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**NEL**

# **Commissioning Support Unit**

**Services Agreement**

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February 2020

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## SERVICES AGREEMENT

between

NEL Commissioning Support Unit

and

[Insert client name]

(Contract Reference No: #####)

For providing

[Insert name of service to be provided] service

From

DD/MM/YYYY

To

DD/MM/YYYY

## Agreement

This Agreement is made on [...insert date] between:

- (a) **NEL Commissioning Support Unit**, an arm's length service organisation of NHS England whose principal place of business is at Clifton House 75-77 Worship Street, London EC2A 2DU ("**Service Provider**" or the "**CSU**"); and
- (b) [...insert full client name], a [company incorporated in England and Wales under company number [...insert]] whose [registered office/principal place of business] is at [...insert address] ("**Client**"),

each a "**Party**" and together the "**Parties**".

## Background

The Service Provider is a provider of clinical commissioning support services.

The Client wishes to appoint the Service Provider to provide the Services to it.

The Service Provider has agreed to supply to the Client, and the Client has agreed to receive and pay for, the Services on the terms of this Agreement.

## Contents of this Agreement

This Agreement comprises this document (including the Services summary and key terms set out below) and the Schedules listed below and appended hereto:

<b>Schedule 1</b>	General Terms and Conditions	Page 7
<b>Schedule 2</b>	The Services	Page 38
<b>Schedule 3</b>	Charges and Payments	Page 40
<b>Schedule 4</b>	Embedded Personnel	Page 41
<b>Schedule 5</b>	TUPE	Page 47

## Services summary and key terms

Subject to the further terms and conditions of this Agreement, the key terms and details relating to the Services are as follows:

Service Summary, Term and Contract Value		
Summary of Services	[insert brief description of the service]	
Commencement Date	[insert service commencement date]	
Expiry Date	[insert service expiry date]	
Contract Value	Year 1:	£
	Year 2:	£
	Year 3:	£
	Whole life value:	£

Representatives	
Service Provider Representative	[Name, Position]
Client Representative	[Name, Position]
The management levels for the escalation and resolution of Disputes are set out in Clause 12 of Schedule 1 ( <i>General Terms and Conditions</i> ).	

Addresses for Notices	
Service Provider	NEL Commissioning Support Unit, Fourth Floor, Clifton House, 75-77 Worship Street, London EC2A 2DU For the attention of: The Managing Director [insert e-mail / fax as required]
Client	[insert address] For the attention of: [insert name or title] [insert e-mail / fax as required]

**Execution page**

This document has been entered into by the Parties or their duly authorised representatives on the date set out at the beginning of this document.

**Signed by the authorised representative of the Client**

Name:	[Name]	Signature:	.....
Position:	[Position]	Date	

**Signed by the authorised representative of the Service Provider**

Name:	Stephen Childs	Signature:	.....
Position:	Managing Director, NEL Commissioning Support Unit	Date	

## Schedule 1 – General Terms and Conditions

### 1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

Term	Definition
<b>“Applicable Law”</b>	means all applicable statutory and other laws, rules, regulations, instruments and provisions in force from time to time.
<b>“Business Continuity Plan”</b>	a business continuity and disaster recovery plan in respect of the provision of the Services by the Service Provider in accordance with the NHS England Business Continuity Management Framework (Service Resilience) and the principles of PAS 2015 (British Standards Institution 21 October 2010) and ISO 22301.
<b>“Business Day”</b>	means any day other than a Saturday or Sunday or a bank holiday or public holiday in England and Wales.
<b>“Charges”</b>	means the charges payable by the Client to the Service Provider for the provision of the Services.
<b>“Change in Law”</b>	means the coming into effect after the date of this Agreement of any change in Applicable Law.
<b>“Client Representative”</b>	means a senior manager or officer of the Client with authority to act on the Client's behalf in connection with this Agreement, as nominated by the Service Provider and notified to the Service Provider in writing from time to time.
<b>“Commencement Date”</b>	means the commencement date set out in the Key Service Terms.
<b>“Confidential Information”</b>	means all information (whether written, oral or in electronic form) concerning the business and affairs of a Party or a Service Recipient that the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement.
<b>“Contract Variation”</b>	means a change to this Agreement.
<b>“Contract Variation Notice”</b>	has the meaning given to that term in Clause 11.
<b>“Contract Year”</b>	means a period of 12 months starting on the Commencement Date or any anniversary of the Commencement Date.
<b>“Controller”</b>	means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

Term	Definition
<b>“Data Protection Laws”</b>	means all Applicable Law relating to the Processing of Personal Data.
<b>“Data Subject”</b>	the individual to which the Personal Data relates.
<b>“Data Subject Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance the Data Protection Laws to exercise the Data Subject's rights under the Data Protection Laws in relation to their Personal Data.
<b>“Dispute”</b>	means a dispute, conflict, claim or other disagreement between the Service Provider and the Client arising out of or in connection with this Agreement (including any non-contractual dispute or claim).
<b>“E-Invoicing Laws”</b>	means all Applicable Law implementing Directive 2014/55/EU on electronic invoicing in public procurement.
<b>“E-Invoicing Standard”</b>	means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
<b>“EIRs”</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>“Embedded Personnel”</b>	has the meaning given to that term in paragraph 1 of Schedule 4 ( <i>Embedded Personnel</i> ).
<b>“Expenses”</b>	means expenses reasonably incurred by the Service Provider and the Service Provider Personnel in connection with the performance of the Services.
<b>“Exit Management Plan”</b>	has the meaning given to that term in Clause 20.3.
<b>“Expiry Date”</b>	means the expiry date set out in the Key Service Terms.
<b>“FOIA”</b>	the Freedom of Information Act 2000, and any subordinate legislation made under that act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>“Force Majeure Event”</b>	has the meaning given to that term in Clause 24.1.
<b>“Guidance”</b>	means all applicable health or social care guidance, directions or determinations, frameworks, codes of practice, standards or requirements, to which the Client and/or the Service Provider have a duty to have regard (and whether specifically mentioned in this Agreement or not), to the extent that the same are published and publically available or the existence or contents of them have been notified to the Service Provider by the Client and/or any regulatory or supervisory body.

<b>Term</b>	<b>Definition</b>
<b>“Information”</b>	has the meaning given to that term in section 84 of the FOIA.
<b>“Intellectual Property Rights”</b>	means any and all patents, rights in inventions, rights in designs, trade-marks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term.
<b>“Key Service Terms”</b>	means the Services summary and key terms set out at the front of this Agreement.
<b>“Negotiation Period”</b>	has the meaning given to that term in Clause 12.5.
<b>“NHS Contract”</b>	means an arrangement under which one NHS body arranges for the provision to it by another NHS body of goods or services which it reasonably requires for the purposes of its functions, within the meaning of Section 9(1) of the National Health Service Act 2006.
<b>“Performance Report”</b>	means a report detailing the performance of the Services in relation to the Service Levels, prepared in accordance with the provisions of Clause 9 and Schedule 2 ( <i>The Services</i> ).
<b>“Personal Data”</b>	any information relating to an identified or identifiable living individual.
<b>“Personal Data Breach”</b>	means the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data.
<b>“Premises”</b>	means the Client’s and/or Service Providers’ premises at which the Services are to be provided, as specified in this Agreement or otherwise agreed by the Parties from time to time.
<b>“Processing”</b>	means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, and <b>“Process”</b> , <b>“Processes”</b> and <b>“Processed”</b> shall be construed accordingly.
<b>“Processor”</b>	means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of a Controller.
<b>“Representatives”</b>	means the Service Provider Representative and the Client Representative.
<b>“Request for Information”</b>	means a request for information or an apparent request under the FOIA or the EIRs.

<b>Term</b>	<b>Definition</b>
<b>“Services”</b>	means the services to be provided by the Service Provider to the Client under this Agreement as set out in Schedule 2 ( <i>The Services</i> ).
<b>“Service Improvement Notice”</b>	means a notice issued by the Client to the Service Provider in accordance with Clause 10 requiring the Service Provider to produce and implement a Service Improvement Plan.
<b>“Service Improvement Plan”</b>	means a plan submitted by the Service Provider to the Client in accordance with Clause 10 in response to a Service Improvement Notice.
<b>“Service Failure”</b>	has the meaning given to that term in Clause 10.1.
<b>“Service Levels”</b>	means the service levels and/or key performance indicators set out in Schedule 2 ( <i>The Services</i> ), if any.
<b>“Service Provider Representative”</b>	means a senior manager of the Service Provider with authority to act on the Service Provider's behalf in connection with this Agreement, as nominated by the Service Provider and notified to the Client in writing from time to time.
<b>“Service Provider Personnel”</b>	means all persons engaged by the Service Provider or its sub-contractors in the provision of the Services from time to time.
<b>Service Recipients</b>	means the recipients of the Services (other than the Client) set out in Schedule 2 ( <i>The Services</i> ), if any.
<b>Service Review</b>	has the meaning given to that term in Clause 8.1.
<b>Service Stabilisation Period</b>	means the period of four months from the Commencement Date.
<b>Sub-Processor</b>	means a third-party Processor engaged by the Service Provider to Process Personal Data on behalf of the Client.
<b>TUPE Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time).

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- (a) **“writing”**, and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- (b) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- (c) a **“Schedule”** is a schedule to this Agreement; and

- (d) a “**Clause**” or “**paragraph**” is a reference to a Clause of these General Terms and Conditions or a paragraph of the relevant Schedule.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 In this Agreement, words importing the singular shall include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, governmental or state agencies, foundations and trusts (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists).

1.5 In this Agreement, any phrase introduced by the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 Principles**

2.1 The Parties agree to adopt the following principles when carrying out this Agreement:

- (a) to collaborate and co-operate in the delivery of the Services to help ensure that the commissioning ambitions and intentions of the Client are met;
- (b) to be accountable, by taking on, managing and accounting to each other for the performance of the respective roles and responsibilities set out in this Agreement;
- (c) to communicate openly about major concerns, issues or opportunities relating to this Agreement;
- (d) to learn, develop and seek to achieve the full potential by sharing information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) to behave in a constructive and proactive manner;
- (f) to comply with Applicable Law and standards, including EU procurement rules as applicable, data protection and freedom of information legislation;
- (g) to act in a timely manner, recognising the time-critical nature of the Services provided under this Agreement and respond accordingly to requests for support and information;
- (h) to manage stakeholders effectively;
- (i) to act in good faith to support the achievement of each Party’s objectives in entering into this Agreement and compliance with these principles; and

(j) to provide coherent, timely and efficient decision-making.

- 2.2 The Parties agree to abide by, and promote awareness of, the NHS Constitution for England, including the rights and pledges set out in it, to the extent that it applies to any of the activities carried out under this Agreement.

### **3 Service Provider's Obligations**

- 3.1 The Service Provider shall provide the Services to the Client with reasonable care and skill in accordance with the provisions of this Agreement, Applicable Law and Guidance.
- 3.2 The Service Provider shall provide the Client with such information and advice in connection with the Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Services.
- 3.3 The Service Provider shall promptly inform the Client if it becomes aware that it is unable to perform any Services in accordance with this Agreement as a result of any act or omission of the Client, including any failure by the Client to perform its obligations under this Agreement.
- 3.4 The Service Provider shall nominate and retain at all times a Service Provider Representative. The Service Provider Representative will be a single point of contact for the Client and will have overall responsibility for the delivery of the Services by the Service Provider. The Service Provider Representative as at the date of this Agreement is set out in the Key Service Terms.
- 3.5 The Service Provider shall have in place and implement a Business Continuity Plan that is appropriate in the context of its obligations under this Agreement.
- 3.6 The Service Provider shall take reasonable steps to identify and manage any conflict of interest between the Service Provider (or any Service Provider Personnel) and the Client.
- 3.7 The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Services does not have any adverse effect on the name, reputation, image or business of the Client.

### **4 Client's Obligations**

- 4.1 The Client shall provide the Service Provider with such information in connection with the Services and the provision thereof as the Service Provider may, from time to time, reasonably require both before and during the provision of the Services.
- 4.2 The Client shall perform its obligations under this Agreement, and ensure that any dependencies set out in this Agreement are met, in a reasonable and timely manner in accordance with the provisions of this Agreement, Applicable Law and Guidance.
- 4.3 The Client shall:
- (a) provide and make available to the Service Provider and the Service Provider Personnel such access to, and use of, its premises, facilities, office space, equipment and

telephony and information technology systems as may be reasonably required by the Service Provider to enable it to provide the Services;

- (b) obtain all necessary licences, permissions and consents required in connection with such access and use by the Service Provider and the Service Provider Personnel; and
- (c) inform the Service Provider of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises.

4.4 Where the Service Provider makes available any third party software or services as part of the Services, the Client shall:

- (a) comply with all terms and conditions applicable to the use of such third party software or services (as set out in such software or services or otherwise notified by to the Client by the Service Provider);
- (b) indemnify the Service Provider against any costs (including the cost of defending any legal action brought against the Service Provider), damages, losses and expenses suffered or incurred by the Service Provider as a result of any failure of the Client to comply with such terms and conditions.

4.5 The Client shall use its reasonable endeavours to keep the Service Provider informed of any special requirements (including legislative and regulatory requirements) applicable to the Services.

4.6 The Client shall nominate and retain at all times a Client Representative. The Client Representative will be a single point of contact for the Service Provider and will have overall responsibility for the receipt of the Services by the Client. The Client Representative as at the date of this Agreement is set out in the Key Service Terms.

4.7 The Client shall use all due and proper care to ensure that the manner in which it discharges its obligations under this Agreement does not have any adverse effect on the name, reputation, image or business of the Service Provider.

## **5 Service Recipients**

5.1 The Service Provider acknowledges that the Client has procured the Services for its own benefit and for the benefit of the Service Recipients and that, as part of the Services, the Service Provider may be required to provide some or all of the Services to the Service Recipients. The Service Recipients shall be entitled to use and take the benefit of the Services subject to and in accordance with the terms and conditions of this Agreement.

5.2 The Client shall ensure that the Service Recipients:

- (a) are aware of, and at all times comply with, the Client's obligations under this Agreement; and

- (b) only use and take the benefit of the Services subject to and in accordance with the terms and conditions of this Agreement.

5.3 The Client shall remain responsible to the Service Provider in accordance with this Agreement for all acts and omissions of the Service Recipients (and the acts and omissions of those employed or engaged by the Service Recipients) as if they were its own. An obligation on the Client to do, or to refrain from doing, any act or thing shall include an obligation upon the Client to procure that each Service Recipient also does, or refrains from doing, such act or thing in connection with its use and receipt of the Services.

5.4 Unless otherwise agreed in writing by the Parties, the Service Provider shall be entitled to treat any instruction given to it in respect of the Services by a Service Recipient as if such instruction had been given to it by the Client.

## **6 Service Provider Personnel**

6.1 The Service Provider shall use appropriately experienced, qualified and trained personnel to perform the Services.

6.2 The Parties acknowledge and agree that the Service Provider Personnel are not, nor is it their intention that the Service Provider Personnel shall be, employees, workers, agents or partners of the Client.

6.3 Schedule 4 (*Embedded Personnel*) sets out provisions relating to the Embedded Personnel that will be made available as part of the Services (if any).

6.4 Schedule 5 (*TUPE*) deals with issues relating to the TUPE Regulations.

## **7 Charges, Payment and Records**

7.1 Unless otherwise specified in this Agreement or agreed in writing by the Parties, the Service Provider shall invoice the Client for payment of the Charges quarterly in advance. The Charges shall be calculated in accordance with the provisions of Schedule 3 (*Charges and Payments*).

7.2 The Client shall reimburse the Service Provider for all Expenses that have been authorised in advance by the Client or incurred in accordance with any expenses policy agreed in writing by the Parties. The Service Provider may invoice the Client for Expenses at any time after they are incurred.

7.3 All amounts payable under this Agreement are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Client following delivery of a valid VAT invoice.

7.4 The Client shall issue a valid purchase order in respect of any amounts to be invoiced in accordance with this Agreement promptly on request.

- 7.5 Where this Agreement is subject to the E-Invoicing Laws, the Client shall accept and process for payment an electronic invoice submitted for payment by the Service Provider where the invoice is undisputed and where it complies with the E-Invoicing Standard.
- 7.6 The Client shall pay all Charges set out in an invoice submitted in accordance with this Agreement within 30 days of receipt of the invoice in sterling in cleared funds to such bank account as the Service Provider may from time to time nominate.
- 7.7 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 7.8 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Client pursuant to this Agreement. Such records shall be retained for inspection by the Client (upon reasonable notice and if deemed necessary by the Service Provider) during the term of this Agreement.
- 7.9 The Client shall make any payments due to the Service Provider without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.10 If this Agreement is not an NHS Contract and the Client fails to pay on the due date any amount which is payable to the Service Provider under this Agreement then the Service Provider may charge interest on the outstanding amount from the due date until payment is made in full (whether before or after judgment) at the rate of 4% per annum over the Bank of England's base rate from time to time, which interest shall accrue on a daily basis from the date payment becomes due until the date payment of the overdue amount together with all interest that has accrued is received.
- 7.11 The Service Provider may revise the Charges on an annual basis based on inflation, staffing costs, agreed changes to service delivery, changes to national policies and regulations, and other factors influencing the cost to the Service Provider of providing the Services. Any changes to the Charges will be notified to the Client and agreed by the Parties, acting reasonably, in good time before the change takes effect.

## **8 Contract management**

- 8.1 The Representatives shall be responsible for managing this Agreement and monitoring the performance of the Services on a day-to-day basis. The Representatives shall meet on a regular basis (at least quarterly), at such times and by such means as may be agreed between them, to review and discuss the performance of the Services (each such meeting, a "**Service Review**"). The Representatives may involve other stakeholders in their discussions as they consider appropriate from time to time.
- 8.2 No later than six (6) months prior to the Expiry Date, the Representatives shall meet to review this Agreement and consider whether the Agreement should be extended or renewed and/or the transitional arrangements necessary to manage the expiry of the Agreement.

- 8.3 Either Party may request a meeting of the Representatives at any time where an issue has arisen in respect of the Agreement or where a change is or may be required to this Agreement (for example, as a result of a material change in the level of year-on-year funding received by the Client or a Change in Law), and the Representatives shall meet as soon as reasonably practicable following any such request. Any changes to this Agreement shall be concluded in accordance with Clause 11.

## 9 Performance monitoring

*[Drafting note: the following Clauses 10 and 11 assume that performance against the Service Levels/KPIs will be measured and reported on a monthly basis and reviewed at quarterly Service Reviews. If KPIs are to be measured and reported on a different basis – for example, quarterly – then it will be necessary to amend references to "month" and "monthly" and consider what changes are necessary to:*

- *the threshold for commencing formal service improvement set out in 11.3 (currently 3 failures of the same KPI in 6 months); and*
- *the threshold for termination by the Client set out in Clause 11.10(b) (currently one further failure within 3 months of completing the service improvement plan),*

*in each case, as highlighted below.]*

- 9.1 The Service Provider shall be responsible for measuring its performance against the Service Levels and shall provide [monthly] Performance Reports to the Client setting out its performance against the Service Levels in respect of each [month].
- 9.2 Performance Reports shall be submitted to the Representatives for consideration as part of the next Service Review.
- 9.3 Where agreed in writing by the Parties, the Service Provider shall carry out periodic surveys of key Client personnel (including the Client Representative) to evaluate qualitative aspects of the Services. The form, frequency and assessment methodology of such surveys shall be as agreed by the Parties in writing from time to time. The Service Provider shall consolidate survey responses and summarise the output of each survey in the next Performance Report. Any areas that are identified as red or amber will be addressed by the Representatives as part of the next Service Review.

## 10 Service Failures

- 10.1 Where, in respect of any [month] following the end of the Service Stabilisation Period, the Service Provider fails to meet or exceed a Service Level as demonstrated by the Performance Report for the month, such failure shall be a "Service Failure" for the purposes of this Agreement, provided that:

- (a) where the Service Provider fails to meet or exceed a Service Level (i) at any time during the Service Stabilisation Period; or (ii) as a result of circumstances outside of the Service Provider's reasonable control (including any failure by the Client to perform its obligations under this Agreement), such failure shall not be treated as a Service Failure; and
  - (b) where, in accordance with the provisions of Schedule 2 (*The Services*), performance against a Service Level is to be measured by reference to green, amber and red (or similar) thresholds, only performance below the red (or lowest) threshold shall count as a Service Failure.
- 10.2 In respect of each Service Failure, the Service Provider shall set out in the Performance Report for the relevant period the reason(s) for the Service Failure and details of any steps proposed by the Service Provider to improve its performance of the affected Service for discussion by the Representatives.
- 10.3 Where [three or more Service Failures occur in respect of the same Service Level in any period of six months], the Client may issue a Service Improvement Notice to the Service Provider. A Service Improvement Notice shall state:
  - (a) the specific Service Level(s) and Service Failures to which the Service Improvement Notice relates;
  - (b) an account of any relevant circumstances, including any remedial steps already undertaken by the Service Provider, so far as known to the Client; and
  - (c) any other supporting information which the Client considers relevant.
- 10.4 Where the Service Provider considers that a Service Improvement Notice is unjustified (for example, because its failure to meet or exceed a Service Level is not a Service Failure by virtue of Clause 10.1), it shall promptly notify the Client and explain the reasons for its objection. Any disagreement as to whether a Service Improvement Notice has been validly issued may be escalated in accordance with Clause 12.
- 10.5 Where the Service Provider accepts a Service Improvement Notice, the Service Provider shall prepare and submit to the Client a Service Improvement Plan within twenty (20) Business Days of receipt of the Service Improvement Notice. The Service Improvement Plan shall:
  - (a) provide a detailed statement of the reasons for the Service Failures;
  - (b) identify the remedial actions needed to rectify the Service Failures so that the relevant Service Level is met or exceeded;
  - (c) set out the Service Provider's key proposals for carrying out the remedial actions, a programme for undertaking such actions and the dates by which such programme will be completed (such dates being reasonable in relation to the remedial actions required

and the importance or urgency of the affected Service(s) to the proper discharge of the Client's own functions);

- (d) identify any actions or consents required from the Client and/or any other body to facilitate the Service Provider's programme of remedial actions; and
- (e) specify proposed criteria for the purpose of auditing completion of the remedial actions and resolution of the Service Failure.

10.6 Within five (5) Business Days following submission of the Service Improvement Plan, the Client shall notify the Service Provider whether or not it accepts the Service Improvement Plan.

10.7 If the Client does not accept the Services Improvement Plan, the Representatives shall work together in good faith to discuss the Service Improvement Plan and agree any amendments to it requested by the Client. Any disagreement about the content of a Service Improvement Plan may be escalated in accordance with Clause 12.

10.8 The Service Provider shall, in respect of each agreed Service Improvement Plan:

- (a) implement all the remedial actions set out in the Service Improvement Plan by the date(s) specified in the Service Improvement Plan;
- (b) provide regular progress reports in respect of the Service Improvement Plan for review and discussion by the Representatives; and
- (c) facilitate the completion of any audit of remedial actions contemplated by the Service Improvement Plan in accordance with its terms.

10.9 The Client shall, in respect of each agreed Service Improvement Plan:

- (a) use reasonable endeavours to procure any actions or consents identified in the Service Improvement Plan as required from the Client or any other body. Where the Client is unable to obtain such actions or consents the Service Provider shall not be required to implement the remedial actions for which they are required and the Parties shall seek to agree appropriate amendments to the Service Improvement Plan; and
- (b) promptly notify the Service Provider once any audit of remedial actions contemplated by the Service Improvement Plan is complete and the Client is satisfied that the Service Provider has complied with its obligations under the Service Improvement Plan.

10.10 Where either:

- (a) the Service Provider materially fails to carry out its obligations under an agreed Service Improvement Plan; or
- (b) the remedial actions set out in the Service Improvement Plan fail to improve the Service Provider's performance against the relevant Service Level such that a further Service Failure arising from the same or similar circumstances occurs in respect of that

Service Level in the [three month] period following the date of completion of the Service Improvement Plan (or such other resolution date as may be set out in the Service Improvement Plan),

the Client may terminate this Agreement in accordance with Clause 18.7. If this Agreement is an NHS Contract, any such termination by the Client must be approved in advance by the relevant contract authority.

## **11 Contract Variation Procedure**

- 11.1 Either Party may request a Contract Variation by submitting a written request for that Contract Variation (“**Contract Variation Notice**”) to the other Party. Each Contract Variation Notice shall set out sufficient information about the proposed change to enable the other Party to assess the impact of the proposed Change on the Services and the Charges.
- 11.2 Each Contract Variation Notice shall be referred to the Representatives, who shall meet to discuss the proposed Contract Variation as soon as reasonably practicable and, in any event, within fifteen (15) Business Days of receipt of the Contract Variation Notice.
- 11.3 Each Party shall conduct discussions relating to proposed Changes reasonably and in good faith.
- 11.4 As soon as reasonably practicable following any agreement by the Parties to a Contract Variation, the Parties will document the agreed Contract Variation, and the amendments to this Agreement necessary to give effect to the Contract Change, in writing.
- 11.5 No change to this Agreement shall be effective unless it is recorded in writing and signed by an authorised representative of each Party.
- 11.6 The Service Provider shall keep a record of all agreed Contract Variations.
- 11.7 Where a Contract Variation is required to comply with a Change in Law, the Parties shall work together diligently and in good faith to ensure that such Contract Variation is given appropriate priority and is, in any event, agreed and implemented within such period of time as may be required to comply with the Change in Law.
- 11.8 Where a Change in Law has directly altered, or will directly alter, the costs incurred by the Service Provider in meeting its obligations under the Agreement, the Service Provider shall be entitled to a fair and reasonable variation to the Charges to reflect such altered costs and may request a Contract Variation in respect of the same.
- 11.9 Neither Party shall unreasonably withhold or delay its agreement to a Contract Variation under Clauses 11.7 or 11.8. Any disagreement in respect of any such Contract Variation shall be escalated in accordance with Clause 12.

## 12 Dispute Resolution Procedure

- 12.1 If any Dispute arises out of or in connection with this Agreement, the Parties shall first attempt to settle it, in good faith, through negotiation between the Representatives prior to commencement of the formal dispute resolution procedure set out in this Clause 12.
- 12.2 The performance of the respective Parties' obligations under this Agreement shall not cease or be delayed by this dispute resolution procedure and each Party shall continue to fulfil its obligations under this Agreement.
- 12.3 Nothing in this Clause 12 shall prevent either Party at any time from:
- (a) applying for any interim remedy pursuant to Part 25 of the Civil Procedure Rules (including injunctive relief); and/or
  - (b) exercising its rights to terminate this Agreement subject to and in accordance with the provisions of this Agreement.
- 12.4 If any Dispute arises out of the Agreement, either Party may serve a written notice on the other Party to commence formal resolution of the Dispute.
- 12.5 The Parties shall attempt to settle each Dispute by negotiation for a period of at least fifteen (15) Business Days from receipt of a written notice under Clause 12.4 ("**Negotiation Period**") as follows:
- (a) for the first ten (10) Business Days, by a nominated senior officer of each Party (other than that Party's Representative) who, where practicable, has not had any direct day-to-day involvement in the matter and who has authority to settle the Dispute; and
  - (b) if the Dispute is not settled within the first ten (10) Business Days, by a chief executive officer, director, or Governing Body or Board member of each Party who has authority to settle the Dispute.
- 12.6 Where practicable, no Party should be represented by the same individual under Clauses 12.5(a) and 12.5(b).
- 12.7 Where the Parties are unable to settle a Dispute by negotiation within the Negotiation Period, either Party may:
- (a) if this Agreement is an NHS Contract, refer the Dispute to NHS England for resolution; or
  - (b) otherwise, commence legal proceedings in respect of the Dispute,
- save that nothing in this Agreement shall prevent the Parties from agreeing to refer the Dispute to any alternative dispute resolution procedure.

## **13 Audit**

- 13.1 The Service Provider will assist the Client with such information in respect of the Services as may be reasonably required by the Client or its external auditors in connection with any audit carried out by or on behalf of the Client in respect of the Client's own operations.
- 13.2 The Client acknowledges that the Service Provider may only be audited through the Service Auditor Reporting (SAR) process mandated by NHS England. The Client may, at its own expense, commission audits via this process but shall not otherwise be entitled to audit the Service Provider.

## **14 Confidentiality**

- 14.1 Each Party undertakes that, except as provided in this Clause 14 or as authorised in writing by the other Party, it shall at all times:
- (a) keep confidential all Confidential Information of the other Party;
  - (b) not disclose any Confidential Information of the other Party to any other person; and
  - (c) not use any Confidential Information of the other Party for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement.
- 14.2 The Service Provider undertakes that, except as provided in this Clause 14 or as authorised in writing by the relevant Service Recipient, it shall at all times:
- (a) keep confidential all Confidential Information of each Service Recipient;
  - (b) not disclose any Confidential Information of a Service Recipient to any other person; and
  - (c) not use any Confidential Information of a Service Recipient for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement.
- 14.3 Either Party may disclose Confidential Information of the other Party or a Service Recipient:
- (a) to those of its officers, employees, professional advisers, parent or subsidiary companies, or agents or sub-contractors as may be reasonably necessary for the purpose of fulfilling its obligations or exercising its rights under this Agreement or, in the case of professional advisers, for use in their professional capacity, provided that before any such disclosure that Party shall make such officers, employees, professional advisers, parent or subsidiary companies, or agents or sub-contractors aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those persons with them; or
  - (b) where disclosure is required by Applicable Law, court order or any competent regulatory authority.

- 14.4 The obligations set out in Clauses 14.1 and 14.2 shall not apply to any information which:
- (a) is or becomes public knowledge other than by breach of this Clause 14;
  - (b) the receiving Party can demonstrate by its records that it was (i) in its possession before it received it from the disclosing Party or relevant Service Recipient (as applicable); or (ii) independently developed by the receiving Party or on its behalf; or
  - (c) the receiving Party can demonstrate was obtained from a source other than the disclosing Party or relevant Service Recipient (as applicable) without breaching any obligation of confidence.
- 14.5 The Client agrees, and the Client shall ensure that each of the Service Recipients agree, that the Service Provider is permitted to disclose the Confidential Information of the Client and/or any Service Recipients to the Client and/or each of the Service Recipients to the extent that such disclosure is necessary for the Service Provider to (i) provide, and for the Client and each such Service Recipient to receive and take the benefit of, the Services; and (ii) perform its obligations and/or exercise its rights under this Agreement.

## **15 Data Protection**

- 15.1 Each Party shall at all times:
- (a) comply with the Data Protection Laws and Guidance in respect of the Personal Data that it Processes under or in connection with this Agreement; and
  - (b) reasonably assist the other Party insofar as may be appropriate or necessary in the context of this Agreement to enable the other Party to comply with the Data Protection Laws and Guidance.
- 15.2 In particular, each Party shall ensure that Personal Data is safeguarded at all times in accordance with the Data Protection Laws, other Applicable Law and Guidance and shall only transfer Personal Data to the other Party where:
- (a) the transfer is essential, having regard to the purpose for which the transfer is conducted and the obligations of the Parties under this Agreement; and
  - (b) in the case of electronic transfers (including transfers over wireless or wired networks, private or secured public cloud infrastructure and data held on laptops, CDs, memory sticks and tapes), the Personal Data is encrypted in accordance with accepted industry standards.

### *Processing as a Controller*

- 15.3 Except as expressly set out in this Agreement, each Party shall be a Controller in respect of the Personal Data that it Processes under or in connection with this Agreement.

15.4 Where a Party Processes Personal Data received from the other Party under or in connection with this Agreement as a Controller, it shall:

- (a) only Process such Personal Data (i) for the purpose of performing its obligations under this Agreement; (ii) as otherwise strictly necessary to comply with any legal and regulatory obligations to which it is subject; or (iii) as otherwise agreed in writing by the other Party; and
- (b) notify the other Party without undue delay after becoming aware of any Personal Data Breach affecting such Personal Data.

*The Service Provider as Processor*

15.5 The Parties acknowledge and agree that the Service Provider may Process Personal Data on behalf of the Client and/or the Service Recipients as a Processor in the provision of the Services. Where this is the case:

- (a) the Service Provider shall Process the Personal Data in connection with the provision of the Services for the duration of this Agreement and thereafter to the extent necessary to comply with any of its obligations that survive the termination of this Agreement; and
- (b) the nature of Processing activities to be carried out, the types of Personal Data and categories of Data Subjects concerned and the identity of the Controller(s) shall be set out in Appendix 1 of Schedule 2 (*The Services*).

15.6 Where the Service Provider Processes Personal Data on behalf of the Client and/or the Service Recipients as a Processor under or in connection with this Agreement, the Service Provider shall:

- (a) Process the Personal Data only on the written instructions of the Client (including its obligations under this Agreement) or as otherwise required by Applicable Law, in which case the Service Provider shall inform the Client of the legal requirement before Processing the Personal Data (unless Applicable Law prohibits the Service Provider from informing the Client);
- (b) immediately inform the Client if, in the Service Provider's opinion, Processing the Personal Data in accordance with a written instruction received from the Client infringes the Data Protection Laws;
- (c) ensure that all persons authorised by the Service Provider to Process the Personal Data:
  - (i) Process the Personal Data in accordance with provisions of this Clause 15;

- (ii) are under an appropriate contractual or other legal obligation to keep the Personal Data confidential; and
  - (iii) are aware of the confidential nature of the Personal Data and have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) taking into account the state of the art, the nature, scope, context and purposes of the Processing and the risks to Data Subjects, implement appropriate technical and organisational measures to ensure the security of the Personal Data and prevent Personal Data Breaches;
- (e) not transfer the Personal Data outside the United Kingdom, nor disclose the Personal Data to any party located outside the United Kingdom unless such transfer complies with the requirements of the Data Protection Laws;
- (f) taking into account the nature of the Processing, implement appropriate technical and organisational measures to assist the Controller to comply with its obligations under the Data Protection Laws in respect of Data Subject Requests;
- (g) notify the Client without undue delay if it receives:
  - (i) a Data Subject Request or a complaint from any person in relation to the Personal Data;
  - (ii) a request from any third party for disclosure of the Personal Data; or
  - (iii) any communication from the Information Commissioner's Office or any other regulatory authority in connection with the Personal Data;
- (h) notify the Client without undue delay after becoming aware of a Personal Data Breach in respect of the Personal Data;
- (i) taking into account the nature of the Processing activities and the information available to the Service Provider, assist the Controller to comply with its obligations in respect of such Personal Data under the Data Protection Laws in relation to:
  - (i) keeping Personal Data secure;
  - (ii) dealing with Personal Data Breaches;
  - (iii) carrying out data protection impact assessments;
  - (iv) dealing with Data Subject Requests; and
  - (v) investigations and enquiries by data protection regulatory authorities;

- (j) at the Client's option, permanently and securely delete, destroy and/or return to the Client all the Personal Data promptly on termination of this Agreement, and delete or destroy any existing copies of the Personal Data save to the extent that the Service Provider is required to retain copies of the Personal Data by Applicable Law;
  - (k) make available to the Client all information necessary to demonstrate compliance with the Service Provider's obligations under this Clause 15.6; and
  - (l) allow for and contribute to audits of such compliance carried out by or on behalf of NHS England in accordance with Clause 13.
- 15.7 The Service Provider may charge the Client for the time and expenses incurred in providing the assistance required by the Client or any Service Recipient under Clauses 15.6(i), 15.6(j) and 15.6(k).
- 15.8 The Service Provider shall not be liable to the Client for any failure to provide the Services to the extent that such failure is due (either directly or indirectly) to the Service Provider complying with an instruction of the Client or a Service Recipient pursuant to Clause 15.6(a) or the Data Protection Laws.
- 15.9 The Service Provider may engage Sub-Processors in the course of performing its obligations under this Agreement and providing the Services. The Service Provider shall enter into a contract with each Sub-Processor that imposes on the Sub-Processor terms equivalent to, or more onerous than, the provisions of Clause 15.6 and shall remain fully liable and responsible to the Client in accordance with this Agreement for all acts and omissions of Sub-Processors in relation to their Processing of Personal Data.
- 15.10 The Service Provider shall provide to the Client a list of the Sub-Processors used by the Service Provider on request. Where the Service Provider engages an additional or replacement Sub-Processor to Process Personal Data on behalf of the Client and/or a Service Recipient, the Service Provider shall notify the Client of the change before the Processing starts. In the event that the Client objects to the Service Provider's use of any Sub-Processor, such objection shall be referred to the Representatives and may be escalated in accordance with Clause 12.

*Data security*

- 15.11 As part of the measures to be implemented by the Service Provider under Clause 15.6(d), the Service Provider shall ensure that:
- (a) it has properly configured access rights for its staff, including a well-defined starters and leavers process to ensure appropriate access control in respect of the Personal Data;
  - (b) suitable and effective authentication processes are established and used to protect the Personal Data;

- (c) the Personal Data is backed up on a regular basis and that any back up data is subject to vigorous security measures as necessary to protect the availability, integrity and confidentiality of the data;
- (d) Personal Data transferred electronically is encrypted in accordance with accepted industry standards; and
- (e) staff are not able to access the Personal Data remotely (for example, from home or via their own electronic device or internet portal other than through a secure electronic network and in accordance with the Service Provider's remote working policy) and that no Personal Data shall be stored on such remote devices.

*Secure destruction*

15.12 As part of the measures to be implemented by the Service Provider under Clause 15.6(d), the Service Provider shall ensure that:

- (a) Personal Data held in paper form is destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713; and
- (b) electronic storage media used to hold or Process the Personal Data is destroyed or overwritten to current National Cyber Security Centre standards and, in the event of any bad or unusable sectors that cannot be overwritten, the Processor shall ensure complete and irretrievable destruction of the media itself.

15.13 The Service Provider shall provide to the Client copies of all relevant overwriting verification reports and/or certificates of secure destruction of Personal Data at the conclusion of this Agreement.

*Additional requirements for NHS Contracts*

15.14 Where this Agreement is an NHS Contract and either Party Processes Personal Data relating patients and/or service users under or in connection with this Agreement, that Party shall:

- (a) complete and publish an annual information governance assessment using the NHS Data Security and Protection toolkit;
- (b) achieve compliance to all National Data Guardian standards in the relevant NHS Data Security and Protection toolkit or have an improvement plan in place to achieve compliance;
- (c) nominate an information governance lead able to communicate with its board of directors or equivalent governance body, who will be responsible for information governance and from whom its board of directors or equivalent governance body will receive regular reports on information governance matters including details of all Personal Data Breaches;

- (d) report all Personal Data Breaches in respect of such Personal Data in accordance with the Guidelines, including Department of Health, NHS England and Health and Social Care Information Centre guidelines;
- (e) have and maintain an information security management plan appropriate to this Agreement;
- (f) put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies;
- (g) fully comply with all relevant regulatory and industry standards, including the NHS Care Record Guarantee and the NHS Constitution;
- (h) put in place and maintain a policy that supports its obligations under the NHS Care Records Guarantee (being the rules which govern information held in the NHS Care Records Service, which is the electronic patient/service user record management service providing authorised healthcare professionals access to a patient's integrated electronic care record);
- (i) maintain good information governance standards and practices, by meeting or exceeding the NHS Information Governance Toolkit requirements;
- (j) put in place and maintain agreed protocols for the lawful sharing of Personal Data with other NHS organisations and (as appropriate) with non-NHS organisations in circumstances in which sharing of that data is required under this Agreement;
- (k) where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings; and
- (l) have appropriate Cyber Security measures in place in line with those set out in HM Government Cyber Essentials Scheme.

## **16 Freedom of information**

- 16.1 Each Party shall comply with its obligations under the FOIA and the EIRs in relation to this Agreement.
- 16.2 Each Party shall, where the other Party is subject to the FOIA and the EIRs:
- (a) provide all necessary assistance and cooperation as reasonably requested by the other Party to enable the other Party to comply with its obligations under the FOIA and EIRs;
  - (b) notify the other Party of any Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
  - (c) provide the other Party with a copy of all Information requested in the Request For Information to which the other Party is required to respond which is in its possession

or control in the form that the other Party requires within 5 Business Days of request (or such other period as the other Party may reasonably specify); and

- (d) not respond directly to a Request For Information to which the other Party is required to respond unless authorised in writing to do so by the other Party.

## **17 Intellectual Property Rights**

- 17.1 Except as otherwise agreed in writing by the Parties, any Intellectual Property Rights owned by a Party on or prior to the Commencement Date or created by or on behalf of a Party during the performance of its obligations under this Agreement shall vest in and remain with that Party at all times and neither Party shall acquire any rights or interest in the Intellectual Property Rights of the other Party. If for any reason the Parties agree that any Intellectual Property Rights should be assigned by one Party to the other (or to a Service Recipient), such assignment shall be subject to a separate written agreement.
- 17.2 The Client hereby grants to the Service Provider a royalty-free, non-exclusive licence to use all documents, information and other materials provided or made available by the Client and/or any Service Recipients to the Service Provider in connection with the Services for the purpose of exercising its rights and performing its obligations under this Agreement.
- 17.3 The Service Provider hereby grants to the Client a royalty-free, non-exclusive licence to use (and allow the Service Recipients to use) all documents, information and other materials provided or made available by the Service Provider to the Client and/or the Service Recipients as part of the Services in connection with the operation of its the Client's or each Service Recipient's (as applicable) business and/or the performance of its statutory functions.
- 17.4 Nothing in this Agreement shall prevent either Party from complying with its obligations under the Re-use of Public Sector Information Regulations 2015.

## **18 Term and Termination**

- 18.1 This Agreement shall commence on the Commencement Date and shall, subject to Clause 18.2 and unless terminated earlier in accordance with the terms of this Agreement or Applicable Law, expire on the Expiry Date.
- 18.2 The Client shall be entitled to extend the term of this Agreement by giving the Service Provider written notice no less than six (6) months prior to the Expiry Date, provided that:
  - (a) the duration of the extension shall be no longer than twenty-four (24) months from the Expiry Date; and
  - (b) the extension shall be subject to the Parties agreeing the Charges applicable to the extension period in writing on or before the Expiry Date.

***Termination without cause by either Party***

- 18.3 Either Party may terminate this Agreement by giving to the other Party not less than twelve (12) months written notice of such termination.
- 18.4 Either Party may terminate an individual Service by giving to the other Party not less than twelve (12) months written notice of such termination.

***Termination with cause by either Party***

- 18.5 Either Party may terminate this Agreement with immediate effect by giving written notice of such termination to the other Party at any time on or after the occurrence of any of the following circumstances:
- (a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
  - (b) the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such a breach is capable of remedy) fails to remedy that breach within thirty (30) days after being notified in writing to do so;
  - (c) the other Party repeatedly breaches any of the terms of this 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 Agreement; or
  - (d) either Party fails to obtain or ceases to hold any authorisation from NHS England necessary to enable it to carry out its obligations under this Agreement.
- 18.6 Either Party may terminate this Agreement or any affected individual Service with immediate effect by giving written notice of such termination to the other Party if the other Party suffers a Force Majeure Event which prevents it from performing its obligations under this Agreement for a continuous period of thirty (30) days.

***Termination by the Client***

- 18.7 The Client may terminate this Agreement or any affected individual Service by giving at least six months' prior written notice of such termination to the Service Provider in the circumstances set out in Clause 10.10.
- 18.8 If this Agreement is an NHS Contract, the Client may terminate this Agreement or any affected individual Service with immediate effect by giving written notice of such termination to the Service Provider where:
- (a) NHS England exercises its right to substitute the Service Provider; or
  - (b) NHS England instructs the Client to conduct a competition for some or all of the Services.

### ***Termination by the Service Provider***

- 18.9 If this Agreement is not an NHS Contract, the Service Provider may terminate this Agreement with immediate effect by giving written notice of such termination to the Client if:
- (a) a receiver, liquidator or administrator is appointed for the Client or the Client passes a resolution for the appointment of a liquidator (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
  - (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986);
  - (c) the Client takes steps to enter into a company voluntary arrangement, a scheme of arrangement under Part 26 Companies Act 2006 or any analogous compromise or arrangement (whether formal or informal) with any of its creditors (other than (in any such case) a voluntary winding-up of a solvent company for the purposes of amalgamation or reconstruction);
  - (d) any substantial part of the assets of the Client is the object of attachment, sequestration or other type of comparable proceeding;
  - (e) the Client is unable or admits in writing its inability to pay its debts as they fall due; or
  - (f) the Client suffers or takes any similar or analogous action in any jurisdiction in consequence of debt.

### ***Automatic termination***

- 18.10 If this Agreement is an NHS Contract, this Agreement will automatically terminate on the date that the Service Provider becomes independent of NHS England.

### ***Notification***

- 18.11 Each Party shall promptly notify the other Party in writing on the occurrence of any of the events set out in this Clause 18 in relation to it.

## **19 Effects of termination**

- 19.1 The termination of this Agreement or an individual Service shall not prejudice or affect any right of action or remedy which shall have accrued up to the date of termination.
- 19.2 Upon the expiry or termination (for any reason) of this Agreement or termination of any individual Service(s):
- (a) any unpaid Charges in respect of the affected Services provided prior such expiry or termination shall become immediately due and payable by the Client;

- (b) the Service Provider shall cease to provide the affected Services (save to the extent the Parties have agreed that the Service Provider shall continue to carry out any activities under Clause 20);
- (c) each Party shall:
  - (i) promptly return to the other Party all equipment, materials and property belonging to the other Party in connection with the provision of the Services under this Agreement;
  - (ii) except for any information referred to in Clause 14.4, immediately cease to use any Confidential Information of the other Party, return or destroy (at the other Party's option) any documents in its possession or control which contain or record any such Confidential Information; and erase all copies of such Confidential Information from its computer systems (to the extent possible), save to the extent the Service Provider is required to retain copies of the Confidential Information by Applicable Law; and
  - (iii) on request, certify in writing to the other Party that it has complied with the requirements of this Clause 19.2(c);

19.3 Upon termination of any individual Service(s) during the term of this Agreement:

- (a) without prejudice to the provision of Schedule 5 (*TUPE*), the Client shall pay exit Charges in respect of the terminated Services, which shall be according to the costs (including redundancy-related costs) incurred by the Service Provider as a result of the termination of the terminated Services; and
- (b) the Service Provider shall be entitled to adjust the Charges in respect of the remaining Services to reasonably reflect any increased costs incurred by the Service Provider as a result of the termination of the terminated Services.

19.4 The Parties shall work together to minimise, as far as reasonably practicable, the extent of any redundancies and redundancy-related costs upon termination or expiry of this Agreement or any individual Service.

19.5 The provisions of Clauses 1, 6.4, 7, 11, 12, 14 to 17 (inclusive), 19 to 21 (inclusive) and 23 to 30 (inclusive), paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** (inclusive) of Schedule 4 (*Embedded Personnel*) and paragraph **Error! Reference source not found.** of Schedule 5 (*TUPE*) shall survive expiry or termination of this Agreement and shall continue to apply as shall any other provision which by its nature is intended to survive expiry or termination.

## 20 Exit management

20.1 This Clause 20 shall apply on expiry or termination of this Agreement (howsoever arising) and on the termination of any individual Service(s) in accordance with Clause 18.

- 20.2 The Service Provider shall provide such assistance as the Client may reasonably require to effect a full and orderly transfer of the affected Services either to the Client or to a third party nominated by the Client. The Service Provider shall furnish the Client or such third party with all reasonable information or documents reasonably required to enable the Client or such third party to assume responsibility for the affected Services (including staffing details). All such assistance shall be provided within a reasonable time having regard to the circumstances of the transfer.
- 20.3 The Service Provider shall produce an exit management plan that sets out all the activities and the associated liaison and assistance which should be provided by the Service Provider under Clause 20.2 for the successful transfer of the affected Services to the Client and/or a third party nominated by the Client ("**Exit Management Plan**").
- 20.4 The Exit Management Plan shall, where possible, be delivered to the Client no later than three (3) months prior to the date of termination or expiry of this Agreement or termination of the affected Services (as applicable) and shall be agreed by the Parties.
- 20.5 The Exit Management Plan shall include:
- (a) a description of the activities to be performed in order to achieve an orderly transfer of the Services to the Client or a third party nominated by the Client (including the transfer of any Client data used by the Service Provider in connection with the Services);
  - (b) a projected timetable for the performance of such activities; and
  - (c) a description of the basis on which the Charges payable by the Client in respect of the performance of such activities will be calculated and an estimate of such Charges.
- 20.6 The Client shall, promptly on demand, pay the Service Provider's reasonable Charges in respect of the performance of its obligations under this Clause 20 on the basis set out in the Exit Management Plan (or as otherwise agreed in writing by the Parties).

## **21 Non-solicitation**

- 21.1 During the term of this Agreement and for a period of 6 months following its termination (howsoever arising), the Client undertakes that it shall not, without the prior written consent of the Service Provider (not to be unreasonably withheld), offer a contract of employment or a consultancy agreement (either directly or indirectly) to any member of the Service Provider Personnel unless such person is recruited by the Client as a result of an unsolicited response to a public recruitment advertisement that is not specifically targeted at the Service Provider Personnel.
- 21.2 During the term of this Agreement and for a period of 6 months following its termination (howsoever arising), the Service Provider undertakes that it shall not induce or encourage any officer, employee or consultant of the Client, with whom the Service Provider has had business dealings during the term of this Agreement, to seek an appointment with the Service Provider

unless such person is recruited by the Service Provider as a result of an unsolicited response to a public recruitment advertisement.

## **22 Warranties and undertakings**

22.1 Each Party warrants and undertakes to the other Party that:

- (a) it has the power and is duly authorised to enter into, perform and comply with its obligations under this Agreement;
- (b) this Agreement is executed by one of its authorised representatives; and
- (c) its entry into this Agreement and its performance of and compliance with its obligations under it do not and will not violate any restriction imposed by any law or regulation to which it is subject, its memorandum or articles of association, or any agreement to which it is a party.

## **23 Liability and insurance**

23.1 Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence; or
- (c) any other act or omission for which liability may not be limited or excluded by law.

23.2 Subject to Clause 23.1, neither Party shall be liable or responsible to the other in contract, tort (including negligence) or otherwise for:

- (a) any loss or corruption of data, any loss of revenue, business, contracts, anticipated savings or profits, or any loss of use of facilities; or
- (b) any special, indirect or consequential loss howsoever arising.

23.3 Subject to Clause 23.1, the Service Provider shall not be liable to the Client for any failure to comply, or delay in complying, with its obligations under this Agreement to the extent that such failure or delay is due (directly or indirectly) to:

- (a) the Service Provider (or any of the Service Provider Personnel) complying with any instruction given to it by the Client or a Service Recipient in connection with the Services;
- (b) a failure by the Client to comply, or a delay by the Client in complying, with its obligations under this Agreement; or

- (c) a failure by the Client to ensure that any dependencies set out in this Agreement are met.

23.4 Subject to Clause 23.1, in respect of each Contract Year, the Service Provider's total liability in relation to all causes of action arising under or in connection with this Agreement (whether arising under statute or in contract, tort (including negligence) or otherwise) in the Contract Year shall not exceed the higher of (i) [£50,000]; and (ii) the total amount of Charges payable under this Agreement in respect of that Contract Year.

*[Drafting note: financial limit on the Service Provider's liability, including the de minimis amount, to be considered on a case by case basis by reference to, and amongst other things, the value of the contract, the remuneration being paid to the Service Provider and the level and balance of risk for the Service Provider and the Client.]*

23.5 Both Parties agree to take out and maintain in force adequate insurance throughout the term of this Agreement, whether under the NHSLA Schemes or otherwise, in respect of their obligations under this Agreement.

## **24 Force Majeure**

24.1 Neither Party shall be liable to the other for any failure or delay in performing its obligations under this Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party ( "**Force Majeure Event**") provided that it:

- (a) promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- (b) uses all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

24.2 For the purposes of this Agreement, Force Majeure Events may include flood, earthquake, windstorm or other natural disaster; strike or other industrial dispute; failure of information technology systems (other than those controlled by the affected Party or its sub-contractors); war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion, riots or sabotage; nuclear, chemical or biological contamination or sonic boom; fire, explosion or accidental damage; loss at sea; extreme adverse weather conditions; or interruption or failure of utility services, including but not limited to electric power, gas or water.

24.3 Where the Service Provider incurs increased or additional costs as a result of a Force Majeure Event affecting either Party, the Service Provider shall be entitled to a reasonable adjustment to the Charges to reflect those increased or additional costs.

## **25 Compliance with laws**

### **25.1 Each Party shall:**

- (a) comply with all Applicable Laws relating to anti-bribery and anti-corruption, including the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- (c) have and maintain in place throughout the term of this Agreement adequate policies and procedures to ensure that it and its associated persons comply with Clauses 25.1(a) and 25.1(b), and enforce such policies and procedures where appropriate.

### **25.2 Each Party shall comply with all Applicable Laws relating to labour, anti-slavery and human trafficking laws, including the Modern Slavery Act 2015.**

### **25.3 Each Party shall:**

- (a) comply with all Applicable Laws relating to tax evasion and the facilitation of tax evasion including the Criminal Finances Act 2017; and
- (b) have and maintain adequate procedures to prevent the facilitation of tax evasion, including policies and training programmes where appropriate.

## **26 Nature of the Agreement**

### **26.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder except as expressly set out in this Agreement or with the written consent of the other Party, such consent not to be unreasonably withheld.**

### **26.2 The Service Provider may sub-contract the supply of Services or a part of the Services to any third party. The Service Provider shall maintain and, at the reasonable request of the Client, supply to the Client, an up-to-date list of any subcontractors engaged in the provision of any or all of the Services from time to time. In the event that the Service Provider wishes to outsource a significant element of Services to third party service providers, the Service Provider shall have regard to the views of the Client, acting reasonably, in respect of the evaluation of potential third party service providers. In doing so, the Service Provider will work with the Client to understand the Client's position in relation to the proposed procurement and identify and account for the Client's requirements.**

### **26.3 Each Party shall remain responsible for all acts and omissions of its subcontractors and the acts and omissions of those employed or engaged by its subcontractors as if they were its own.**

- 26.4 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except in accordance with Clause 11.
- 26.5 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 26.6 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 26.7 Each Party shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the other Party may reasonably require for the purpose of giving to the other Party the full benefit of all the provisions of this Agreement.
- 26.8 Clauses 14.2 and 15.6 are intended to benefit Service Recipients and may be enforced by a Service Recipient in relation to its own Confidential Information or the Personal Data of which it is a Controller, in each case subject to and in accordance with the terms and conditions of this Agreement and the Contracts (Rights of Third Parties) Act 1999. Notwithstanding the foregoing, the rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
- 26.9 Except as set out in Clause 26.8, no third party shall have any rights under or in connection with this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **27 Severance**

- 27.1 The Parties agree that, in the event that any provision of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that provision shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable to the extent permitted by Applicable Law. In such event, the Parties shall use their reasonable endeavours to replace the invalid or unenforceable provision by a provision that, to the extent permitted by Applicable Law, achieves the purposes intended under the invalid or unenforceable provision.

## **28 Relationship of the Parties**

- 28.1 This Agreement shall not be construed as giving rise to the relationship of principal and agent (save as otherwise expressly provided herein) or partnership or joint venture.
- 28.2 Subject to any express provisions to the contrary in this Agreement, the Service Provider shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

## **29 Notices**

- 29.1 All notices under this Agreement shall be in writing and sent to the receiving Party at its address, e-mail address or facsimile number set out in the Key Service Terms (or such other address, e-mail address or facsimile number as may be notified by that Party in writing from time to time).
- 29.2 Notices shall be deemed to have been duly given:
- (a) when delivered, if delivered by hand, courier or other messenger (including registered mail); or
  - (b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
  - (c) on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - (d) on the fifth Business Day following mailing, if mailed by airmail, postage prepaid.

## **30 Law and Jurisdiction**

- 30.1 The Parties acknowledge that, if this Agreement is an NHS Contract, the provisions of Section 9 of National Health Service Act 2006 shall apply to this Agreement.
- 30.2 This 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 laws of England and Wales.
- 30.3 Subject to Clause 30.1, each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim arising out of or in connection with this Agreement and its subject matter or formation (including non-contractual Disputes or claims).

## Schedule 2 – The Services

[INSERT DETAILS OF SERVICES PURCHASED – *Complete the Service Specification Template*]

## Appendix 1 to Schedule 2 – Data Set Specification(s) and Instructions

[INSERT DETAILS OF DATA SET – *Complete the Data Set Specification Template (Schedule2 – Appendix 1)*]

### Schedule 3 – Charges and Payments

INSERT PRICING DETAILS – *Complete the Pricing and Payment Template (Schedule 3).*

## Schedule 4 – Embedded Personnel

### 1 Definitions and Interpretation

1.1 In this Schedule 4, unless the context otherwise requires, the following definitions apply:

Term	Definition
<b>“Embedded Personnel”</b>	means the Service Provider Personnel whose names and job titles are set out in Appendix 1 to this Schedule 4 (if any), who are retained by the Service Provider under the Employment Contracts and whose services are made available to the Client and/or the Service Recipients by the Service Provider pursuant to paragraph 0 (references to the Embedded Personnel in this Schedule 4 mean either the Embedded Personnel collectively or each of the Embedded Personnel named in Appendix 1 individually as the context requires);
<b>“Employment Contracts”</b>	means the terms of employment between the Service Provider and the Embedded Personnel at the date of this Agreement, subject to any changes in the Embedded Personnel's salary or other benefits in accordance with the Service Provider's usual procedures from time to time.
<b>“Management Issues”</b>	means all those matters under the Employment Contracts requiring action, investigation and/or decisions by the Service Provider including in particular (by way of illustration only and without limitation) appraisals and performance issues, pay reviews and the award of other payments and benefits under the Employment Contracts, periods of annual, sick or other leave, absence of the Embedded Personnel for any other reason, any complaint about the Embedded Personnel (whether or not that would be dealt with under the Service Provider's disciplinary procedure) and any complaint or grievance raised by the Embedded Personnel (whether or not that would be dealt with under the Service Provider's grievance procedure);

### 2 Provision of the Embedded Personnel

- 2.1 The Service Provider shall engage the Embedded Personnel and make them available to the Client and/or the Service Recipients in connection with the Services in accordance with the terms of this Schedule 4.
- 2.2 Details of the Embedded Personnel, the roles assigned to them, the hosting organisation (i.e. the Client or a Service Recipient) to which they are assigned and the Premises from which they will work are set out in Appendix 1 to this Schedule 4. The Service Provider shall use its reasonable endeavours to procure that the Embedded Personnel shall perform the roles assigned to them in connection with the Services at the Premises as specified in Appendix 1 to this Schedule 4.

- 2.3 Where Embedded Personnel are made available to a Service Recipient, the Client shall be responsible for the Service Recipient's compliance with the Client's obligations under this Schedule 4 in accordance with Clause 5.
- 2.4 The Embedded Personnel's working hours shall be those set out in their respective Employment Contracts.

### **3 Management of Embedded Personnel**

- 3.1 The Employment Contracts shall remain in force during the term of this Agreement and the Embedded Personnel shall at all times remain employees of the Service Provider. Nothing in this Schedule 4 shall be construed, or have effect as construing, any relationship of employer and employee between the Client or any Service Recipient and the Embedded Personnel.
- 3.2 The Service Provider shall deal with any Management Issues concerning the Embedded Personnel.
- 3.3 The Client shall use its reasonable endeavours to provide any information, documentation, access to the Premises and its (or any Service Recipient's) employees and assistance (including by giving witness evidence) to the Service Provider to deal with any Management Issues concerning the Embedded Personnel whether under the Service Provider's internal procedures or before any court or tribunal.
- 3.4 The Embedded Personnel shall be under the day to day supervision of both the Client's Representative and the Service Provider's Representative and shall take instructions and directions from them, and comply with both the Service Provider's and the Client's policies, procedures and working practices. In the event of any conflict, the instructions or directions given by the Service Provider's Representative and the Service Provider's policies, procedures and working practices shall prevail.
- 3.5 The Client shall ensure that the Embedded Personnel shall have the authority to act as if they were employees of the Client and/or Service Recipient, as applicable, in the day to day operation of their role and, subject to the supervision, direction and control of the Client and/or Service Recipient, as applicable, shall be expected to perform their duties to a minimum professional standard reasonably expected of an employee of the Embedded Personnel's qualification and experience.
- 3.6 The Embedded Personnel shall not have any authority to enter into any contract with a third party or exercise executive power on behalf of the Client or any Service Recipient and they shall not be specifically authorised to do so or be presented to third parties as if they had such authority.
- 3.7 The Client shall allow the Embedded Personnel to attend internal meetings and training sessions run by or on behalf of the Service Provider for the benefit of its employees. The Embedded Personnel shall provide the Client and, where appropriate, any Service Recipients with reasonable notice of such meetings.

3.8 The Client shall:

- (a) not, and shall not require the Embedded Personnel to do anything that shall, breach any Employment Contract;
- (b) have no authority to vary the terms of any Employment Contract or make any representations to the Embedded Personnel in relation to the terms of any Employment Contract; and
- (c) provide the Service Provider with such information and assistance as it may reasonably require to carry out its obligations as the Embedded Personnel's employer.

3.9 If, during the term of this Agreement, any of the Embedded Personnel cease to be employed by the Service Provider or are transferred away from the roles assigned to them in Appendix 1 to this Schedule 4, then the Service Provider shall assign replacements to such roles as soon as reasonably practicable, subject to the agreement of the Client and the Service Provider's usual recruitment processes (where applicable). Notwithstanding the above, should the number of Embedded Personnel fall below the number of Embedded Personnel specified in Appendix 1 to this Schedule 4 at any time during the term of this Agreement, this shall not constitute a breach of this Agreement.

3.10 Each Party shall inform the other as soon as reasonably practicable of any significant matter that may arise during the term of this Agreement relating to the Embedded Personnel or their employment. The Representatives shall be the initial points of contact for all matters concerning the Embedded Personnel.

3.11 The Client shall not assign or sub-contract the Embedded Personnel or the Staff Services to any other firm, company or organisation (save as set out in Appendix 1 to this Schedule 4) without the prior written consent of the Service Provider and the Embedded Personnel.

#### **4 Payment of Embedded Personnel**

4.1 The Service Provider shall continue to pay salary and provide all contractual benefits due to the Embedded Personnel under their Employment Contracts, including any deductions from salary which are required by law.

4.2 The Service Provider shall be responsible for reimbursing Embedded Personnel for any out of pocket expenses that they incur in the performance of the Services in accordance with its own policies and procedures. Such expenses shall be reimbursed by the Client to the Service Provider, subject to and in accordance with Clause 7.2.

#### **5 Holiday and other absence**

5.1 The Embedded Personnel shall continue to be eligible for sick pay, holiday pay and any other contractual or statutory absence entitlements in accordance with their Employment Contracts, and shall remain subject to the Service Provider's approval and notification procedures.

- 5.2 The Service Provider shall consult with the Client before approving any holiday request made by the Embedded Personnel. The Client shall agree to all reasonable requests for absence in accordance with the Embedded Personnel's entitlements. The Client shall honour any pre-existing holiday commitments of the Embedded Personnel.

## **6 Liability and indemnity**

- 6.1 The Client shall take out and maintain for the term of this Agreement in full force with a reputable insurance company adequate insurance cover for any loss, injury and damage caused by or to the Embedded Personnel during the term of this Agreement.
- 6.2 During the term of this Agreement, the Client shall fulfil all duties relating to the Embedded Personnel's health, safety and welfare as if it was their employer and shall comply with the Service Provider's reasonable requests in connection with the Service Provider's duties in relation to the Embedded Personnel.
- 6.3 The Client shall indemnify the Service Provider fully and keep the Service Provider indemnified fully at all times against all and any costs (including legal costs), demands, claims, proceedings and liabilities, penalties, damages and interest in the event of any claim sustained or incurred by:
- (a) the Embedded Personnel in relation to any loss, injury, damage or costs arising out of any act or omission by the Client or its employees or agents;
  - (b) a third party, in relation to any loss, injury, damage or costs whatsoever arising out of any act or omission of the Embedded Personnel during the term of this Agreement.
- 6.4 The Client shall indemnify the Service Provider fully and keep the Service Provider indemnified fully at all times against costs (including legal costs) demands, claims, proceedings and liabilities, penalties, damages and interest in the event of any claim by the Embedded Personnel arising out of their employment by the Service Provider or its termination during the term of this Agreement to the extent that such claim relates to any act or omission of the Client or a Service Recipient.
- 6.5 Save as expressly set out in this Agreement, the Service Provider shall have no liability to the Client in respect of any acts or omissions of the Embedded Personnel committed under the direction or supervision of the Client or a Service Recipient.

## **7 Data protection**

- 7.1 The Client will collect and process information relating to the Embedded Personnel in accordance with the Client's privacy notice. For this purpose, the Client will provide the Service Provider and the Embedded Personnel with such privacy notice and ensure that the Embedded Personnel signs and dates it, returning it to the Client's Representative.

- 7.2 The Client will procure that the Embedded Personnel comply with the Client's data protection or privacy policy when handling Personal Data relating to any employee, worker, contractor, client, service provider or agent of the Client.
- 7.3 Failure to comply with the policies referred to in paragraph **Error! Reference source not found.** may be dealt with as a disciplinary matter and referred to the Service Provider and, in serious cases, may result in the termination of the Embedded Personnel's role in connection with the Services or even the Embedded Personnel's employment.

**Appendix 1 to Schedule 4 – Arrangements in respect of Embedded Personnel**

*[Drafting note: where embedded personnel will be provided to the Client or a Service Recipient under this agreement, details of those personnel, the roles they will carry out, the identity of the hosting organisation and the location(s) from which they will work should be set out using the template below. This template should be replicated for each hosting organisation and may be expanded or supplemented as necessary to capture any agreed details (provided that it includes, as a minimum, the information set out below).]*

*[Note: Please ensure that the arrangements specified in this schedule accord with each person's job description and contract of employment.]*

[No Embedded Personnel a will be provided under this Agreement.]

**OR:**

Hosting organisation and Premises		
<b>Hosting organisation: (Client/Service Recipient)</b>	[identify the hosting organisation – this should be the Client or one of the Service Recipients named in Schedule 2]	
<b>Premises:</b>	[identify the principle location(s) at which the embedded personnel will carry out their roles]	
Embedded Personnel		
Name	Position	Role
[insert name]	[insert job title]	[describe role that will be performed in connection with the Services]

## Schedule 5 – TUPE

*[Drafting note: this schedule deals with TUPE transfers on both commencement and termination of this agreement. Where there will be a TUPE transfer on commencement of this agreement, the CSU should ensure that it obtains full details of the transferring employees before signing this agreement.]*

### 1 Definitions and Interpretation

1.1 In this Schedule 5, unless the context otherwise requires, the following definitions apply:

Term	Definition
<b>“Affiliate”</b>	with respect to any entity, means any other entity controlling, controlled by or under common control with such entity. For the purposes of this definition, <b>“control”</b> means the power of a person to secure (i) by means of the holding of shares or the possession of voting power in an entity, or (ii) by virtue of any powers conferred by the articles of association or other document regulating or relating to an entity, that the affairs of that entity are conducted in accordance with that person’s wishes and <b>“controlled”</b> and <b>“controlling”</b> shall be construed accordingly.
<b>“Employee Information”</b>	means an up to date and accurate list containing for each individual the anonymised information listed in regulation 11(2) of the TUPE Regulations.
<b>“Employee Liabilities”</b>	means all liabilities, including claims for redundancy payments, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for age, sex, race or disability discrimination or discrimination on the grounds of religion, belief, age or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any other claims whether in tort (including negligence), contract or statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis.
<b>“Employment Costs”</b>	means all costs associated with the employment of the Supplier Personnel including all taxes, national insurance, pension contributions and other costs related to the same.
<b>“Entry Transferring Employees”</b>	means any person who immediately prior to the Commencement Date was an employee of the Client, a Service Recipient or any of their respective Affiliates or Existing Suppliers and assigned to Equivalent Services.
<b>“Equivalent Services”</b>	means any activities or services which are identical or substantially similar to any of the Services.

<b>Term</b>	<b>Definition</b>
<b>“Existing Supplier”</b>	means any third party supplier providing Equivalent Services to the Client or a Service Recipient or any of their respective Affiliates prior to the Commencement Date.
<b>“Exit Transferring Employees”</b>	means those Service Provider Personnel whose contract of employment will be transferred to the Client, a Service Recipient or any of their respective Affiliates or a Replacement Supplier pursuant to the TUPE Regulations on expiry or termination of this Agreement.
<b>“Replacement Supplier”</b>	means any third party supplier providing Equivalent Services to the Client or a Service Recipient or any of their respective Affiliates in substitution for any of the Services following termination or expiry of all or any part of this Agreement (or the cessation of any part of the Services).
<b>“Sub-Contractor”</b>	means any sub-contractor appointed to provide the Services or any part of them.
<b>“Transfer Date”</b>	means the date on which the Services, or any part of the Services, for whatever reason transfers from the Service Provider to the Client, a Service Recipient or any Replacement Supplier.

## 2 Transfer on entry

- 2.1 The Parties agree that the outsourcing of the Services to the Service Provider shall constitute a service provision change as defined in regulation 3(1)(b) of the TUPE Regulations and that on the Commencement Date the employment of the Entry Transferring Employees shall transfer to the Service Provider pursuant to the TUPE Regulations.
- 2.2 The Client shall be responsible for and shall indemnify and keep indemnified the Service Provider in full against:
- (a) any Employee Liabilities and Employment Costs arising out of or in connection with:
    - (i) the employment or engagement of the Entry Transferring Employees or any other person; or
    - (ii) the termination of the employment or engagement of any person;
 in each case by the Client, a Service Recipient and/or any of their respective Affiliates or Existing Suppliers during the period prior to the Commencement Date; and
  - (b) any failure by the Client, a Service Recipient and/or any of their respective Affiliates or Existing Suppliers to comply with its obligations under the TUPE Regulations.

- 2.3 The Service Provider shall be responsible for and shall indemnify and keep indemnified the Client in full against:
- (a) any Employee Liabilities and Employment Costs arising out of or in connection with the employment or engagement of the Entry Transferring Employees or (except as provided in paragraph 2.5) any other person by the Service Provider on and after the Commencement Date and before the Transfer Date;
  - (b) any failure by the Service Provider to comply with its obligations under the TUPE Regulations; and
  - (c) any claim against the Client, a Service Recipient and/or any of their respective Affiliates or Existing Suppliers by any Employee under regulation 4(9) or 4(11) of the TUPE Regulations.
- 2.4 The Client shall not without the prior written consent of the Service Provider:
- (a) increase or decrease the number of Entry Transferring Employees performing the Equivalent Services;
  - (b) increase the remuneration of any Entry Transferring Employee other than by an annual pay increase or otherwise change the terms and conditions of employee of any Entry Transferring Employee;
  - (c) terminate the employment or engagement of any Entry Transferring Employee; or
  - (d) cease to assign any Entry Transferring Employee to the Equivalent Services.
- 2.5 If any person employed or engaged by the Client or any of the Client's Affiliates other than an Entry Transferring Employee transfers or alleges that his employment or engagement (or any liability related thereto) transfers to the Service Provider or any of the Service Provider's Affiliates or any Sub-Contractor under the TUPE Regulations or otherwise as a result of the Service Provider or any of the Service Provider's Affiliates or any Sub-Contractor providing the Services, the parties will discuss how to address the situation. In the absence of any agreement, the Service Provider, any of the Service Provider's Affiliates or any Sub-contractor (as applicable) may dismiss any such person. The Client will indemnify and will keep indemnified the Service Provider and the Service Provider's Affiliates (for its or their benefit and the benefit of any relevant Sub-Contractor) from all Employee Liabilities which the Service Provider, any of the Service Provider's Affiliates or any relevant Sub-Contractor may incur as a result of the TUPE Regulations applying or being alleged to apply including any Employee Liabilities arising out of or in connection with any dismissal permitted by this paragraph **Error! Reference source not found.** (including the cost of employment until the date of dismissal).

### **3 Employee information**

- 3.1 Subject to any obligations under the Data Protection Laws, the Client will provide the Employee Information in respect of the Entry Transferring Employees to the Service Provider no later than 28 days prior to the Commencement Date.
- 3.2 Subject to any obligations under Data Protection Laws, the Service Provider will provide the Employee Information in respect of the Exit Transferring Employees to the Client upon request by the Client:
- (a) at any time during the last six months of the term of this Agreement; or
  - (b) at any time after notice to terminate this Agreement has been given by either Party.

### **4 Transfer on exit**

- 4.1 The Parties will comply with their obligations to provide information to the Client or a Replacement Supplier about the individuals assigned to the Services and to inform and consult with affected employees in relation to any potential transfer to a Replacement Supplier or the Client under the TUPE Regulations.
- 4.2 The Service Provider shall not without the prior written consent of the Client at any time during the last six months of the term of this Agreement or at any time after notice to terminate this Agreement or any individual Service has been given by either Party:
- (a) increase or decrease the number of Exit Transferring Employees performing the affected Services;
  - (b) increase the remuneration of any Exit Transferring Employee in respect of the affected Services other than by an annual pay increase or otherwise change the terms and conditions of employee of any such Exit Transferring Employee;
  - (c) terminate the employment or engagement of any Exit Transferring Employee in respect of the affected Services; or
  - (d) cease to assign any Exit Transferring Employee to the affected Services.
- 4.3 The Client shall be responsible for and shall indemnify and keep indemnified the Service Provider in full against:
- (a) any Employee Liabilities and Employment Costs arising out of or in connection with the employment or engagement of the Exit Transferring Employees or any other person by the Client, a Service Recipient or any of their respective Affiliates or Replacement Suppliers on or after the Transfer Date;
  - (b) any failure by the Client, a Service Recipient or any of their respective Affiliates or Replacement Suppliers to comply with its or their obligations under the TUPE Regulations; and

- (c) any claim against the Service Provider or a Sub-Contractor by any Exit Transferring Employee under regulation 4(9) or 4(11) of the TUPE Regulations.

4.4 The Service Provider shall be responsible for and shall indemnify and keep indemnified the Client in full against:

- (a) any Employee Liabilities and Employment Costs arising out of or in connection with the employment or engagement of the Exit Transferring Employees or any other person by the Service Provider on and after the Commencement Date and before the Transfer Date; and
- (b) any failure by the Service Provider or its Affiliates to comply with its or their obligations under the TUPE Regulations.