPE.

- 18.13 Subject to paragraph 18.14, the Contracting Body shall procure that the Replacement Service Provider indemnifies the Service Provider on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Service Provider Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Service Provider Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Service Provider and/or Replacement Sub-contractor;
 - (b) the breach or non-observance by the Replacement Service Provider and/or Replacement Sub-contractor on or after the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Service Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Service Provider Employees which the Replacement Service Provider and/or Replacement Sub-contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Service Provider Employees arising from or connected with any failure by the Replacement Service Provider and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - (d) any proposal by the Replacement Service Provider and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Service Provider Employees on or after their transfer to the Replacement Service Provider or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Service Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - (e) any statement communicated to or action undertaken by the Replacement Service Provider or Replacement Sub-contractor to, or in respect of, any Transferring Service Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Service Provider in writing;
 - (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Service Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Service Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Service Provider or Sub-contractor, to

the Replacement Service Provider or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- (g) a failure of the Replacement Service Provider or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Service Provider Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or Replacement Sub-contractor in relation to obligations under regulation 13 of TUPE.

18.14 The indemnities in paragraph 18.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Service Provider and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Service Provider and/or any Sub-contractor (as applicable) to comply with its obligations under TUPE.

ANNEX E Transferring Former Service Provider Employees

ANNEX F List of Notified Sub-contractors