



Star

**CONTRACT TO SUPPLY SERVICES (NO TUPE)**

**[Insert Contract Title]**

**SEPTEMBER 2019 to AUGUST 2021**

**at**

**[Insert Name of Trust]**

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## Section 1 Parties to the Contract

THIS CONTRACT is made the \_\_\_\_\_ day of \_\_\_\_\_ [insert year]

### BETWEEN

- (1) [insert name of Trust or the Corporation whichever is the legal entity] of [insert address of Trust] ("the Trust") and
- (2) [insert name of contractor] Registered in England and Wales Company Registration No. [insert Registration No] the Registered Office of which is at [insert address of the Contractor] ("the Contractor");

### BACKGROUND

- (A) The Trust wishes to appoint a [insert name of services being purchased] provider to meet its requirements.
- (B) The Contractor is a specialist and experienced provider of [insert name of services being purchased].
- (C) Following the receipt of a tender from the Contractor dated [insert date of tender return] ("the Tender") the Trust has accepted the Tender of the Contractor to provide the Services, on the basis that the Contractor's Tender was the most economically advantageous tender to the Trust, and the Contractor has agreed to provide the Services on the terms and conditions of this Contract.

**IT IS HEREBY AGREED** between the Trust and the Contractor that:

1. This Contract constitutes the entire agreement between the parties in respect of the Services.
2. So long as the Contractor shall supply the Services in accordance with this Contract and to the satisfaction of the Trust, the Trust shall pay the Contractor the Contract Sum in accordance with the terms of the Contract.

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## **2.1. Definitions and Interpretations**

- 2.1.1. The following definitions shall be used for the purposes of interpreting this Contract and all documents relating thereto (and other definitions that are not applicable to all Sections shall be stated in the Section where the definition is first used and shall apply only to that Section and subsequent Sections as appropriate) except where the context requires otherwise:

**“Additional Services”** means any services which are not within the scope of the Services but which the Trust requests that the Contractor performs from time to time;

**“Approved”** or **“Approval”** means approved in writing;

**“Change of Control”** means the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all of the assets, of the contractor by another entity in a single transaction or a series of transactions.

**“Charging Rate”** means as defined in **Section 5** (Schedule of Prices);

**“Trust’s Representative”** shall mean the [insert Title of the person at the Trust responsible for this contract] or his/her nominated representative;

**“Commencement Date”** shall be [insert the commencement date];

**“Conditions”** means these Conditions of Contract (including the Schedules attached hereto);

**“Contract”** shall comprise the following documents (the **“Contract Documents”**) which shall be read as one document and which, in the event of conflict or contradiction between Sections, shall be given precedence in the order listed:

- a. Section 1 – Parties to Contract, entire agreement and appointment
- b. Section 2 – Conditions Of Contract
- c. Section 3 – Service Level Agreement
- d. Section 4 – Specification
- e. Section 5 – Schedule Of Prices;

**“Contractor’s Representative”** shall mean the named person responsible to the Contractor for the management of the Service;

**“Contract Period”** shall mean the period from the Commencement Date up to [insert end date of the contract], unless extended at the option of the Trust in accordance with **Clause 2.8.2** or terminated by the Trust in accordance with this Contract;

**“Contract Sum”** shall mean subject to **Clause 2.26**, the price calculated in accordance with **Section 5** (Schedule of Prices);

**“Contract Year”** means each 12 month period from the Commencement Date during the Contract Period;

**“Current Contractor”** shall mean [insert name of current contractor];

**Data Breach**" means any act or omission that (i) compromises the security, confidentiality or availability of the Personal Data; (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Contractor that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the Trust or Contractor to be in breach of data protection Law (in particular the GDPR);

**"Data Controller"** has the meaning set out in the GDPR;

**"Data Protection Particulars"** means, in relation to any Processing under this Contract: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects.;

**"Data Subject"** has the meaning set out in the GDPR;

**"DPA"** means the Data Protection Act 2018 and the rules and regulations made or having effect under it.

**“Equivalent Hourly Wage”** shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act);

**“FOIA”** shall mean the Freedom of Information Act 2000;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016.;

**“Information”** has the meaning given to it in **Clause 2.29**;

**“Monthly Contract Sum”** shall mean 1/12th of the Contract Sum;

**“the National Living Wage”** shall mean the most recently identified National Living Wage hourly figure (or equivalent set figure) published by the UK government;

**"Personal Data"** has the meaning set out in the DPA. For the purposes of this Contract, Personal Data shall include Special Category to Personal Data;



**"Processing"** has the meaning set out in the GDPR, and "Process" and "Processed" shall be construed accordingly;

**"Processor"** has the meaning of set out in the GDPR;

**"Relevant Staff"** shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.;

**"Review Date"** means the date of the annual review of the Contract, to take place on an agreed date, as more particularly detailed in the Specification;

**"Special Category of Personal Data"** means Personal Data that reveals such categories of data as are listed in Article 9(1) of the GDPR.

**"Service Level Agreement"** shall mean the document detailing the service levels the Contractor must perform to as set out in **Section 3**;

**"Services"** shall mean the services to be performed under this Contract as detailed in the Specification;

**"Specification"** shall mean the specification detailing the Services to be provided as set out in **Section 4**;

**"Staff"** shall mean personnel Approved in advance by the Trust provided by the Contractor to execute the Service;

**"Termination Date"** means the date of termination or expiry of this Contract;

**"Variations"** shall mean an executed variation in compliance with the requirements of **Clause 2.22**;

**"Variation to Contract Form"** means the form set out in Annex A to this Contract;

**"Working Days"** means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971.

2.1.2. References to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

2.1.3. The interpretation and construction of this Contract shall be subject to the following

provisions:

- a. The headings in this Contract are for the convenience of the parties only and do not affect its interpretation.
- b. Words importing the singular meaning include where the contract so admits the plural meaning and vice versa.
- c. Where the contract so admits words denoting the masculine gender includes the feminine and neuter genders and words denoting natural persons include Trusts and firms and all such words shall be construed interchangeably in that manner.
- d. Reference to a Condition, Clause, Schedule or a Section is to a Condition, Clause, Schedule or a Section of this Contract.

2.1.4. The word **"indemnify"** in this Contract shall mean to indemnify, keep indemnified and hold harmless the indemnified party from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgement which the indemnified party incurs or suffers and **"indemnity"**, **"indemnities"** and **"indemnifies"** have a corresponding meaning.

2.1.5. The word **"month"** means calendar month.

## **2.2. The Services**

2.2.1. From the Commencement Date and throughout the Contract Period the Contractor shall provide the Services upon the terms and subject to the conditions of this Contract, and subject thereto the Trust shall pay the Contract Sum.

2.2.2. The Contractor shall provide the Services strictly in accordance with and subject to the provisions of the Specification including, without limitation, as to description and frequency and in particular, but without prejudice to the generality of the foregoing, the Contractor shall:

2.2.2.1. Perform the Services in accordance with and to all and any standards specified in the Contract Documents in relation to the whole or part of the Services and if no standard is specified the standard shall be the standard specified in clause 2.2.2.2.

2.2.2.2. Promptly and diligently comply with and perform its obligations under this Contract with all proper skill, care and diligence and in accordance with the standards of good industry practice for services of the same nature of the Services.

2.2.2.3. Ensure that all materials which the Contractor supplies to the Trust, are owned by it and are free from defects in materials, design and workmanship.

- 2.2.2.4. Ensure that all materials and Equipment used in the performance of the Services where appropriate comply with any relevant British Standard specification and where required to be Approved under the terms of the Specification, are approved by the Trust's Representative.
  - 2.2.2.5. Perform the Services during the hours stated in the Specification or as otherwise agreed in writing with the Trust.
  - 2.2.2.6. Do all such acts and things and employ and deploy such Staff, persons, resources, equipment and assets as may be required to procure the uninterrupted provision of the Services to the Trust in accordance with the terms of this Contract.
- 2.2.3. The Contractor warrants and represents to the Trust that it has full power and authority to enter into and to carry out the provisions of this Contract and has the capacity and resources available to it to perform the Services.
- 2.2.4. Nothing in this Contract shall imply any relationship of agency or partnership between the Trust and Contractor in relation to the provision of the Services.

### **2.3. Transfer of The Services**

- 2.3.1. Prior to the Commencement Date and thereafter, the Contractor shall provide all such assistance and cooperation (at its own cost) as is necessary to procure that the transfer of the Services from the provision by the Current Contractor to the Contractor shall be implemented in such a way to ensure a seamless transfer from the Current Contractor to the Contractor with no reduction in service or quality.

### **2.4. Service of Notice**

- 2.4.1. Any notice or other communication which the Trust is required to give under this Contract shall be sufficiently given if sent by recorded or registered post or by facsimile to the last known address of the Contractor, or if delivered by hand to an authorised representative of the Contractor or the Contractor's Representative.

### **2.5. Conditions Affecting Execution Of The Service**

- 2.5.1. The Contractor shall be deemed to have satisfied himself as regards the means of communication with and access to the Trust, the nature of the Services, the conditions under which the Services may be carried out, the supply of, and conditions affecting labour, and generally to have obtained its own information on all matters affecting the execution of the Services and the prices tendered therefore.
- 2.5.2. No claim by the Contractor for additional payment shall be allowed on the grounds of any misunderstanding or misapprehension in respect of any such matter set out in **Clause 2.5.1** or otherwise or on the grounds of any allegation or fact that incorrect information was given to him by any person whether in the employment of the Trust or not, or of the failure on its part to obtain correct information nor shall the

Contractor be relieved from any risks or obligations imposed on or undertaken by the Contractor under this Contract on any such grounds.

- 2.5.3. In the case of any information provided by the Trust, the Trust makes no representations as to the accuracy of that information and shall accept no responsibility for representations or omissions in any document or other instruction provided by the Trust.

**2.6. Supply Of Staff**

- 2.6.1. The Contractor shall, unless specified elsewhere, supply Staff to the standards required to fulfil the Services in accordance with the Specification or good industry practice. The Contractor shall keep the turnover of Staff to a minimum and the Contractor shall supply sufficient extra competent Staff for any Additional Services or work covered by a Variation.

- 2.6.2. The Contractor shall appoint a Contractor Representative as a single point of contact for the purpose of all communications with the Trust and shall make such person available for regular monthly meetings to review progress of the Services.

**2.7. Care And Diligence**

Subject to clause 2.2.2:

- 2.7.1. The Contractor shall perform the Services in accordance with the terms of this Contract and with due skill, care and diligence and good industry practice using the most efficient and cost effective means and methods.
- 2.7.2. In performing the Services the Contractor shall comply with all applicable legal requirements and the Trust's requirements set out in the Specification or as otherwise notified to the Contractor from time to time and Conditions including (without limitation) insurer's requirements.
- 2.7.3. The Contractor shall carry out the Services in such a way as to ensure that the activities of the Trust are not disturbed or disrupted.

**2.8. Contract Period**

- 2.8.1. The Contractor shall provide the Services from the Commencement Date and throughout the Contract Period unless terminated in accordance with this Contract..
- 2.8.2. The Trust may, prior to the last day of the Contract Period, extend the Contract for a further period or periods of any duration, but in any case, the total duration of any extensions shall not exceed 24 months from the last day of the Contract Period.

**2.9. Hand-Over Co-Operation on Exit**

- 2.9.1. At the end of the Contract Period (prior to and following termination), the Contractor shall co-operate in good faith with the Trust at its own cost in the transfer of the Services to a new contractor or the Trust under arrangements to be

notified to the Contractor by the Trust to ensure the seamless transition and transfer of the Services from the Contractor to the new contractor or Trust with minimum disruption to the Trust and without reduction in service or quality.

- 2.9.2. The Contractor shall provide to the Trust all such information and assistance as the Trust shall require for the purposes of tendering and hand-over to a new contractor as and when such information is required.

**2.10. Invoicing**

- 2.10.1. All invoices should be sent by the Contractor to the Trust to:

[insert the name and address of the person who should receive the invoices]

- 2.10.2. Invoices for the Contract Sum shall be submitted by the Contractor to the Trust monthly in arrears, in accordance with the following:

2.10.2.1. One invoice for the Monthly Contract Sum. The invoice shall show a monthly total at the bottom of the invoice and clearly state the Contract Purchase Order Number and the Contract Identification Number.

2.10.2.2. An additional separate invoice shall be submitted by the Contractor per Purchase Order for all Additional Services and clearly stating the Purchase Order Number.

- 2.10.3. The Contractor must ensure that it has received a Purchase Order as authorisation, prior to commencing any Additional Services.

- 2.10.4. The Trust shall pay valid, undisputed invoices within thirty (30) days following the date of the relevant invoice.

- 2.10.5. Where the Contractor submits an invoice to the Contractor in accordance with paragraph 2.12, the Contractor will consider and verify that invoice in a timely fashion;

- 2.10.6. The Contractor shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Contractor has determined that the invoice is valid and undisputed;

- 2.10.7. Where the Contractor fails to comply with paragraph 1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph (2) after a reasonable time has passed;

- 2.10.8. Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:

2.10.8.1. Provisions having the same effect as clauses 2.10.4-2.10.6 of this Contract; and

2.10.8.2. A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 2.10.4-2.10.6 of this Contract.

- 2.10.8.3. In clause 2.10.4, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Trust in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

**2.11. Returns**

- 2.11.1. Without prejudice to **Clause 2.32**, the Contractor shall report in writing each calendar month to the Trust’s Representative in a format to be approved by the Trust, providing all relevant information as may be requested by the Trust from time to time. The Contractor warrants that such reports shall be accurate and complete.

**2.12. Correspondence**

- 2.12.1. All correspondence by the Contractor to the Trust shall be sequentially numbered and sent to the designated Trust’s Representative.
- 2.12.2. The Contractor is required to inform the Trust’s Representative prior to the Commencement Date (or if details change) of the contact name, address, telephone (including mobile telephone) and facsimile numbers and e-mail address of the Contractor’s Representative.

**2.13. Contractor’s Contract Representative**

- 2.13.1. The Contractor’s Representative shall be the duly authorised representative of the Contractor for all purposes connected with this Contract and accordingly any information, instruction or other communication given and/or addressed to the Contractor’s Representative shall be deemed to have been given or made to the Contractor. The Contractor shall not change the Contractor’s Representative without the prior Approval of the Trust (not to be unreasonably withheld).
- 2.13.2. The Contractor shall inform the Trust’s Representative from time to time of the identity of any person proposed to be authorised to act for any period as deputy for the Contractor’s Representative before the start of such period. Any person proposed to be authorised to act as deputy for the Contractor’s Representative shall first be Approved by the Trust.

**2.14. Programme**

- 2.14.1. The Contractor shall provide no less than one month prior to the Commencement Date, a detailed programme indicating the operations that shall be performed during the Contract Period in order to fulfil the obligations of the Contract. The details of such programme (which shall be attached to the Specification) shall require the Approval of the Trust and thereafter shall form an integral part of this Contract.

**2.15. Performance Monitoring**

- 2.15.1. The Contractor's Representative shall attend monthly performance monitoring meetings called by the Trust's Representative at which a Monthly Contract Review Report shall be submitted by the Contractor, as defined in the Service Level Contract.
- 2.15.2. The Trust will measure the Contractor's performance against the Key Performance Indicators and the associated thresholds as defined in the Service Level Agreement.
- 2.15.3. If the Contractor fails to meet the KPI thresholds as defined in [insert number of Schedule(s)] in any one month it shall be deemed to be in default of the Contract and the Trust may without prejudice to its other rights and remedies invoke any of the provisions set out in **Clause 2.38**.
- 2.15.4. The Contractor shall use all reasonable endeavours to reduce the costs of providing the Services per Contract year and shall put in place within 28 days following the Commencement Date and subject to the Approval of the Trust a plan illustrating how such savings could be achieved.

**2.16. Disaster Recovery**

- 2.16.1. The Contractor shall produce a written disaster recovery plan to ensure the Services are not affected, such plan to be provided to the Trust by no later than the Commencement Date and to be subject to Approval by the Trust. Any subsequent amendments to such disaster recovery plan must be approved in advance by the Trust.

**2.17. Security Procedures**

- 2.17.1. The Contractor shall ensure that all Staff and sub-contractors, who may require access to the Trust in connection with the Services are provided with an identity document issued by the Trust through the Trust's Representative and this shall be visible at all times.
- 2.17.2. The Contractor's Representative shall ensure that all security requirements are met, including obtaining the necessary documents for Contractor Staff and sub-contractors and vehicles, the safe custody of those documents and their ultimate recovery and return on completion of this Contract. The Contractor's Representative shall also be responsible for complying with any additional security requirements which may arise during the Contract Period. The Contractor shall familiarise the Staff and its sub-contractors with the security arrangements within the Trust.
- 2.17.3. The Contractor shall not employ any individual who does not have the right to work in the United Kingdom. The Contractor shall comply with all relevant legislation, including (without limitation) the Asylum and Immigration Act 1996 and the code of practice (Full guide to employers on preventing illegal working in the UK October 2013) or such other act or regulations in force and provide evidence in writing to the Trust of its compliance. The Contractor shall indemnify the Trust for any breach of this Clause.

**2.18. Equal Opportunities Policy**

- 2.18.1. The Contractor shall comply with the Trust's Equal Opportunities Policy, a copy of which can be obtained from the Trust. The Contractor shall provide a copy of its Equal Opportunities Policy and monitoring processes.

**2.19. General**

- 2.19.1. The failure or delay of either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- 2.19.2. All intellectual property rights produced from or arising as a result of the performance of the Contract, so far as not already vested, are hereby assigned by the Contractor to the Trust and shall become the absolute property of the Trust. The Contractor shall do all that is reasonably necessary to ensure that such rights vest in the Trust by the execution of appropriate instruments or the making of agreements with third parties.
- 2.19.3. In the event that any term, condition, provision of a Clause of this Contract shall be nullified or made void in whole or in part by any statute, regulation or order or by the decision or order of any Court having jurisdiction, the remaining terms conditions and provisions and the remainder of the affected provision shall remain in full force and effect.
- 2.19.4. Except as expressly stated otherwise, an entity which is not expressly a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("**the Act**") to enforce any term of this Contract and the provisions of the Act shall be expressly excluded from this Contract.
- 2.19.5. The Contractor shall act as an independent contractor for the purposes of this Contract and nothing in this Contract shall and no action taken by the parties pursuant to this Contract shall constitute or be deemed to constitute a partnership, association, joint venture or other co-operative entity between the Trust and the Contractor and neither party is authorised to act as agent for the other.
- 2.19.6. Neither the Contractor nor any of the Contractor's employees, agents or sub-contractors are authorised to incur any expenditure on behalf of or for the account of the Trust, or to pledge the credit of the Trust, or to hold itself out as an authorised signatory of the Trust, without the Trust's prior written consent.
- 2.19.7. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies otherwise provided by Law.
- 2.19.8. Each party warrants to the other that the signatory or signatories to this Contract are duly authorised and empowered to execute this Contract on its behalf and so as to bind it to the terms of this Contract.



2.19.9. This Contract may be executed in any number of counterparts, each of which, when executed shall be an original, and all the counterparts together shall constitute one and the same instrument.

2.19.10. This Contract together with the documents referred to herein set out the entire agreement between the parties in relation to the subject matter hereof and supersede any previous agreement relating to the subject matter of this Contract, whether written or oral. Each party acknowledges and agrees that, except where otherwise specified, in entering into this Contract it places no reliance on any representation or warranty in relation to the subject matter of this Contract, nor shall have any remedy in relation to the subject matter of the same, save as expressly set out in this Contract. The only remedy available to either party for breach of such warranties or representations shall be for breach of contract under the terms of this Contract. Nothing in this Clause or in this Contract shall operate to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.

**2.20. Transfer And Sub-Letting**

2.20.1. The Contractor shall not assign, sub-let, sub-contract, transfer or otherwise dispose of this Contract or any part thereof without the prior Approval of the Trust.

2.20.2. The Contractor shall manage the changeover of any sub-contractors to ensure there is no break or disruption to services.

**2.21. Overtime, Shift Working And Night Work**

2.21.1. The Contractor shall comply with the current Working Time Regulations 1998.

**2.22. Variations**

2.22.1. The Contract shall be subject to adjustment only when a Variation to Contract Form has been signed by the Trust's Representative.

2.22.2. The Contractor shall notify the Trust of any occurrence it considers should give rise to the issue of a Variation to Contract Form within five (5) working days of the event first becoming known to the Contractor. The notification shall be fully supported with detailed time and cost implications.

2.22.3. The value of all additions and omissions agreed by the Trust on a Variation to Contract Form shall be added to or deducted from the Contract Sum and divided equally in the next twelve months or the remaining number of months of the calendar year.

2.22.4. Any instruction issued orally varying the terms of the Contract shall have no effect until confirmed by the Trust by a Variation to Contract Form within 24 hours following such instruction.

2.22.5. The Contractor shall forthwith comply with any Variation to Contract Forms issued by the Trust's Representative.

- 2.22.6. Should the Contractor fail to commence to carry out, within 14 (fourteen) working days of the date of issue, any reasonable instructions issued in accordance with this Condition on receipt of a Variation to Contract Form, the Trust's Representative may issue a written notice requesting compliance. If the Contractor fails to comply with the instructions directed by the Trust's Representative within 7 (seven) working days of receipt of such a notice the Trust may, notwithstanding its rights of termination, have the instructions carried out by his own employees or other contractors. Any excess costs incurred by the Trust shall be recoverable from the Contractor subject to the addition of a reasonable percentage (subject to a minimum 10%) to cover the Trust's supervision and establishment charges.
- 2.22.7. The value of all variations, additions and omissions shall be ascertained by valuation in accordance with rates contained in **Section 5** (Schedule of Prices).
- 2.22.8. Should the Trust's Representative issue a Variation to Contract Form and a dispute arise regarding the valuation of the work under the Variation then **Clause 2.45** shall apply.
- 2.22.9. The Trust may instruct the Contractor to carry out Additional Services from time to time.

**2.23. Price**

- 2.23.1. The amount payable to the Contractor for the provision of the Services (excluding any Variations of Contract) in accordance with this Contract for the first Contract Year shall be the sum set out in **Section 5** (Schedule Of Prices) and entitled "Contract Sum".
- 2.23.2. The price payable to the Contractor for the provision of the Services shall be subject to review in accordance with **Clause 2.26** upon each Review Date in respect of the Contract Year commencing on such Review Date.
- 2.23.3. Variations will be valued and paid as **Clause 2.22**.
- 2.23.4. The Charging Rates will be subject to review in accordance with **Clause 2.26** upon each Review Date in respect of the twelve month period commencing on such Review Date.
- 2.23.5. Without limitation the Contract Sum and the Charging Rate are inclusive of all items and matters set out in **Clauses 2.2, 2.34, and 2.41**.
- 2.23.6. The Contract Sum and Charging Rates are exclusive of VAT, but inclusive of all other costs, charges and expenses whatsoever.

**2.24. Value Added Tax**

- 2.24.1. The Trust shall pay to the Contractor, in addition to the Contract Price, where applicable, a sum equal to the Value Added Tax chargeable on the value of the Service provided in accordance with this Contract.
- 2.24.2. The Contractor shall, if so requested by the Trust, furnish such information as may

reasonably be required by the Trust as to the amount of Valued Added Tax chargeable on the Service in accordance with the Contract and payable by the Trust to the Contractor in addition to the Contract Price. Any overpayment by the Trust to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of **Clause 2.25**, Recovery of Sums Due.

**2.25. Recovery Of Sums Due**

- 2.25.1. Whenever under this Contract, any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under this Contract or under any other Contract with the Trust.

**2.26. Review Of Price And Charging Rates**

- 2.26.1. The Contract Sum and the Charging Rates shall be reviewed on the first Review Date and each subsequent Review Date during the Contract Period by the Trust and the Contractor. If the parties are unable to reach agreement as to the revised Contract Sum and Charging Rates to apply during that Contract Year within one month following such Review Date then, the Contract Sum and Charging Rates then in force under the terms of this Contract shall be increased in accordance with the yearly increase figures stated in Section 5 (Schedule of Prices)

**2.27. Unlawful Discrimination**

- 2.27.1. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of any enactment or regulation relating to the employment or recruitment of Staff or personnel.
- 2.27.2. The Contractor shall take all reasonable steps to secure the observance of the provisions of **Condition 2.27.1** by all Staff or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

**2.28. Corrupt Gifts and Payment of Commission**

- 2.28.1. The Contractor shall not offer or give, or agree to give, to any employee or representative of the Trust, any gift or consideration of any kind as an inducement or reward for doing or refraining from, or for having done, any act in relation to the obtaining or execution of this Contract or any other contract with the Trust, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any other contract with the Trust. The Contractor's attention is drawn to the criminal offences created by the Bribery Act 2010.
- 2.28.2. Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without his knowledge), shall entitle the Trust to terminate this Contract and recover from the Contractor the amount of any loss resulting from such determination and/or recover from the Contractor the amount or value of any such gift, consideration or commission, as the Trust shall think fit.

**2.29. Confidentiality and Data Protection**

2.29.1. The Contractor undertakes to:

- 2.29.1.1. keep confidential and procure that its managers and other staff keep confidential all information (written, oral or in any form) concerning the affairs of the Trust that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Contract or otherwise obtains or receives during or in connection with the provision of the Services (“the **Information**”). The term “Information” extends to all knowledge and information relating to the activities, operations, organisations, finances, business, processes, methods of and concerning the Trust and any of its staff, students or suppliers;
- 2.29.1.2. not without the Trust’s written consent to disclose the Information in whole or in part to any other person, save those of its employees, agents and sub-contractors involved in the provision of the Services and who have a need to know the same; and
- 2.29.1.3. use the Information solely in connection with the provision of the Services and not for its own benefit or the benefit of any third party.

2.29.2. The provisions of **Clause 2.29.1** shall not apply to the whole or any part of the Information to the extent that it is:

- 2.29.2.1. already in the Contractor’s possession on the date of its disclosure without breach of any obligation of confidentiality;
- 2.29.2.2. in the public domain other than as a result of a breach of this Clause; or
- 2.29.2.3. independently developed by the Contractor without reference to or use of the Information.

2.29.3. The Contractor undertakes to make all its relevant Staff, employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this **Clause 2.29**, and, without limitation to the foregoing, to take all such steps as shall from time to time be necessary to ensure compliance by its Staff, employees, agents and sub-contractors with the provisions of this **Clause 2.29**.

2.29.4. If Personal Data is processed by the Contractor on the instructions of the Trust the parties acknowledge that under GDPR and the DPA that the Trust is the Controller and the Contractor is the Processor. The only Processing of Personal Data that the Controller is authorised to do as a Processor of the Trust are listed in Schedule 1 (Data Protection Particulars) of this Contract.

2.29.5. The Contractor shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the Trust’s written instructions from time to time and shall not Process Personal Data for any other purpose. If the Contractor is required by Law to Process Personal Data otherwise than in accordance with this

Clause 2.29, immediately inform the Trust of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).

- 2.29.6. The Contractor shall provide all reasonable assistance to the Trust in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Trust, include:
  - 2.29.6.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 2.29.6.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Specification;
  - 2.29.6.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.29.6.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.29.7. The Contractor will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the European Economic Area except with the Trust's prior written consent and where such consent is given, take such actions and enter into such agreements as the Trust may require to ensure that such transfer or disclosure complies with Law.
- 2.29.8. The Contractor will keep a record of any Processing of Personal Data it carries out under the Contract.
- 2.29.9. The Contractor shall not disclose Personal Data to any person except under this Contract or with your written consent.
- 2.29.10. The Contractor shall ensure that access to Personal Data is limited to:
  - 2.29.10.1. those employees who need access to Personal Data to meet the Contractor's obligations under this Contract; and
  - 2.29.10.2. in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.
- 2.29.11. The Contractor shall ensure that employees that require access to Personal Data:
  - 2.29.11.1. are informed of the confidential nature of Personal Data;
  - 2.29.11.2. have undertaken training in handling Personal Data in

accordance with the GDPR and DPA; and

- 2.29.11.3. are aware both of the Contractor's duties and their personal duties and obligations under the GDPR, DPA and this Contract.
- 2.29.12. The Contractor shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.
- 2.29.13. The Contractor shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Trust or as provided for in this Contract.
- 2.29.14. The Contractor shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data that have been reviewed and approved by the Trust as appropriate having taken account of the:
  - 2.29.14.1. nature of the Personal Data to be protected;
  - 2.29.14.2. harm that might result from a Data Breach;
  - 2.29.14.3. state of technological development; and
  - 2.29.14.4. cost of implementing any measures.
- 2.29.15. Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.
- 2.29.16. The Contractor shall, upon becoming aware, immediately and in any event within 24 hours notify the Trust of any Data Breach and shall work together with the Trust to provide the Trust with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by the Trust; (ii) facilitating interviews with the Contractor's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Trust to investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).
- 2.29.17. The Contractor shall not engage another Processor to Process Personal Data ("a Sub-Processor") except with the Trust's prior specific written

authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Clause on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Clause.

- 2.29.18. The Contractor shall assist and fully co-operate with the Trust to enable it to comply with its obligations as a Controller under and in accordance with Law including in relation to the security of Processing, data subject right requests, reporting personal Data Breaches to the supervisory authority and conducting data privacy impact assessments. The Contractor shall notify the Trust within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract.
- 2.29.19. The Contractor shall promptly comply with any request from the Trust requiring the Contractor to amend, transfer or delete Personal Data. At the Trust's request, the Contractor shall provide to the Trust a copy of all Personal Data held by it in the format and on the media reasonably specified by the Trust.
- 2.29.20. The Contractor shall at any time on the request of the Trust, return all Confidential Information and/or data (including any Personal Data that the Contractor Processes for and on behalf of the Trust) to that Trust and/or permanently delete the same from its systems, including any back-up copies.
- 2.29.21. The Contractor shall at the Trust's option, delete or return to the Trust all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Trust is required to retain Personal Data by Law.
- 2.29.22. The Contractor shall make available to the Trust all information necessary to demonstrate our compliance with the obligations under this Clause 2.29 and allow for and contribute to audits, including inspections, conducted by the Trust or another auditor mandated by the Trust.
- 2.29.23. The Contractor shall immediately inform the Trust if, in its opinion, an instruction from the Trust infringes Law.
- 2.29.24. The Contractor shall, in connection with this Contract, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Contractor shall comply with its obligations as a Processor under and in accordance with Law.
- 2.29.25. The Contractor shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the Data Subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purpose

for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.

2.29.26. The Trust may, at any time on not less than 30 working days' notice, revise this Clause 2.29 by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme.

2.29.27. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Trust may on not less than 30 working days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

2.29.28. The Contractor shall Process Personal Data in performing the Services only for as long as required and for no longer than the term of this Contract.

2.29.29. The Contractor warrants that it shall:

2.29.29.1. Process the Personal Data in compliance with Law; and

2.29.29.2. take appropriate technical and organisational measures against Data Breach.

2.29.30. The Contractor agrees to indemnify and keep indemnified and defend at its own expense the Trust against all costs, claims, damages or expenses incurred by the Trust or for which the Trust may become liable due to any failure by the Contractor or its employees or agents to comply with any of its obligations under this Clause.

## **2.30. Freedom of Information Act**

2.30.1. The Contractor acknowledges and agrees that the Trust is subject to the FOIA and insofar as the Contractor acts as agent for the Trust and holds records and information in relation thereto shall:

2.30.1.1. comply with the Trust's instructions and directions, including any publication scheme, policies and codes of practice issued by the Trust from time to time in relation to FOIA;



- 2.30.1.2. subject to Clause **2.30.1** otherwise to comply with FOIA;
  - 2.30.1.3. promptly and properly comply with any valid lawful access requests pursuant to the Trust's publication scheme from time to time;
  - 2.30.1.4. promptly notify and keep informed (with full supporting details if requested) the Trust of all and any access requests, all complaints and investigations in relation to the FOIA (whether by an individual, the Office of the Information Commissioner or otherwise) and to deal with the same in accordance with the Trust's instructions from time to time.
- 2.30.2. The Contractor agrees to and hereby indemnifies the Trust for losses incurred or suffered as a result of a direct or indirect breach of this **Clause 2.30** and/or due to the negligence of the Contractor in relation thereto. This indemnity shall survive termination of this Contract.

**2.31. Use of Documents, Information, etc.**

- 2.31.1. Except with the prior written consent of the Trust, the Contractor shall not disclose this Contract or any provision thereof or any matters relating thereto to any person other than a person employed by the Contractor in carrying out this Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of this Contract.
- 2.31.2. Except with the prior written consent of the Trust, the Contractor shall not make use of this Contract or any information issued or furnished by or on behalf of the Trust, otherwise than for the purposes of this Contract.
- 2.31.3. Any specifications, plans, drawings or other documents or IT equipment, software or hardware issued by or on behalf of the Trust for the purposes of this Contract remain the property of the Trust and shall be returned to the Trust immediately on the Termination Date.
- 2.31.4. Nothing in this Contract shall grant to the Contractor any right, title or interest in any intellectual property owned or controlled by the Trust.
- 2.31.5. If, at the Trust's absolute discretion, the Contractor or any of its staff are given access to the Trust's IT systems (including without limitation the Trust's intranet) the Contractor warrants that it shall and shall procure that such staff shall only use such systems and any information accessed for the strict purpose of providing the Services and shall keep the same confidential and shall not disclose information accessed to any third party without the express written consent of the Trust.

**2.32. Right Of Audit**

- 2.32.1. The Contractor shall keep full and proper records and all the documents relating to the transactions affecting the Services. The Trust shall have, at all reasonable times and upon notice to the Contractor, access to and the right to reproduce the Contractor's and its sub-contractors books, documents, correspondence,

instructions, receipts, vouchers and memoranda of any description including that stored on microfilm or in computers which shall be made available in legible form together with any other information (such as codes) needed for its comprehension. (hereinafter referred to collectively as 'the Documents'), plus access to the Contractors personnel and Staff and their records relating to the Services undertaken under this Contract for the purpose of auditing and verifying costs of the Services and for any other reasonable purposes. The Contractor, or its sub-contractors shall preserve the Documents for seven (7) years after the Termination Date.

**2.33. Advertising**

- 2.33.1. The Contractor shall not publish or reproduce or arrange any press releases in connection with this Contract without prior written consent of the Trust.

**2.34. Rates of Wages, Hours and Conditions**

- 2.34.1. The Contractor shall ensure;
- 2.34.1.1. that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the National Living Wage;
  - 2.34.1.2. that all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the National Living Wage;
  - 2.34.1.3. that they provide to the Employer such information concerning the National Living Wage and the performance of its obligations under this Clause 2.34 as the Employer may reasonably require and within the deadlines it reasonably imposes.

**2.35. Contractor's Responsibilities And Indemnification**

- 2.35.1. Subject to **Clause 2.36**, the Contractor shall be responsible for all damage to or loss of property (including destruction) and injury to or death of any person arising out of or in consequence of this Contract and shall indemnify and keep indemnified the Trust and all its respective employees, agents, contractors and invitees against all claims proceedings, damages, costs and expenses in respect of any such damage, loss, injury or death save to the extent that the Contractor shall not be responsible for any damage, loss or injury to or death of any person caused by the negligence or wilful act or omission of the Trust.
- 2.35.2. The Contractor shall in all matters arising in the performance of the Services at all times observe, perform and comply with all statutory and other obligations, regulations and by-laws applicable to the performance of the Services (including without limitation health, hygiene and safety regulations) and shall keep the Trust and all its respective employees, agents, contractors and invitees indemnified from and against all costs, claims, expenses and damages arising from any breach of any such obligations, regulations or by-laws or arising from the negligence or wilful default of the Contractor.
- 2.35.3. Without prejudice to the generality of the foregoing the Contractor shall observe, perform and comply with all the relevant provisions of the Fire Precautions Act

1971, Health & Safety at Work Act 1974, Control of Pollution Act 1974, Provision and Use of Work Equipment Regulations 1998, Control of Major Accident Hazard Regulations 1999, Control of Substances Hazardous to Health Act, the Public Health Acts, any amendments or re-enactment thereof and/or any other relevant legislation and good working practice.

**2.36. Limitation of Liability**

2.36.1. The following provisions set out the parties' entire liability (including any liability for the acts and omissions of their respective employees, agents or sub-contractors) to each other in respect of:

2.36.1.1. any breach of their respective contractual obligations under this Contract; and

2.36.1.2. any representation, statement or tortuous act or omission, including negligence, arising under or in connection with this Contract.

2.36.2. Any act or omission on the part of either party or its employees, agents or sub-contractors, falling within **Clause 2.36** shall, for the purpose of this **Clause 2.36** be known as an "**Event of Default**".

2.36.3. Notwithstanding any other provision in this Contract the Contractor accepts unlimited liability for:

2.36.3.1. death or personal injury caused by the negligence of the Contractor, and

2.36.3.2. any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982; and

2.36.3.3. fraud committed by the Contractor.

2.36.4. Notwithstanding any other provision in this Contract the Trust accepts unlimited liability for:

2.36.4.1. death or personal injury caused by the negligence of the Trust; and

2.36.4.2. any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982; and

2.36.4.3. fraud committed by the Trust.

2.36.5. The Trust will be under no liability to the Contractor whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss, pure economic loss, loss of profits, loss of business, loss of contract, depletion of goodwill and like loss and including contractual damages suffered by the Contractor and/or payable by the Contractor to a third party.

2.36.6. Subject to **Clause 2.36.4** the Trust's liability for each Event of Default shall not

exceed the value of this Contract over one Contract Year, save that such limitation will not apply in respect of any liability of the Trust for the Charges.

- 2.36.7. The parties each confirm that all exclusions and limitations of liability set out in this Clause **2.36** are fair and reasonable having regard to the value and term of this Contract.

## **2.37. Contractor's Insurances**

- 2.37.1. The Contractor shall carry and maintain in force for the duration of this Contract, the following insurance's:

2.37.1.1. **Public/Products Liability Insurance** – unless the Trust shall have approved in writing other arrangements satisfactory to the Trust, the Contractor or any of its sub-contractors shall, from the Commencement Date until the Termination Date, insure against the Contractors liability in respect of any loss or damage arising from any Public and/or Product liability. Such insurance's shall be effected with a reputable insurer. The Contractor shall produce to the Trust's Representative, the policy and/or satisfactory evidence of insurance cover at least 12 weeks prior to Commencement Date and, annually during the Contract Period and, from time to time as may be required. All monies received under such policy shall be applied in or towards the loss or damages but this provision shall not affect the Contractors liabilities under this Contract.

2.37.1.2. The Contractor shall, prior to the Commencement Date insure against its liability for damage or injury occurring during the Contract Period to any person (including any employee of the Trust) or to any property. Such insurance shall be effective for an amount not being less than **£5,000,000 (five million pounds)**, with a reputable insurer. The Contractor shall from time to time, when so required by the Trust, produce the policy and the receipts for the premiums or other satisfactory evidence of insurance cover.

2.37.1.3. **Employers Liability Insurance** – the Contractor shall insure and shall keep insured with a reputable insurer, for an amount not being less than **£5,000,000 (five million pounds)** in respect of the Contractor's liability arising from personal injury to or death of any person under a contract of service or apprenticeship with the Contractor or any sub-contractor. The Contractor shall from time to time when so required by the Trust produce the policy and the receipts for the premiums or satisfactory evidence of insurance cover. The terms of any such policy shall also include the provision to indemnify the Trust as mentioned in **Clause 2.35** provided always that in respect of such persons in such manner that the Trust is indemnified under the policy but the Contractor shall require such sub-contractor to produce to the Trust when required, the policy, the receipt for premiums or other such satisfactory evidence of the insurance cover.

## **2.38.     Default**

- 2.38.1. If the Contractor fails to comply with any of its obligations under this Contract at any time, including (without limitation) failure to meet the Key Performance Indicators as defined in the Service Level Contract ("**Default**"), then without prejudice to any other right or remedy which the Trust may possess in respect of such a failure the Trust may do one or more of the following:
- 2.38.1.1. Without prejudice to the provisions of **Clauses 2.40** issue a default notice ("**Default Notice**") to the Contractor requiring the Contractor to remedy such Default within such time as may be specified in the Default Notice by providing, or providing again (as the case may be) without further charge to the Trust any part of the Services to which such failure relates.
  - 2.38.1.2. Without terminating this Contract in whole or part itself provide or procure the provision of any part of the Services to which such Default relates until such time as the Contractor's Representative shall have provided to the satisfaction of the Trust's Representative that such part of the Services will once more be provided by the Contractor to the specified standard or at the Trust's option until such later time as the Trust's Representative may specify as being reasonable in all the circumstances.
  - 2.38.1.3. Without terminating the whole of this Contract, terminate any aspect of the Services to which the Default relates, and thereafter itself provide or procure the provision of the said Services and without terminating the whole of this Contract in whole or part deduct from any monthly Contract Sum payable to the Contractor such proportion thereof as is fair and reasonable having regard to the period of the relevant Default and to the terms of this Contract.
- 2.38.2. The remedies of the Trust under **Clause 2.38.1** may be exercised successively in respect of any Default by the Contractor. Where the Contractor fails to remedy the Default as defined in the Default Notice, or fails to remedy the Default within the time allowed, the Trust will be entitled (without prejudice to any other rights and remedies it may have) to levy a charge (a "monetary default") for each Default Notice. The valuation of a monetary default in a Default Notice will reflect the genuine value of the work that the Contractor has contracted to do but has not done, or has not done in the satisfactory manner. Where a monetary default has been levied and the Contractor has rectified the Default but then, within a short time, fails to maintain the standard of service, the Trust shall immediately without prejudice to its other rights and remedies be entitled to levy further monetary default(s).
- 2.38.3. As part of a monetary default the Trust may charge the Contractor the cost of any services provided or procured by it under **Clauses 2.38.1.2 and 2.38.1.3** together with an administration charge equal to 10% of the cost of such services to the Contractor which represents a genuine pre-estimate of the additional management time and costs to the Trust in procuring the Services due to a default by the Contractor.

**2.39. Disclosure**

- 2.39.1. Provided that disclosure is not prevented by Stock Exchange regulations the Contractor, whether a company as defined in the Companies Act 1985 or a partnership as defined in the Partnership Act 1890 shall immediately inform the Trust in writing of any proposal or negotiations which will, result in control of the Contractor's affairs passing to another company or other individuals. The Trust shall treat any information given by the Contractor under this condition in confidence.

**2.40. Termination**

- 2.40.1. This Contract may be terminated by notice in accordance with Clause **2.40.4**, and may be terminated earlier:

- 2.40.1.1. immediately by the Trust if the Contractor, having been given written notice by the Trust's Representative that the Service is not in accordance with this Contract due to material or persistent breach (persistent breach meaning more than 3 Default Notice issued within a consecutive 60 day period), fails within 30 days to correct the matters, in which circumstances the Trust may by notice in writing forthwith terminate this Contract without compensation to the Contractor;
- 2.40.1.2. immediately by the Trust if the Contractor being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its winding up (save for the purposes of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its administration, has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985 or is the subject of a notice to strike off the register at Companies House or it is subject to an administration order in which circumstances the Trust may by notice in writing forthwith terminate this Contract without compensation to the Contractor;
- 2.40.1.3. immediately by the Trust if the Contractor ceases or threatens to cease to trade;
- 2.40.1.4. immediately by the Trust if the Trust is notified of any proposed change under Clause **2.39** or if there is a Change of Control of the Contractor provided that the Trust serves notice of termination within three months of the date on which the Contractor informs the Trust (by written notice of the Change of Control or on which the Trust otherwise becomes aware of the Change of Control);

- 2.40.1.5. upon the Trust serving 6 (six) months' notice to the Contractor where the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
  - 2.40.1.6. immediately by the Trust where the contractor has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of Regulation 57(2) of the same, and should therefore have been excluded from the procurement procedure;
  - 2.40.1.7. immediately by the Trust where the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 2.40.2. Any termination under this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Trust. On termination, the Trust may hold and retain all monies due or thereafter to become due to the Contractor or those claiming under him by this Contract until all monies becoming due to the Trust have been covered. Any excess monies shall then be paid to the Contractor.
- 2.40.3. For a period of six (6) months following any termination of the Contract (other than pursuant to **clause 2.40.4**), the Trust may, cover the Services and recover from the Contractor the costs (if any) incurred by the Trust either by itself, or by employing other contractors to carry out the Services that are in excess of that which would have become payable under this Contract. In calculating such excess cost there shall also be added a reasonable administration charge to cover the Trust's supervision and establishment charges.
- 2.40.4. The Trust shall in any event at any time be entitled to terminate this Contract on the giving of **six (6) months'** written notice of such termination to the Contractor. The Contractor shall not be entitled to any payment by way of compensation, damage or otherwise following such termination but shall, for the avoidance of doubt, so long as the Contractor shall supply the Services in accordance with this Contract, be entitled to receive payment due for the **six (6) month** notice period.
- 2.41. Effect of Termination**
- 2.41.1. Any termination of this Contract for any reason shall not affect any accrued rights or liabilities of either party, nor the coming into force, or the continuance in force, of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination, including without limitation **Clauses 2.5, 2.9, 2.17, 2.20, 2.23, 2.24, 2.27, 2.28, 2.29, 2.30, 2.31, 2.32, 2.35, 2.36, 2.37, 2.38, 2.40, 2.41, 2.42, 2.44, 2.45.**

2.41.2. Upon the termination of this Contract:

- 2.41.2.1. the Contractor shall remain liable for and shall indemnify the Trust against all wages, holiday pay, employment benefit, costs, redundancy costs and unfair dismissal costs and awards in respect of all employees and former employees of the Contractor, save in the case of those employees who become employed by the Trust with effect from the Termination Date when the Contractor's indemnity shall apply only in respect of such employees insofar as and to the extent that such wages, pay, costs and awards arise on or in respect of any date or period before the Termination Date;
- 2.41.2.2. without limitation to the foregoing, the Contractor shall take all such steps as shall be necessary to agree with the Trust a plan for the orderly hand-over of the Services to the Trust (or its nominee), and will supply any information the Trust reasonably requires (including but not limited to information relating to employees employed by the Contractor to perform the Services and the terms and conditions on which such employees are employed), such that the Services can be carried on with the minimum of interruption and inconvenience to the Trust and to effect such handover;
- 2.41.2.3. with effect from the Termination Date, and until such time as the plan for the handover of the Services pursuant to **Clause 2.9** has been fully implemented, the Contractor agrees to continue the provision of the Services to the Trust in accordance with the terms and conditions of this Contract, except that it shall be entitled to be paid for such Services and all other actions necessary to implement **Clause 2.9** at its then prevailing time and materials charges. Such charges shall be payable by the Trust within thirty (30) days of the Trust receiving a valid invoice for such Services containing a breakdown of the Staff, charging rates and the materials and their costs incurred in connection with this Clause;
- 2.41.2.4. immediately following the Termination Date the Contractor shall promptly deliver up to the Trust all property supplied by it together with all work performed up to and including the Termination Date and all materials incorporating any Information (as defined in **Clause 2.30.1.2**), and will destroy any Information contained in any materials prepared by the Contractor. If the Contractor fails to return or destroy (as the case may be) any such property, work or materials, the Trust shall be entitled, and is licensed, to enter the Contractor's premises and seize and destroy the same.

2.41.3. Subject as otherwise provided in this Contract, or subject to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract.

**2.42. Approvals**

2.51.1 No approvals, comments, instructions, consents or advice or indication of



satisfaction given by or from the Trust nor any enquiry or inspection which the Trust may make or have carried out for its benefit or on its behalf shall operate to reduce, extinguish, exclude, limit or modify the Contractors obligation to fulfil its duties and obligations under this Contract.

**2.43. Waiver**

- 2.43.1. The failure of either party at any time to enforce any provision of this Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

**2.44. Force Majeure**

- 2.44.1. In the event of any act of God, hostilities, riot, civil commotion, public demonstration, terrorist act or any other circumstances (whether or not of a similar nature to any of the foregoing) beyond the reasonable control of either party ("Force Majeure Event"), neither party shall be deemed to be in breach of this Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Contract.
- 2.44.2. If a party's performance of its obligations under this Contract is affected by Force Majeure Event, upon service of a notice of suspension by the party affected on the other party the obligation of the affected party to perform its obligations shall forthwith be suspended until the party affected serves notice on the other party that such circumstances have ceased and the other party shall not be liable to make payments under this Contract in respect of the period of such suspension. In circumstances where formal notice is impracticable the Contractor shall use its reasonable endeavours to notify the Trust of the suspension as soon as possible by whatever means.
- 2.44.3. If the Force Majeure Event in question prevails for a continuous period in excess of one month after the date on which the Force Majeure Event begins, the party not in default may give notice in writing to the defaulting party to terminate this Contract. This notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Contract will terminate on the termination date set out in the notice.

**2.45. Disputes**

- 2.45.1. All disputes or differences not otherwise resolved as set out in **Clause 2.38 (Default)**, which shall at any time arise between the Contractor and the Trust in respect of the construction or effect of this Contract, or the rights, duties and liabilities of the parties hereunder, or any matter or event connected with or arising out of this Contract (a '**Relevant Event**') shall in the first instance be referred for resolution between the Contractor's Representative and the Trust Representative. If the Contractor's Representative and Trust Representative cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be referred to the Contractor's managing director and the

Trust's Principal / CEO for resolution. If the managing director and the Principal cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be referred to such independent third party (the '**Third Party**') as the Contractor and the Trust shall jointly nominate.

2.45.2. If the Contractor and the Trust fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event, then the Third Party shall be nominated at the request of either the Trust or the Contractor by the President for the time being of the Chartered Institute of Arbitrators.

2.45.3. The Third Party (whether appointed under **Clause 2.45.1 or 2.45.2**) shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Contractor and the Trust.

## **2.46. Law And Jurisdiction**

2.46.1. This Contract (and all matters, including any non-contractual obligations, arising under or in connection with it) shall be governed by, and construed in accordance with the provisions of English law as interpreted in an English Court.

2.46.2. Nothing in Clause **2.46** shall prevent either Party applying to court for injunctive or other interim relief and to this extent the parties submit to the non-exclusive jurisdiction of the English courts.

2.46.3. No person other than a contracting party may enforce any provision of this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **2.47. Health And Safety**

2.47.1. The Contractor shall comply with all applicable Health & Safety regulations. The Contractor is required to read and comply with all Trust Health & Safety instructions (verbal and written) including the Trust Health & Safety Manual.

2.47.2. The Contractor must undertake to provide Staff with all relevant training to enable them to complete their tasks safely and efficiently. All appropriate courses will be undertaken at the Contractors cost.

## **ANNEX A: VARIATION TO CONTRACT FORM**

<u>Site Address:</u> 	<u>Contract:</u> Contract For
<u>Contractor:</u> 	Job Reference:
	Issue Date:
	Instruction No.

The Contract Sum will be adjusted where applicable in accordance with the terms of the Contract.		Omit		Add	
Instruction		£	p	£	p
Signature of Contractor's Representative:		Contract Sum			
		Value of previous instructions			
Signature of Trust's Representative:		Sub-total			
		Value of this instruction			
		Adjusted Total			

### **Section 3            Service Level Agreement**

[To be agreed at award of contract or inserted from the ITT where applicable]

## **Section 4        Specification**

[To be inserted from the Tender Document].

## **Section 5          Schedule of Prices**

[Completed Pricing Schedule to be inserted from the Contractors Tender Response]

# Schedule 1 of the Agreement

## Schedule 1: Data Protection Particulars

### DATA PROTECTION PARTICULARS

<i>The subject matter and duration of the Processing</i>	<i>The parties will Process Personal Data in the context of: [●] [describe the relevant services and describe how long the personal data will be processed for- will this be determined by time period or for as long as the purpose continues? Consider longevity of the contract and if the personal data will need to be retained post termination of the contract.]</i>
<i>The nature and purpose of the Processing</i>	<i>The Processing will be for the purposes of: [●] [describe what processing of the personal data will take place and for what purpose e.g. for the provision of IT services to individual students, record of usernames etc...]</i>
<i>The type of Personal Data being Processed</i>	<i>The Personal Data will include: [●] [e.g. Names, e-mail addresses, postal address, ip address, username and related password, student ID number, national insurance number.]</i>
<i>The categories of Data Subjects</i>	<i>The Data Subjects will include: Staff of Star Academies only</i>

This Contract is entered into on the date hereof: \_\_\_\_\_

**Signed on Behalf of [insert name of Trust or the Corporation whichever is the legal entity]**

**(The Trust):**

Authorised Signatory 1: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Authorised Signatory 2: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**SIGNED on behalf of [insert name of Contractor] (The Contractor) by (A Director and its Secretary or two Directors):**

Authorised Signatory 1: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Authorised Signatory 2: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_