**Social Outcomes Contract / Social Impact Bond Contract Template**

**DRAFT for Social Outcomes Conference 2021 September 2021 (V2.0)**

This September 2021 draft is a suggested revision to the UK Government’s Social Impact Bond Contract Template. It was shared for discussion at the Social Outcomes Conference 2021. Please send feedback on this draft suggested template to [golab@bsg.ox.ac.uk](mailto:golab@bsg.ox.ac.uk) with the subject line “For Oxford POGO Club.”

This draft is prepared by members of the Oxford POGO Club Contract Templates Working Group. POGO refers to the Procurement of Government Outcomes. The Oxford POGO Club is a peer learning initiative at the University of Oxford, Blavatnik School of Government, Government Outcomes Lab (GO Lab). The GO Lab is supported in part by a grant from the UK Department of Digital Media and Sport and the University of Oxford. For more information on the Oxford POGO Club visit <https://golab.bsg.ox.ac.uk/community/peer-learning-groups/pogo/>.

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Feedback regarding this resource is welcome at [Department email].

[If a UK government department or outcomes fund wants to adopt and adapt this draft template a revisions table may be helpful.]

**REVISIONS IN THIS VERSION**

|  |  |  |
| --- | --- | --- |
| Version Number | Date | Amendment Notes |
| V.2.0 | September 2021 | Oxford POGO Club Contracts Template Working Group draft shared for discussion at the Social Outcomes Conference 2021. |

**INTRODUCTORY GUIDANCE – PERSPECTIVES TABLE**

The following Perspectives Table presents a few selected issues and potential perspectives of the three typical parties. These parties are the Outcomes Payer, the Provider, and the Social Investor (sometimes called a Fund Manager.) This table is not designed to be comprehensive and more detailed explanatory notes are included in footnotes below. Of course, the actual perspectives of any individual party may vary greatly from the generalisations below. The circumstances of each situation will be different, and readers should pay attention to the disclaimer above. (Additional information on the perspectives of these parties based on their appetite for risk and their preference to be active or passive in the programme is available in the GO Lab Guide to Awarding Outcomes Based Contracts: <https://golab.bsg.ox.ac.uk/toolkit/technical-guidance/awarding-outcomes-based-contracts/>.)

|  |  |  |  |
| --- | --- | --- | --- |
| **Selected Drafting Issues and Related Clauses** | **Outcome Payer(s) / Authority** | **Service Provider(s) / Delivery Partner** | **Social Investor(s) / Fund Manager** |
| ***The Parties***  **§ 2. Statement of Shared Aims and Co-Operation** describes a shared commitment and good faith among all the parties around the programme objective and outcomes.  **§ 10 Assignment, Delivery Partners, and Sub-Contracting,** which describes how delivery partners are managed and/or changed.  **Schedule 3 Deed of Assurance,** which brings the subcontractor “Delivery Partner” more directly into the relationship with the Outcomes Payer.  **§ 5.5. and Schedule 1 Requirements and Obligations** provide an opportunity to name key personnel. | Based on the practice that is most common in the UK, the contract template was drafted assuming that one party is a local authority and the other is either an investor owned special purpose vehicle (SPV) that enters into separate contract(s) with service providers or the entity delivering the programme. The contract template was also drafted assuming that outcomes are measured and evidenced using administrative data available to at least one of the parties – not by an independent impact evaluation run by a third party. The contract template must be adjusted to a specific scenario and may be adjusted to other structures as necessary. The thrust of § 2. Statement of Shared Aims and Co-Operation is that the parties seek a collaboration that is more relational than transactional. | | |
| Outcome Payers may want as much influence as possible on how delivery partners are managed and selected.  Outcome Payers may want to specify key personnel. (Note, however, that specifying key personnel is actually an input specification rather than an outcome specification.) | Service Providers may want as much flexibility as possible in the performance of the work, but likely want there to be limited flexibility to change service providers.  If Service Providers are subcontractors, they may want their key personnel specified.  Service Providers may want the flexibility to change investors. | An active Social Investor may want as much control and/or flexibility as possible to change delivery partners and/or the intervention programme being carried out to ensure outcomes are met.  The Social Investor may want to avoid specifying solutions and/or key personnel from providers. |
| ***Outcomes & Outcome Payments***  **Schedule 1 Authority Requirements and Obligations** is a template for describing the outcomes and any key performance indicators (KPIs).  **§ 9 Payment Provisions** and **Schedule 2 Payment.** The latter includes a table for documenting outcomes on a fixed price basis and the evidence required.  **§ 11 Monitoring and Inspection, §7 Reporting and Continuous Improvement** | Parties should consider making outcomes as clear and as simple as possible. A more standard services contract would focus on programme inputs and activities, whereas an outcomes-contract focuses on the outcomes. This may be a break from the parties’ previous ways of working and standard contract clauses. On the other hand, a focus on long-term outcomes may cause tension with the parties’ desire to reduce the length of time between the ‘outcome’ being achieved and the service being performed / funded. Further, with Outcome Payers’ need to operate on a short fiscal cycle. | | |
| Outcome Payers may need to break with the normal practice of detailing how the services are performed and resist the urge to have many outcomes.  Outcome Payers will likely pay attention to the minimum and maximum possible payments (range) and the timeframe for this range. The range may be linked to the number of service users or cohort size. The Outcome Payer may be concerned about guaranteeing a minimum number of service users. The Outcome Payer will want to ensure that the intervention is providing value for money vis a vis the costs associated with not funding the intervention.  Local authorities often have duties to service users and may care about their service providers and supply chain. They may want to know how well the provider is funded and/or de-risked.  Outcome Payers may want to incur costs and/or savings within timeframes related to their fiscal calendar. | Service Providers and/or Social Investors may want shorter-term outcomes or payment triggers. They may want to reduce the time between the ‘outcome’ being achieved and the service being performed / funded. (Shorter timeframes may reduce risks and the costs of funding, which may be reflected in the pricing.)  Service Providers and/or Social Investors may want to keep KPIs to a minimum and/or closely aligned to the outcomes to reduce time spent measuring and reporting different aspects of performance.  Service Providers and/or Social Investors will likely be very focused on how service users enter the programme and how many will do so. If the Outcome Payer has a role in referring service users into the programme, then there may be discussions around guaranteed minimums. | |
| Service Providers will likely need funding on a timeframe that is different from the timeframe of outcome payments.  Service Providers may want to take on some or most of the risks and rewards. | Social Investors may be surprised that local authorities want to understand the financial model and share of risks behind the outcome pricing. |
| ***Reporting and Data Sharing During Performance***  **§7. Reporting and Continuous Improvement** and **Schedule 7 Management Information.** §11 provides for a Review Meeting at least every three months and a Contract Review Data every six months (as defined in §1 Definitions.)  **§11. Monitoring and Inspection**  **§12. Information and Audit**  **§15 Transparency and Freedom of Information** and **Schedule 9 Transparency Report.** (§15 is based on the UK gov’s model services agreement, while Schedule 9 includes data definitions based on open data standards developed by the International Network for data and Impact for Government Outcomes, which is based at the GO Lab.) | Information is shared for different purposes -- monitoring, performance management, invoicing, and evaluation are different uses of data. Data collection, analysis, and publication have associated costs. Clarity around what information is to be shared by whom, when, and for what purpose may be helpful and reduce confusion and problems during contract performance. On one hand, commitments to provide data on inputs and activities rather than only outcomes may undermine the purpose of an outcomes-based programme. On the other hand, the parties may want to collaborate transparently and/or the Outcome Payers may have statutory obligations. | | |
| Outcome Payers may have responsibilities to service users and may want management reports and/or rights of inspection to meet those responsibilities.  Outcome Payers may want to be able to publish information to efficiently meet both data protection and transparency requirements.  Outcome Payers may want to share information with other public bodies or the public to meet wider learning objectives.  Outcome Payers may want to pay a fee for data or explicitly include it in the Schedule 1 requirements, so it is included in the pricing. This is to make it very clear that the Outcomes Payer becomes the owner of the data and is free to use it and/or release it under an open government licence. | Service Providers and/or Social Investors may want to keep reporting to a minimum and/or ensure various reports are harmonised to reduce costs associated with data collection and reporting. (The minimum may be evidence that the outcomes occurred for payment and/or the invoice.)  Service Providers and/or Social Investors may worry that their data describe their way of working and pricing model and/or is commercially sensitive.  Service Providers and/or Social Investors may be sharing performance data to give early indicators that things are on the right track to achieve outcomes, but they may also be concerned that a requirement to share information with the Outcome Payer and/or the public will reduce their flexibility to adapt and adjust services to meet objectives.  Service Providers and/or Social Investors may want to use the same templates and data definitions for as many different projects as possible to reduce costs. | |
| ***Changes***  **§7. Reporting and Continuous Improvement** provides for discussion of changes in the Review Meeting. The template avoids a detailed change procedure.  **§20. Force Majeure,** which (innovatively) provides for amending the contract before providing for excusing non-performance.  **§33. Amendments and Waivers** | In social programmes, the priority is the service user. On one hand, the needs of service users may change and/or more may be learned during performance. On the other hand, the Outcome Payer is likely already paying more for outcomes than they would for services because there is a cost to transferring the risk that the outcomes will not be achieved. If the contract is changed to address all changes this may undermine the risk transfer. | | |
| Outcome Payers may want to avoid changes to outcome pricing if they feel they are already paying to transfer the risk that outcomes may be more difficult to achieve.  As noted above, local authorities often have duties to service users and may care about their service providers and supply chain. These Outcome Payers may want to make changes to assist service users and/or the Service Provider. | Service Providers and/or Social Investors may have based their financial model(s) on information provided by the Outcome Payer, so knowing that there will be flexibility to adjust based on new data will be helpful.  Service Providers and/or Social Investors may have taken-on and priced-in the risk that the service is ineffective, but they may not have taken on risks such as s global pandemic. | |
| ***Default and Termination***  **§21 Default and Termination.** Dispute Resolution Procedure. **§ 1 Definition and Interpretation** provision regarding “**Satisfactory Level of Outcomes**” and “**Authority Default Termination Sum**.”  §21 provides Performance Improvement Plan process, for-fault termination, and voluntary termination. Where the Outcome Payer is at fault or voluntarily terminates the contract the “Authority Default Termination Sum” is payable. In the draft this sum is essentially the profit the contractor would have received if the contract was performed and minimum expected outcomes were achieved. | Stopping an outcomes contract is likely more complicated than a services contract because the activities being performed relate to outcomes that were expected to be achieved in the future. Stopping outcomes now likely only relates to activities that were completed long ago and does not address activities and costs incurred more recently. Note that the Outcomes Payer may default, for example, if it is involved in referring service users into the program. | | |
| Outcomes Payers may be concerned about defaulting if they over-commit to referring service users into the program. They may want any commitment to minimum referrals may be reduced according. This may affect the pricing model.  Outcome Payers may want more flexibility to terminate the contract voluntarily without having to pay for many years’ future profit on minimum expected outcomes. They may want to reduce minimum expected outcomes and/or the period of performance may be reduced accordingly. This may affect the pricing model. | Service Providers and/or Social Investors will have built their financial model based on expected outcomes achieved over a specific period. They will likely be planning to spend funds far in advance of outcomes being achieved. They will want to avoid risks that the Outcome Payer reduces the ability of Service Providers and/or Social Investors to achieve outcomes. | |

**OUTCOMES CONTRACT[[1]](#footnote-1)**

**Dated 20[ ]**

**[**INSERT NAME OF AUTHORITY**]**

**AND**

**[**INSERT NAME OF CONTRACTOR**]**

[1. Definitions and interpretation 4](#_Toc79043948)

[2. Statement of Shared Aims and co-operation 22](#_Toc79043949)

[3. Commencement and Duration 23](#_Toc79043950)

[4. Mobilisation 24](#_Toc79043951)

[5. The Programme 24](#_Toc79043952)

[6. Authority Obligations 26](#_Toc79043953)

[7. Reporting and continuous improvement 26](#_Toc79043954)

[8. Authorised Representatives 28](#_Toc79043955)

[9. Payment provisions 28](#_Toc79043956)

[10. Assignment, Delivery Partners and Sub-contracting 31](#_Toc79043957)

[11. Monitoring and inspection 34](#_Toc79043958)

[12. Information and audit 35](#_Toc79043959)

[13. Insurance 37](#_Toc79043960)

[14. Data Protection 37](#_Toc79043961)

[15. Transparency and Freedom of information 43](#_Toc79043962)

[16. Confidentiality 45](#_Toc79043963)

[17. Publicity 47](#_Toc79043964)

[18. Intellectual Property 48](#_Toc79043965)

[19. Indemnities 50](#_Toc79043966)

[20. Force Majeure 53](#_Toc79043967)

[21. Default and Termination 54](#_Toc79043968)

[22. Continuing obligations on termination 57](#_Toc79043969)

[23. Transition to another contractor 58](#_Toc79043970)

[24. TUPE and Employees 58](#_Toc79043971)

[25. Pensions 63](#_Toc79043972)

[26. Dispute Resolution Procedure 64](#_Toc79043973)

[27. Change in Ownership 66](#_Toc79043974)

[28. Warranties and Representations 66](#_Toc79043975)

[29. Prevention of Fraud and Bribery 67](#_Toc79043976)

[30. Conflicts of Interest 69](#_Toc79043977)

[31. Entire Agreement 69](#_Toc79043978)

[32. No partnership or agency 70](#_Toc79043979)

[33. Amendments and waivers 70](#_Toc79043980)

[34. Severance 70](#_Toc79043981)

[35. Notices 71](#_Toc79043982)

[36. Contracts (Rights of Third Parties) Act 1999 71](#_Toc79043983)

[37. Counterparts 71](#_Toc79043984)

[38. Law and jurisdiction 71](#_Toc79043985)

[Schedule 1 Authority Requirements and Obligations 74](#_Toc79043986)

[Schedule 2 Payment Schedule 77](#_Toc79043987)

[Schedule 3 Deed of Assurance 78](#_Toc79043988)

[Schedule 4 Processing, Personal Data and Data Subjects 93](#_Toc79043989)

[Schedule 5 Mobilisation and Demobilisation Plans 96](#_Toc79043990)

[Schedule 6 Required Insurances 97](#_Toc79043991)

[Schedule 7 Management Information 98](#_Toc79043992)

[Schedule 8 Commercially Sensitive Information 99](#_Toc79043993)

[Schedule 9 Transparency Report 100](#_Toc79043994)

**THIS AGREEMENT** is made the *[DAY]* day of *[MONTH]* 20[     ]

**BETWEEN:**

1. *[NAME]* of *[ADDRESS]* (the “**Authority**”); and
2. *[NAME]* whose registered office is at *[ADDRESS]* and whose registered [company] number is *[NUMBER]* (the “**Contractor**”),

each a “**Party**” and together the “**Parties**”.[[2]](#footnote-2)

RECITALS

1. The Authority and the Contractor wish to establish a Programme to achieve the Objective by delivering the Outcomes on the terms set out below.
2. Definitions and interpretation
   1. In this Agreement:

|  |  |
| --- | --- |
| 1. “**2018 Act**” | 1. means the Data Protection Act 2018; |
| 1. “**Affiliate**” | 1. means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” have the meaning given to such terms in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded; |
| 1. “**Agreement**” | 1. means the terms and conditions below together with the Schedules listed in the table of contents; |
| 1. “**Agreement Term**” | 1. means the period from and including the Commencement Date to the Expiry Date or, if earlier, the Termination Date; |
| 1. “**Applicable Policies**” | 1. means the policies included at ‎Part 2 of Schedule 1 (*Applicable Policies*); |
| 1. “**Authority Default**” | 1. means:    * + 1. failure to pay sums properly due and payable under this Agreement within forty (40) days of their due date;        2. [failure to make [at least [x]% of] the Required Referrals in any [month]/[quarter];][[3]](#footnote-3) or        3. breach of any obligations under this Agreement which has a material adverse impact on the Contractor in providing the Programme or achieving any of the Outcomes [or being able to provide the Evidence required to invoice the Authority for such Outcomes][[4]](#footnote-4); |
| 1. “**Authority Default Termination Sum**” | 1. means an amount which is reasonably determined by the Authority, on the basis of information available to the Authority following consultation with the Contractor and having regard to any representations made by the Contractor (provided that, if the Contractor does not agree with the Authority’s determination the matter shall be determined in accordance with the Dispute Resolution Procedure), as being equivalent to the amount the Contractor would have received (net of any payments already received under this Agreement) had this Agreement continued until the Expiry Date and the Contractor had met [the Minimum Expected Outcomes][[5]](#footnote-5) less the additional costs that the Contractor would have incurred in providing the Programme from the Termination Date to the Operational Period End Date (for the avoidance of doubt without adjusting either the Outcomes Payments or the additional costs for inflation); |
| 1. “**Authority Mobilisation Obligations**” | 1. means the obligations set out at ‎Part 4 of Schedule 1 (*Authority Requirements and Obligations*)‎; |
| 1. “**Authority Obligations**” | 1. means the obligations set out in ‎Part 3 of Schedule 1 (*Authority Requirements and Obligations*); |
| 1. “**Authority Related Party**” | 1. means an officer, agent, contractor, employee or subcontractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate) but excluding the Contractor and any Contractor Related Parties; |
| 1. “**Authority’s Authorised Representative**” | 1. means the person appointed and authorised by the Authority in accordance with Clause 8 (*Authorised Representatives*) to represent the Authority for the purposes of this Agreement; |
| 1. “**Background IPR**" | 1. has the meaning given to such term in Clause [18.1][18.5.2];[[6]](#footnote-6) |
| 1. “**CEDR**” | 1. means the Centre for Effective Dispute Resolution; |
| 1. “**Change in Ownership**” | 1. means any person or related group of persons (that does not currently have Control) gains Control of the Contractor; |
| 1. “**Commencement** **Date**” | 1. means [*DATE*]/[*the date on which the conditions precedent referred to in Clause ‎3.2 are satisfied*]; |
| 1. “**Commercially Sensitive Information**” | 1. means:    * + 1. the subset of Confidential Information listed in column 1 of ‎Part 1 of ‎Schedule 8 (*Commercially Sensitive Information*) and column 1 of ‎Part 2 of Schedule 8 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of Part 1 and ‎Part 2 of ‎Schedule 8 (*Commercially Sensitive Information*); and        2. with respect to the Contractor, information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor. |
| 1. “**Confidential Information**” | 1. means:    * + 1. information disclosed by either Party, or any of their respective related Parties in connection with this Agreement that by its nature ought to be considered as confidential by the other Party (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests or Intellectual Property Rights of any person ; and        2. Commercially Sensitive Information; |
| 1. “**Contract Review Date**” | 1. means each of the dates falling [twelve, eighteen, twenty-four, thirty, thirty-six and forty-two][[7]](#footnote-7) months following the Programme Commencement Date; |
| 1. “**Contracting Authority**” | 1. means any “contracting authority” as defined in Regulation 3(1) of the Public Contracts Regulations 2006; |
| 1. “**Contractor Default**” | 1. means one of the following events:    * + 1. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;        2. any receiver or manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor that is the subject of a charge;        3. any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;        4. an administration order is made or an administrator is appointed in respect of the Contractor;        5. a failure by the Contractor to implement a Performance Improvement Plan in accordance with Clause 21.1.3, or the occurrence of a Performance Failure or Negative Outcomes Assessment which the Parties agree, or it is determined pursuant to Clause 21.1.4, cannot be remedied through a Performance Improvement Plan;        6. a breach by the Contractor of its obligation to take out and maintain the Required Insurances (in respect of the Contractor);        7. the existence of a conflict of interest on the part of the Contractor which, in the reasonable opinion of the Authority, presents a material reputational risk to the Authority or compromises the Contractor’s ability to provide the Programme and which the Contractor fails to address in accordance with Clause 29 (*Prevention of Fraud and Bribery*);        8. a breach by the Contractor of its obligations in Clause 10 (*Assignment, Delivery Partners and Sub-contracting*);        9. the Contractor is found to have intentionally provided false information to substantiate its claim for an Outcomes Payment;        10. where a consent, licence or approval of the Contractor which is material to the provision of the Programme is suspended, cancelled, revoked, terminated or otherwise ceases to be in full force and effect and is not replaced by an equivalent consent, licence or approval within thirty (30) Working Days of such consent, licence or approval being suspended, cancelled, revoked, terminated or otherwise ceasing to be in full force and effect;        11. a breach by the Contractor of its obligations in Clause 27 (*Change in Ownership*); |
| 1. “**Contractor Related Party**” | 1. means an officer, servant or agent of the Contractor, or any Affiliate of the Contractor, or any Delivery Partner and any officer, servant or agent of such a person; |
| 1. “**Contractor’s Authorised Representative**” | 1. means the person appointed and authorised by the Contractor in accordance with Clause 8 (*Authorised Representatives*) to represent the Contractor for the purposes of this Agreement; |
| 1. “**Control**” | 1. means, in relation to any undertaking, being:    * + 1. entitled to exercise, or control the exercise of (directly or indirectly) more than 50 per cent. of the voting power at any general meeting of the shareholders, members or partners or other equity holders (and including, in the case of a limited partnership, of the limited partners of) in respect of all or substantially all matters falling to be decided by resolution or meeting of such persons; or        2. entitled to appoint or remove:      1. directors on the board of directors or its other governing body (or, in the case of a limited partnership, of the board or other governing body of its general partner) who are able (in aggregate) to exercise more than 50 per cent. of the voting power at meetings of that board or governing body in respect of all or substantially all matters; and/or      2. any managing member of that undertaking;      3. in the case of a limited partnership, its general partner; |
| 1. “**Controller**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Data Loss Event**” | 1. means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach; |
| 1. “**Data Protection Impact Assessment**” | 1. means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data; |
| 1. “**Data Protection Legislation**” | 1. means all applicable statutes, laws, secondary legislation, rules, regulations and guidance from a Supervisory Authority, in any jurisdiction, relating to privacy, confidentiality, security, direct marketing or data protection of Personal Data or corporate data (including any national laws implementing any such legislation) and any successor laws addressing identical or similar subject matter arising out of the UK’s withdrawal from the European Union), including the 2018 Act, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426) as amended (and any successor laws addressing identical or similar subject matter), the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the GDPR and any applicable national laws, rules and regulations implementing the foregoing; |
| 1. “**Data Protection Officer**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Data Sharing Policy**” | 1. means the policy at Schedule 4 (*Processing, Personal Data and Data Subjects*); |
| 1. “**Data Subject**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Data Subject Request**” | 1. means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the applicable Data Protection Legislation; |
| 1. [“**Deed of Assurance**” | 1. means an agreement to be executed as a deed between the Authority, the Contractor and a Principal Delivery Partner in the form set out in ‎Schedule 3 *(Deed of Assurance*);] |
| 1. “**Delivery Partner**” | 1. means a person with whom the Contractor contracts to operate the Programme or any part of it [or provide any of the Services][[8]](#footnote-8);[[9]](#footnote-9) |
| 1. “**Demobilisation Plan**” | 1. means the plan at Part 2 of Schedule 5 (*Mobilisation and Demobilisation Plans*); |
| 1. “**Directive**” | 1. means EC Council Directive 2001/23/EC; |
| 1. “**Direct Losses**” | 1. means all Losses other than Indirect Losses; |
| 1. “**Dispute Resolution Procedure**” | 1. means the procedure to deal with disputes as set out at Clause 26‎ (*Dispute Resolution Procedure*); |
| 1. [“**Eligible Employees**” | 1. has the meaning given to such term in Clause ‎25.2 of this Agreement;][[10]](#footnote-10) |
| 1. “**Environmental Information Regulations**” | 1. means the Environmental Information Regulations 2004; |
| 1. “**Evidence**” | 1. means the evidence required to prove the achievement of the Outcomes specified as such in ‎Schedule 2 (*Payment Schedule*); |
| 1. “**Existing Service Provider**” | 1. means each and every service provider who is providing any service equivalent to any of the services expected to be provided in connection with the delivery of the Programme pursuant to this Agreement [or the Services][[11]](#footnote-11) for or on behalf of any of the Parties immediately prior to the Programme Commencement Date; |
| 1. “**Existing Transferring Employee**” | 1. has the meaning given to such term in Clause 24.2.1 ‎of this Agreement; |
| 1. “**Expiry Date**” | 1. means *[day falling [•] years/months following][[12]](#footnote-12)* the Operational Period End Date or such other date agreed between the Authority and the Contractor in accordance with this Agreement; |
| 1. “**FOIA**” | 1. means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation; |
| 1. “**Force Majeure Event**” | 1. means any circumstance beyond a Party’s reasonable control, including:    * + 1. any act of God, epidemic, flood, earthquake or other natural disaster;        2. any act of terrorism, riot, war, sanction, embargo or breaking-off of diplomatic relations;        3. any collapse of buildings, fire, explosion or accident;        4. any Law or action taken by a Governmental Authority, including imposing an export or import restriction, quota or prohibition;        5. interruption or failure of any utility service; and        6. any labour or trade dispute, strike, industrial action or lockout (other than, in each case, by personnel of the Party seeking to rely on this Clause or any Affiliate of that Party,   as a result of which the affected Party is unable to comply with its obligations under this Agreement or, in the case of the Contractor, it is unable to collect or provide any Evidence required to claim Outcomes Payments or its ability to achieve the Outcomes is materially and adversely affected; |
| 1. “**Foreground IPR**" | 1. has the meaning given to such term in Clause [18.1][18.5.1];[[13]](#footnote-13) |
| 1. “**Future Service Provider**” | 1. means any successor to the Contractor that provides services in the nature of, or any part of, the Programme to the Authority; |
| 1. “**GDPR**” | 1. means:    * + 1. Regulation 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; and        2. laws implementing Regulation 2016/679 or any successor laws arising out of the withdrawal of a member state from the European Union; |
| 1. “**Good Industry Practice**” | 1. means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor providing services of a similar scope, type and complexity to the activities involved in providing the Programme, seeking in good faith to comply with its contractual obligations, complying with all applicable Legislation and engaged in the same type of undertaking and under the same or similar circumstances and conditions; |
| 1. “**Indirect Losses**” | 1. means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, anticipated savings, goodwill or reputation or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement; |
| 1. “**Information**” | 1. has the meaning given under Section 84 of FOIA; |
| 1. “**Initial Delivery Partner[s]**” | 1. means [*NAME (if any)*]; |
| 1. “**Intellectual Property Rights**” | 1. means all (i) registered or unregistered: trade marks; copyright; service marks; patents and utility models; designs; database rights, and applications for any of the foregoing; and (ii) rights in trade secrets and other confidential information or know-how; |
| 1. “**Investor[s]**” | 1. means [the parties providing finance to the Contractor to fund the delivery of the Programme] /[*NAME[S]*]; |
| 1. [“**Key Personnel**” | has the meaning given to such term in Part 1 of Schedule 1 (*Programme Specification*);] [[14]](#footnote-14) |
| 1. “**Legislation**” | 1. means any Act of Parliament, government regulation or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom; |
| 1. “**Loss**” | 1. means all damages, losses (including Indirect Losses), liabilities, claims, actions, costs, expenses (including reasonable legal and other professional charges and expenses, legal costs being on an indemnity basis) proceedings, demands and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands; |
| 1. “**Minimum Expected Outcomes**” | 1. means [*the number of Outcomes that the Authority and the Contractor agree are expected to be achieved in each of the [weeks / months / years] of the Operational Period. I*f using the value of Outcomes Payments claimed to determine this: [Outcomes with a value equal to those set out in the Base Case column of the table entitled “Outcome Levels” in Part 1 of Schedule 1 (*Programme Specification*)]*,*]; |
| 1. “**Mobilisation Period**” | 1. means the period commencing on *[DATE]*/[the Commencement Date] and expiring on the Working Day immediately prior to the Programme Commencement Date; |
| 1. “**Mobilisation Plan**” | 1. means the plan at Part 1 of ‎Schedule 5 (*Mobilisation and Demobilisation Plans*); |
| 1. “**Negative Outcomes Assessment**” | 1. means an assessment, conducted at a Review Meeting in accordance with Clause 7.3, which establishes that the current performance levels for the Programme have not achieved the Satisfactory Level of Outcomes; |
| 1. “**No Fault Termination Sum**” | 1. means the reasonable and evidenced costs of the Contractor incurred directly in relation to the mobilisation, delivery and wind down of the Programme [and the Services][[15]](#footnote-15) up to the date this Agreement terminates pursuant to Clause 20.4 (capped at any overall cap applicable to payments under this Agreement) , less the aggregate amount of any Outcomes Payments [and Services Fees][[16]](#footnote-16) received by the Contractor from the Authority under this Agreement;[[17]](#footnote-17) |
| 1. “**Objective**” | 1. means the intended effect of delivering the Outcomes under this Agreement, namely [*insert details*]; |
| 1. “**Operational Period**” | 1. means the period during which the Contractor shall provide the Programme which will start on the Programme Commencement Date and end on the Operational Period End Date or the Termination Date if earlier; |
| 1. “**Operational Period End Date**” | 1. the Working Day falling [*[•]* *years and [•]* *months*] following the Programme Commencement Date, save where extended pursuant to Clause 3.4; |
| 1. “**Outcomes**” | 1. means the Outcomes identified as such in Schedule 2 (*Payment Schedule*); |
| 1. “**Outcomes Payment**” | 1. means the payments by the Authority to the Contractor for the achievement of the Outcomes calculated in accordance with ‎Schedule 2 (*Payment Schedule*); |
| 1. “**Participants**” | 1. means those Potential Participants who have been accepted for participation in the Programme; |
| 1. “**Performance Failure**” | 1. means a breach by the Contractor of any of its obligations under this Agreement which materially and adversely affects the Authority or any Participant(s)[[18]](#footnote-18); |
| 1. “**Performance Improvement Plan**” | 1. means the plan agreed in accordance with Clause 21.1.2 to remedy a Performance Failure or address a Negative Outcomes Assessment; |
| 1. “**Personal Data**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Personal Data Breach**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Potential Participants**” | 1. means [*include details of target group*]; |
| 1. “**Prescribed Rate**” | 1. means [*three (3)*] per cent above the Bank of England base rate from time to time per annum; |
| 1. “**Principal Delivery Partner**” | 1. means the Delivery Partner (if any) which provides the majority of the Programme; |
| 1. “**Private Data**” | 1. has the meaning given to such term in Schedule 9 (*Transparency Report*); |
| 1. “**Processing**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation, and “**Process**”, “**Processing**” and “**Processed**” shall be construed accordingly; |
| 1. “**Processor**” | 1. has the meaning given to such term in the 2018 Act or other applicable Data Protection Legislation; |
| 1. “**Processor Personnel**” | 1. means all directors, officers, employees, agents, consultants and contractors of the Processor; |
| 1. “**Programme**” | 1. means the programme to [*include details of programme being established by this Agreement*] as specified by the Programme Specification; |
| 1. “**Programme Commencement Date**” | 1. means the latest to occur of (i) [*insert expected Programme Commencement Date*] and (ii) the date on which the Mobilisation Plan has been completed, or such other date as the Parties agree in accordance with Clause 4.3; |
| 1. “**Programme Specification**” | 1. means the specification contained in Part 1 of ‎Schedule 1 (*Authority Requirements and Obligations*); |
| 1. “**Prohibited Act**” | 1. means:    * + 1. offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:      1. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority; or      2. for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;         1. entering into this Agreement or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;         2. committing any offence:      3. under the Bribery Act 2010;      4. under Legislation creating offences in respect of fraudulent acts; or      5. at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority; or      6. defrauding or attempting to defraud or conspiring to defraud the Authority; |
| 1. “**Protective Measures**” | 1. means appropriate technical and organisational measures which may 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; and regularly assessing and evaluating the effectiveness of these measures; |
| 1. “**Relevant Requirements**” | 1. means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| 1. “**Replacement Contractor**” | 1. has the meaning given to such term in Clause 23.1; |
| 1. “**Request for Information**” | 1. has the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations; |
| 1. “**Required Insurances**” | 1. means the insurances listed in ‎Schedule 6 (*Required Insurances*); |
| 1. [“**Required Referrals**” | 1. has the meaning given to such term in Part 1 of Schedule 1 (*Programme Specification*);][[19]](#footnote-19) |
| 1. “**Review Meeting**” | 1. has the meaning given to such term in Clause 7.3; |
| 1. “**Satisfactory Level of Outcomes**” | 1. means [threshold to be negotiated on a project specific basis reflecting acceptable performance of the project, if using the value of Outcomes Payments claimed to determine this: [Outcomes with a value equal to those set out in the Low Case column of the table entitled “Outcome Levels” in Part 1 of Schedule 1 (*Programme Specification*)]*, if using KPIs based on the Programme Specification consider when failure to meet certain KPIs should trigger the performance improvement process*]; |
| 1. [“**Services**” | 1. means the services specified in [Part 5] of Schedule 1 (*[Service Specification]*) to be provided by the Contractor to the Authority as a part of establishing the Programme;][[20]](#footnote-20) |
| 1. [“**Services Fee**” | 1. means the fee payable by the Authority in consideration of the performance of the Services by the Contractor in accordance with Schedule 2 (*Payment Schedule*);] [[21]](#footnote-21) |
| 1. **“Staff”** | 1. means (where the context allows) all persons employed by the Contractor, together with any volunteers, involved in the delivery of the Programme; |
| 1. “**Suitable Third Party**” | 1. means any person who is not    * + 1. a person who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;        2. a person whose activities may, in the reasonable opinion of the Authority, have a material adverse effect on the reputation of the Authority;        3. a person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of the Programme in the relevant area; or        4. a person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security; |
| 1. “**Supervisory Authority**” | 1. has the meaning given to such term in the GDPR or other applicable Data Protection Legislation (and in any case includes the UK Information Commissioner); |
| 1. “**Tender Submission**” | 1. means the bid documents (comprising *[INSERT DETAILS OF RELEVANT DOCUMENTS]*) submitted by the Contractor and relied upon by the Authority in selecting the Contractor to deliver the Programme pursuant to this Agreement; |
| 1. “**Termination Date**” | 1. means the date of early termination of this Agreement in accordance with its terms; |
| 1. “**Termination Notice**” | 1. means a notice of termination issued in accordance with this Agreement; |
| 1. “**Transferring Employees**” | 1. has the meaning given to such term in Clause 24.4.2 ‎of this Agreement; |
| 1. “**Transparency Data**” | 1. has the meaning given to such term in Schedule 9 (*Transparency Report*); |
| 1. “**TUPE**” | 1. means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (as amended) (SI No. 246), as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018; |
| 1. “**VAT**” | 1. means Value Added Tax; and |
| 1. “**Working Day**” | 1. means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London. |

* 1. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
  2. Save where it is stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
  3. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
  4. References to Clauses, paragraphs, Parts and Schedules are, unless otherwise provided, references to the clauses, paragraphs, Parts and Schedules to this Agreement.
  5. In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between Schedules, the conflict should be resolved according to the following descending order of priority:
     1. Schedule 2 (*Payment Schedule*);
     2. Schedule 1 (*Authority Requirements and Obligations*);
     3. the Schedules other than Schedule 1 (*Authority Requirements and Obligations*) and ‎Schedule 2 (*Payment Schedule*).
  6. Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Authority under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
  7. A reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders.
  8. The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
  9. The words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

1. Statement of Shared Aims and co-operation
   1. The principal purpose of the Parties in entering into this Agreement is to achieve the Objective by delivering the Outcomes.
   2. The Parties acknowledge that the successful implementation of the Programme will depend on the Parties’ ability effectively to co-ordinate and combine their expertise, manpower and resources together with those of any other stakeholders such as Delivery Partners and Investors in order to deliver an integrated approach to the provision of the Programme under this Agreement in accordance with its terms.
   3. Subject to Clause 2.5, the Parties agree to work together to achieve the Objective and, subject to and in accordance with the provisions of this Agreement, the Parties will use reasonable endeavours, acting in good faith, to act in accordance with the following principles: (a) work towards a shared vision of integrated Programme delivery; (b) always demonstrate the Participants’ best interests are at the heart of all activities; (c) adopt an uncompromising commitment to trust, honesty, collaboration, innovation and mutual support; (d) establish an integrated collaborative team environment to encourage open, honest and efficient sharing of information; (e) adopt collective ownership of risk, including identifying, managing and mitigating all risks which may arise in connection with the Programme; (f) develop a close working relationship between the Authority, the Contractor, Delivery Partners, Investors and other stakeholders at all appropriate levels, based upon openness and trust in a transparent information and data sharing environment; (g) actively look for opportunities to continuously improve the delivery of the Programme; and (h) continually co-produce with others, especially, Delivery Partners, Investors, Participants, families and carers, in designing and delivering the Programme.
   4. Subject to Clause 2.5, each Party undertakes to co-operate in good faith with the other [and with any Delivery Partners and Investor(s)][[22]](#footnote-22) to facilitate the delivery of the Programme and the achievement of the Outcomes and in particular will:
      1. use all reasonable endeavours to mitigate the effect of disputes and claims against the other Party;
      2. not interfere with the rights of the other Party and its servants, agents, representatives, contractors, subcontractors (of any tier) or Delivery Partners on its behalf in performing its obligations under this Agreement nor in any other way hinder or prevent such other Party or its servants, agents, representatives, contractors, subcontractors (of any tier) or Delivery Partners on its behalf from performing those obligations; and
      3. use all reasonable endeavours to: (i) assist the other Party (and its servants, agents, representatives, contractors, subcontractors (of any tier) or Delivery Partners) in performing their obligations under this Agreement or in relation to the Programme and to achieve the Outcomes; and (ii) comply with any reasonable request of the other Party[, the Delivery Partner[s], Investors] or any other stakeholder to take any actions which might reasonably be expected to help achieve the Outcomes or improve the delivery of the Programme.
   5. Nothing in Clause 2.3 or 2.4 shall:
      1. interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;
      2. oblige any Party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;
      3. relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such document; or
      4. fetter the discretion of the Authority in fulfilling its statutory functions.
2. Commencement and Duration
   1. The rights and obligations of the Parties under this Agreement shall take effect on the Commencement Date and shall continue in force until the Expiry Date unless terminated earlier in accordance with this Agreement.
   2. [The Commencement Date shall take place on the occurrence of the last of the following events:
      1. *[If conditions precedent are required, insert here, otherwise this Clause ‎3.2 and Clause 3.3 may be deleted**][[23]](#footnote-23)*
   3. If the conditions specified in Clause 3.2 are not satisfied by *[DATE]* the Parties may terminate this Agreement immediately, following which this Agreement and the rights and obligations of the Parties under this Agreement shall terminate so that neither Party shall be liable to the other in respect of such termination.][[24]](#footnote-24)
   4. [The Parties may extend the Operational Period for a further period not exceeding an additional [five] years from the original Operational Period End Date where they are satisfied that the Outcomes are being achieved and will continue to be so and such extension can be agreed on terms that deliver value for money to the Authority.]
3. Mobilisation
   1. Each Party will perform the responsibilities allocated to it under the Mobilisation Plan during the Mobilisation Period to be able to commence provision of the Programme on the Programme Commencement Date.
   2. During the Mobilisation Period the Parties shall provide regular updates to each other on progress against the Mobilisation Plan.
   3. If at any time during the Mobilisation Period either Party reasonably believes that the Mobilisation Plan will not be delivered in accordance with the timings contained in the Mobilisation Plan and/or the Programme Commencement Date will not be achieved the relevant Party shall immediately notify the other in writing. The Parties will meet to discuss any such matter in order to agree actions to ensure that the Programme Commencement Date is met, or to amend the Mobilisation Plan and/or the Programme Commencement Date if appropriate.
4. The Programme
   1. The Contractor shall provide the Programme [and the Services][[25]](#footnote-25) during the Operational Period with the intent of achieving the Outcomes.
   2. The Programme [and the Services][[26]](#footnote-26) shall be delivered in accordance with:
      1. the Programme Specification;
      2. all applicable Legislation;
      3. the Applicable Policies (insofar as they are relevant and do not refer to matters addressed specifically elsewhere in this Agreement); and
      4. Good Industry Practice.
   3. Subject to Clause 10 (*Assignment, Delivery Partners and Sub-contracting*) the Contractor shall, or shall procure that the relevant Delivery Partner does, at all times engage a sufficient number of personnel and/or Contractor Related Parties to deliver the Programme in accordance with applicable Legislation and Good Industry Practice.
   4. All personnel directly involved in the provision of the Programme (whether employed by the Contractor or Contractor Related Parties) shall possess the skills, qualifications and competence to deliver the Programme in accordance with applicable Legislation and Good Industry Practice.
   5. [The Contractor shall use reasonable endeavours not to remove or replace Key Personnel without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement. The Contractor shall ensure that any replacement for a role held by any of the Key Personnel, or where such individual is an employee of the Delivery Partner, shall use all reasonable endeavours to ensure that such replacement: (i) has a level of qualifications and experience appropriate to the relevant role; and (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.][[27]](#footnote-27)
   6. The Contractor shall procure that all aspects of the Programme are the subject of, and are conducted in accordance with, appropriate quality assurance systems.
5. Authority Obligations
   1. The Authority shall perform the Authority Obligations in a timely manner to support the delivery of the Outcomes.
   2. During the Agreement Term, the Authority shall not omit, delay or do anything, including enter into any contract or other arrangement for services, that may reasonably be expected to affect adversely the Contractor’s ability to provide the Programme or achieve the Outcomes or to make it materially more difficult or expensive for it to do so.
   3. Nothing in this Clause 6 shall fetter or constrain the Authority’s discretion in the carrying out of its statutory functions.
6. Reporting and continuous improvement
   1. Each Party shall comply with the management information requirements set out in ‎Schedule 7 (*Management Information*).
   2. The Parties shall meet (which shall include virtual meetings) together with the [Principal Delivery Partner, Investor(s)][[28]](#footnote-28) at least every [month]/[three (3) months] to review:
      1. the performance of the Programme and progress towards achieving the Outcomes; and
      2. the effectiveness of the contract management arrangements

in order to assess whether any improvements may be made and implemented by the Parties.

* 1. The Parties shall meet (which shall include virtual meetings) together with the [Principal Delivery Partner, Investor(s)][[29]](#footnote-29) on or around each Contract Review Date and at any other time which the Parties agree it would be helpful to do so (such meeting being a Review Meeting) to review:
     1. the performance to date of the Contractor and the Delivery Partner(s), including whether a Negative Outcomes Assessment has arisen;
     2. the ongoing suitability of the Programme and the delivery of the Outcomes to achieve the Objective; and
     3. the terms of this Agreement and its effect upon the Outcomes, the Parties and the Participants.
  2. If the Parties conclude that a Negative Outcomes Assessment has arisen, Clause 21.1.1 shall apply.
  3. The Parties shall consider in good faith whether amendments may be made to this Agreement, the Programme or the Outcomes which would improve the prospect of achieving the Objective without having a material adverse effect on the Parties, the Investor or the Participants. Either Party may seek the confidential views of any other stakeholder in order to inform their decision to agree to such amendments.
  4. If the Parties agree there are amendments as described in Clause 7.5 they shall be implemented in accordance with Clause 33 (*Amendments and waivers*). If the Parties cannot so agree, no such changes shall be made.
  5. Each Party shall provide, not less than ten (10) Working Days before a Contract Review Date, all information it reasonably believes to be relevant and any other information reasonably requested by the other Party (in each case within its possession or control) to inform the review processes to be conducted pursuant to this Clause 7.

1. Authorised Representatives

The Authority’s Authorised Representative

* 1. The Authority’s Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this Clause 8.
  2. The Authority’s Authorised Representative shall liaise with and give instructions to the Contractor and its officers, employees, agents or representatives in relation to all matters concerning the performance by the Contractor of its obligations under this Agreement and to determine any matters, or give any notices, as may be the function of the Authority’s Authorised Representative under this Agreement.
  3. To the extent it is reasonably practicable the Authority shall not change the identity of the Authority’s Authorised Representative without first discussing the matter with the Contractor and having reasonable regard to the views of the Contractor in relation to any proposed replacement.

The Contractor’s Authorised Representative

* 1. The Contractor’s Authorised Representative shall be *[INSERT NAME AND/OR TITLE]* or such other person appointed pursuant to this Clause 8.
  2. The Contractor’s Authorised Representative shall have the power to act on behalf of the Contractor in connection with any matter relating to the Programme and exercise the rights, functions and obligations of the Contractor under this Agreement.
  3. To the extent it is reasonably practicable the Contractor shall not change the identity of the Contractor’s Authorised Representative without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement.

1. Payment provisions
   1. Payment of [the Services Fee and][[30]](#footnote-30) the Outcomes Payment

[The Authority shall pay the Contractor the Services Fee in accordance with Schedule 2 (*Payment Schedule*) in consideration of delivery of the Services.][[31]](#footnote-31) In consideration of the achievement of the Outcomes, the Authority shall pay the Contractor the Outcomes Payments, calculated in accordance with ‎Schedule 2 (*Payment Schedule*).

* 1. Report and Invoice
     1. [The Contractor shall submit to the Authority an invoice for the Services Fee and for any VAT payable in respect of that amount at the times prescribed in ‎Schedule 2 (*Payment Schedule*).][[32]](#footnote-32)
     2. At the times prescribed in ‎Schedule 2 (*Payment Schedule*), the Contractor shall submit to the Authority:

a report detailing the Outcomes achieved, the related Evidence and Outcomes Payment sought and each item taken into account in calculating that Outcomes Payment pursuant to ‎Schedule 2 (*Payment Schedule*); and

an invoice for the amount shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

* 1. Payment

Subject to Clause 9.4 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under Clause 9.2 (Report and Invoice) within twenty (20) Working Days of receipt of the invoice in question.

* 1. Disputed Amounts
     1. If the Authority disputes the Contractor’s entitlement to any part of the amount claimed by the Contractor pursuant to Clause 9.2 (Report and Invoice) in respect of any invoice the provisions of this Clause 9.4 shall apply.
     2. Within ten (10) Working Days of receipt by the Authority of the relevant invoice and supporting report, provided that, if such report is later found to contain inaccurate information, the time period shall be extended to ten (10) Working Days following the corrected supporting report (notwithstanding that the relevant invoice may have been paid) and the Disputed Amount may be withheld from a different invoice, the Authority shall notify the Contractor in writing of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a“**Disputed Amount**”) and shall submit to the Contractor such supporting evidence as the Authority may have.
     3. The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor’s entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.
  2. Response to Authority Notice

Within five (5) Working Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 9.4.2, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled to retain on a permanent basis any amounts withheld pursuant to Clause 9.4.3.

* 1. Dispute

If the Contractor responds (pursuant to Clause 9.5 (Response to Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 9.4.2, the matter or matters in question shall be determined under the Dispute Resolution Procedure.

* 1. Determination of Dispute

If the determination of any dispute conducted pursuant to Clause 9.6 (Dispute) shows that the Authority has withheld any amount which the Contractor was entitled to be paid the Authority shall pay such amount to the Contractor with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgment. Relevant monies should be paid within ten (10) Working Days of the determination of dispute.

* 1. Rights of Set Off

Any Party may retain or set off any amount owed to it under this Agreement that has fallen due and payable against any amount due and payable under this Agreement, provided that no amount due and payable as a result of a Party’s breach of this Agreement or pursuant to Clause 19 (*Indemnities*) may be set off or retained from any other amount due and payable under this Agreement unless the Parties agree (including pursuant to the dispute resolution procedure in Clause 26 (*Dispute Resolution Procedure*)) or unless such amount is finally judicially determined as due and payable. A Party shall notify the other Party as soon as reasonably practicable of any such retention or set off and provide particulars of the reasons for it.

* 1. Set Off and Disputed Amounts

If the payment or deduction of any amount referred to in Clause 9.8 (Rights of Set Off) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

* 1. VAT on Payments[[33]](#footnote-33)
     1. Unless stated otherwise in this Agreement, all sums payable the Authority under this Agreement are exclusive of any applicable VAT. If, under this Agreement, the Contractor makes a supply for VAT purposes and the Contractor (or any of its Affiliates) is required to account to a tax authority for VAT in respect of that supply, the Authority shall, subject to the receipt of a valid VAT invoice, pay to the Contractor (in addition to, and at the same time as, any other consideration for that supply) an amount equal to that VAT.
     2. If one party (the “**Paying Party**”) is required by this Agreement to reimburse the other party (the “**Payee Party**”) for any Losses, the Paying Party shall also reimburse the Payee Party for any VAT incurred by the Payee Party (or any of its Affiliates) in respect of that Loss, except to the extent that the Payee Party (or its Affiliate) is entitled to relief in respect of that VAT.
  2. Late Payment and Interest

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment.

* 1. Payments following termination

For the avoidance of doubt, provided that no Authority Default Termination Sum has been paid the Contractor may submit invoices following early termination of this Agreement where payments properly fall due in accordance with ‎Schedule 2 (*Payment Schedule*) and the provisions of this Clause 9 shall apply to any amounts which are the subject of such invoices.

1. Assignment, Delivery Partners and Sub-contracting

*Assignment*

* 1. The Contractor shall not assign all or any benefit, right or interest under this Agreement.
  2. The Authority shall be entitled to:
     1. assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or part to any Contracting Authority; or
     2. transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or relevant part of the Authority’s statutory functions.

*Subcontracting*

* 1. [Subject to Clause 10.4, t]/[T]he Contractor shall not subcontract its obligations under this contract without the prior written agreement of the Authority. The Parties agree that the entry into service contracts with Delivery Partners to assist with delivery of the Programme shall not constitute subcontracting.
  2. [The Contractor may subcontract the Services to Delivery Partners, in which case Clauses 10.6 to 10.10 shall apply in relation to the appointment of such Delivery Partners.][[34]](#footnote-34)
  3. [The purchase of standard services [*include details of types of services that may be purchased*]/[as specified by the Tender Submission] from providers shall be permitted and such providers shall not be considered Delivery Partners or subcontractors for the purposes of this Agreement and the provisions of Clauses 10.6 to 10.10 shall not apply in relation to such providers.][[35]](#footnote-35)

*Delivery Partners*

* 1. Save to the Initial Delivery Partners, the Contractor shall not appoint any new Delivery Partner, or replace the Initial Delivery Partners except with the prior written consent of the Authority. The Authority shall not unreasonably withhold or delay its consent to any contract with a Delivery Partner which complies with this Clause 10. By entering into this Agreement the Authority approves the Initial Delivery Partners.
  2. Notwithstanding the appointment of any Delivery Partner permitted under this Agreement, the Contractor shall remain responsible for the acts and omissions of its Delivery Partners as though they were its own.
  3. Other than in relation to the Initial Delivery Partners, where the Contractor did not specify in the Tender Submission how it may use Delivery Partners to deliver the Programme [or the Services][[36]](#footnote-36), but intends to enter into a contract with one or more Delivery Partner in connection with this Agreement, the Contractor shall, if reasonably possible, ensure:
     1. that at least one potential Delivery Partner with an operational or administrative location in the area of the Authority is invited to tender for such subcontract on the same terms as all the other parties invited to tender and that such invitation is made in the same manner as the invitation(s) to all other parties; and
     2. that social, economic and environmental considerations are taken into account in selecting the Delivery Partner.
  4. In all circumstances where the Contractor is contracting with a Delivery Partner in relation to the Programme [or the Services][[37]](#footnote-37), it shall act in good faith and in a fair and reasonable manner and a manner consistent with how it has committed to act with the Authority pursuant to Clause 2 (*Statement of Shared Aims* and Co-operation) of this Agreement. In particular (and without prejudice to the foregoing) it shall ensure that any such contract contains terms which:
     1. allocate risks fairly and appropriately as between the Contractor and the Delivery Partner, having regard to the respective abilities of the parties to manage and bear the relevant risks taking into account, inter alia, the services each are providing under the contract and the resources each has at their disposal;
     2. [makes payment to a Delivery Partner for services provided on a regular basis and not conditional upon achievement of the Outcomes or the receipt of payment by the Contractor from the Authority [unless such payment is [intended as a bonus for high performance][[38]](#footnote-38) AND/OR [withheld as a result of poor performance under such contract][[39]](#footnote-39)];][[40]](#footnote-40)
     3. require the Contractor to pay all sums due thereunder to the Delivery Partner within a specified period from the date of receipt of a valid invoice as defined by the terms of the subcontract not to exceed twenty (20) Working Days;
     4. allow for performance monitoring management and review consistent with the provisions of this Agreement;
     5. relate to data monitoring and audit consistent with the provisions of this Agreement;
     6. oblige the Delivery Partner to take out and maintain the relevant Required Delivery Partner Insurances;
     7. impose equivalent obligations on the Delivery Partner to those contained in Clauses 24 (*TUPE and Employees*) and Clause 25(Pensions) regarding TUPE and Pensions mutatis mutandis.
  5. [The Contractor shall deliver a Deed of Assurance signed by the Principal Delivery Partner and the Contractor to the Authority within one month of signing any contract with a Principal Delivery Partner.][[41]](#footnote-41)
  6. The Contractor shall provide a copy of any contracts with Delivery Partners within five (5) Working Days of request.

1. Monitoring and inspection
   1. Subject to Clause 11.2, the Contractor shall, not more than two (2) times per annum, allow the Authority’s Authorised Representative (or his or her nominee) access on reasonable notice during normal working hours to any premises used by the Contractor[, and shall use reasonable endeavours to procure such access to any premises used by a Delivery Partner,][[42]](#footnote-42) for the provision of the Programme (save where the Contractor [or Delivery Partner (as applicable)], acting reasonably, believes such access may breach any applicable Legislation or have a detrimental impact on Participants or the Programme) for the purpose of:
      1. monitoring and inspecting performance of the Programme;
      2. inspecting any or all records and documents in the possession, custody or control or held by the Contractor [or any Delivery Partner] in connection with the provision of the Programme;
      3. interviewing Contractor [or Delivery Partner] employees, officers or agents in connection with the provision of the Programme; and
      4. inspecting equipment, systems (including any quality assurance systems required by Clause 5.6) and procedures used by the Contractor [or Delivery Partner] to provide the Programme,

provided that the Authority may not use such inspections to gain access to any information: (i) which is Commercially Sensitive Information; (ii) in respect of which the Contractor [or Delivery Partner] owed a duty of confidentiality prior to the entry into this Agreement; or (iii) the disclosure of which would result in a breach of applicable Legislation.

* 1. The Authority may be entitled (save where the Contractor [or Delivery Partner (as applicable)], acting reasonably, believes such access may breach any applicable Legislation or have a detrimental impact on Participants or the Programme) to access premises used by the Contractor[, and the Contractor shall use reasonable endeavours to procure such access to any premises used a Delivery Partner,] for the provision of the Programme more than two (2) times per annum where such additional access is necessary to monitor compliance with statutory obligations of the Parties or to establish that a Performance Improvement Plan has been implemented in accordance with its terms.

1. Information and audit

*Information*

* 1. The Contractor shall maintain separate records of:
     1. the information provided in accordance with ‎Schedule 7 (*Management Information*); and
     2. any other Information produced in the course of this Agreement or relating to this Agreement which would normally be retained by a Contractor acting in accordance with Good Industry Practice,

and retain them for a period of at least six (6) years after the Contractor’s obligations under this Agreement have come to an end and shall permit the Authority to inspect such records as requested from time to time.

* 1. The Contractor shall provide such assistance as the Authority may reasonably require by written notice to the Contractor to enable the Authority:
     1. to complete all official returns, including, but without limitation the following:

returns to any central government body or properly authorised agency of central government; and

information required by any statutory body or compliance with any statute or statutory instrument; and

* + 1. to comply with its statutory duties relating to the Programme,

provided in each case the nature of such data and information and the format for the same has been agreed by the Parties (acting reasonably).

* 1. In the event that a special purpose vehicle is responsible for record keeping during the life of the Programme, and is then wound down after the Expiry Date, the Contractor shall appoint an organisation reasonably acceptable to the Authority to assume the responsibilities set out in Clause 12.1 and 12.2 for the six years following the Expiry Date.
  2. The Authority shall promptly supply accurate and relevant data held by the Authority to the Contractor to determine whether the Outcomes have been delivered and the Outcomes Payments triggered and any other relevant data within its control which is required to enable the Contractors to comply with ‎Schedule 7 (*Management Information*). In the case where a Mediator is appointed as set out in Clause 26 (*Dispute Resolution Procedure*), the Authority shall promptly supply any data reasonably requested by the Mediator, including access to any primary data sources held by the Authority insofar as the Authority is legally permitted to do so and subject, where appropriate, to confidentiality and data protection measures being agreed.

Audit

* 1. On up to two (2) occasions per annum, the Contractor shall permit and procure for the internal and external auditors of the Authority access to all such locations, Staff, property and Information of the Contractor and its agents and consultants (excluding Commercially Sensitive Information) as those auditors may properly require for the purpose of testing audit and investigation on behalf of the Authority notwithstanding whether such purposes relate to periods prior to the Commencement Date or require access to information which may relate to parties other than the Authority but the Contractor may not be required to act in breach of any obligation of confidentiality lawfully undertaken prior to the date of this Agreement toward any third party as a condition of the supply of the Information. The Authority’s rights pursuant to this Clause 12.5 are subject always to applicable Legislation.
  2. The Contractor shall provide to the Authority’s internal and/or external auditors within ten (10) Working Days of request such complete and up-to-date files and other documents as those auditors could have inspected by personal attendance under the provisions of this Agreement and those auditors may retain and copy the same for up to ten (10) Working Days and shall return the same by making them available for collection by the Contractor.
  3. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 12.5 and 12.5 unless an audit identifies a Contractor Default by the Contractor in which case the Contractor shall reimburse the Authority for all of their identifiable, reasonable costs and expenses properly incurred in the course of the audit which relate to the investigation of such Contractor Default.

1. Insurance
   1. The Contractor shall, during the Agreement Term, take out and maintain or procure the maintenance of the Required Insurances with a reputable insurance company and in accordance with Good Industry Practice.
   2. The Contractor shall not do, or omit to do, anything that may result in any of the Required Insurances (in respect of the Contractor) becoming void, voidable or unenforceable, or which would entitle any insurer to refuse to pay any claim under the Required Insurances (in respect of the Contractor).
   3. The Contractor shall provide to the Authority evidence and copies on request of all insurance policies required under this Clause 13 including but not limited to the name of the insurer and premium paid.
   4. If the Contractor is in breach of this Clause 13, the Authority may pay any premium required to keep such Required Insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
   5. The Contractor shall give the Authority notification within ten (10) Working Days after any claim on any of the Required Insurance policies (in respect of the Contractor, insofar as they relate to this Agreement) accompanied by full details of the incident giving rise to the claim.
   6. Failure to comply with the Required Insurance provisions of this Agreement shall not limit or relieve the Contractor of its liabilities and obligations under this Agreement.
2. Data Protection

*General*

* 1. Each Party shall comply with its obligations under the Data Protection Legislation and the Computer Misuse Act 1990, as amended, and any other applicable Legislation, insofar as performance of this Agreement gives rise to obligations under such legislation. The Contractor shall also comply with any data sharing policies set out in Part 2 of Schedule 1 (*Applicable Policies*)(the “**Data Sharing Policies**”) in delivering the Programme so far as they are relevant. In the event of any conflict between the terms of this Clause 14 and the Data Sharing Policies, the terms of this Clause 14 shall prevail.
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation for any Personal Data that is Processed in connection with this Agreement:
     1. each Party is a Controller with respect to the Personal Data for which it determines the purposes and means of the Processing; and
     2. each Party is a Processor for the Personal Data that it Processes on behalf of the Controller; and
     3. the Parties shall be Joint Controllers with respect to any Personal Data for which they jointly determine the purposes and means of the Processing.
  3. Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
  4. The Parties agree to take account of any guidance issued by the UK Information Commissioner’s Office or any other applicable Supervisory Authority and amend this Agreement as necessary to comply with such guidance.

*Controller and Processor*

* 1. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
  2. At the Controller’s request, the Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
     1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
     2. an assessment of the necessity and proportionality of the Processing operations in relation to the Programme;
     3. an assessment of the risks to the rights and freedoms of Data Subjects; and
     4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  3. The Processor shall, in relation to any Personal Data that it Processes in connection with its obligations under this Agreement:
     1. Process that Personal Data only in accordance with Schedule 4 (*Processing, Personal Data and Data Subjects*) or the Controller’s other written instructions, unless the Processor is required to do so otherwise by Legislation in which case the Processor shall promptly notify the Controller before Processing the Personal Data, unless prohibited by Legislation;
     2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

nature, scope, context and purposes of Processing the Personal Data;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

* + 1. ensure that:

the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Schedule 4 (*Processing, Personal Data and Data Subjects*));

it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this Clause 14.7;

are subject to appropriate confidentiality undertakings with the Processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data;

* + 1. not transfer Personal Data outside of the UK, unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

the Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Controller;

the Data Subject has enforceable rights and effective legal remedies;

the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);

the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and

at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Legislation to retain the Personal Data.

* 1. Subject to Clause 14.9, the Processor shall notify the Controller immediately if it:
     1. receives a Data Subject Request (or purported Data Subject Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
     4. receives any communication from the Information Commissioner or any other Supervisory Authority in connection with Personal Data Processed under this Agreement;
     5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required, or purported to be required, by Legislation; or
     6. becomes aware of a Data Loss Event.
  2. The Processor’s obligation to notify under Clause 14.8 shall include the provision of further information to the Controller in phases, as details become available.
  3. Taking into account the nature of the Processing and information available to the Processor, and to the extent required under applicable Data Protection Legislation, the Processor shall assist the Controller in complying with (i) the Controller’s relevant security, data breach notification, data impact assessment and Supervisory Authority consultation obligations under the applicable Data Protection Legislation; and (ii) any complaint, communication or request made under Clause 14.8 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
     1. the Controller with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Controller following any Data Loss Event; and
     5. assistance as requested by the Controller with respect to any request from the UK Information Commissioner’s Office, or any consultation by the Controller with the UK Information Commissioner's Office.
  4. The Processor shall allow for audits of its data Processing activity in connection with this Agreement by the Controller or the Controller’s designated auditor.
  5. Before allowing any sub-processor to Process any Personal Data related to this Agreement, the Processor must:
     1. notify the Controller in writing of the intended sub-processor and Processing;
     2. obtain the written consent of the Controller;
     3. enter into a written agreement with the sub-processor which gives effect to the terms set out in this Clause 14.12, such that they apply to the sub-processor; and
     4. provide the Controller with such information regarding the sub-processor as the Controller may reasonably require.
  6. The Processor shall remain fully liable for all acts or omissions of any of its sub-processors.

*Joint Controllers*

* 1. Where the Parties are acting as Joint Controllers in accordance with Clause 14.2.3, they shall:
     1. enter into an arrangement that shall reflect the respective roles and relationships of the Joint Controllers in respect of the Data Subjects and designate the Controller which is to be the contact point for Data Subjects;
     2. make the essence of that arrangement available to the Data Subjects; and
     3. comply with their respective obligations under that arrangement when Processing Personal Data in connection with this Agreement.

1. Transparency and Freedom of information[[43]](#footnote-43)
   1. The Parties acknowledge that:
      1. the Transparency Data; and
      2. the content of this Agreement, including any changes to this Agreement agreed from time to time, except for:

any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

the Commercially Sensitive Information;

(together the “**Transparency Information**”) are not Confidential Information and may be disclosed by either Party.

* 1. Notwithstanding any other provision of this Agreement, the Contractor hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
  2. The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including by complying with the provisions of Schedule 9 (*Transparency Report*).
  3. If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.
  4. The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
  5. The Contractor agrees that any Information it holds that is not included in the Transparency Data but is reasonably relevant to or that arises from the provision of the Programme shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may, except for Commercially Sensitive Information and Confidential Information, publish such Information. The Contractor shall provide to the Authority within 5 Working Days (or such other longer period as the Authority may specify) any such Information requested by the Authority.
  6. The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority (at the Contractor’s expense) to enable the Authority to comply with any relevant Request for Information.
  7. The Contractor shall and shall use reasonable endeavours to procure that its Delivery Partners shall:
     1. transfer a Request for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
     2. provide the Authority with a copy of all Information in its possession or power that the Authority reasonably requires to enable the Authority to respond to a Request for Information in accordance with the FOIA within five (5) Working Days (or such other longer period as the Authority may specify) of the Authority requesting that Information, such Information to be provided in the form reasonably required by the Authority; and
     3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
  8. The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
     1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; or
     2. is to be disclosed in response to a Request for Information,

in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

* 1. The Authority acknowledges that the Confidential Information is *prima facie* likely to be exempt from disclosure under the provisions of the FOIA or the Environmental Information Regulations (although such acknowledgement does not prejudice the Authority’s discretion as set out in Clause 15.9). The Authority shall notify the Contractor prior to providing any Confidential Information as part of a response to a Request for Information unless prohibited by law.
  2. The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of FOIA, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
     1. without consulting with the Contractor; or
     2. following consultation with the Contractor and having taken its views into account.

1. Confidentiality
   1. Each Party:
      1. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except:

to such of the Staff, or in the case of the Contractor, the Delivery Partner and professional advisors or consultants engaged to advise a Party in connection with this Agreement as is strictly necessary for the entry into and/or performance of this Agreement, or, in the case of the Contractor, any contract with a Delivery Partner, and only to the extent necessary for such purpose; and/or

where disclosure is otherwise expressly permitted by the provisions of this Agreement; and

* + 1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly and shall ensure that such Confidential Information is not disclosed (without prior approval) or used by it or any of its Staff or professional advisors or consultants otherwise than for the purposes of this Agreement.
  1. The Contractor shall ensure that:
     1. its Staff, professional advisors and consultants are aware of the Contractor’s confidentiality obligations under this Agreement and that, where requested by the Authority, such Staff, professional advisors and consultants sign a confidentiality undertaking before commencing work in connection with this Agreement; and
     2. where the Programme includes the provision or recruitment of temporary staff for the Authority, such staff are aware that they will be required to operate in accordance with the confidentiality and intellectual property obligations undertaken by the Contractor under this Agreement (including in particular those set out in Clause 10 (*Assignment, Delivery Partners and Sub-contracting*), Clause 18 (*Intellectual Property*) and Clause 21 (*Default and Termination*) and the Contractor shall, if so required by the Authority, obtain and furnish to the Authority a personal undertaking from such temporary employees directly to the Authority to this effect before such employees begin work in connection with this Agreement.
  2. The provisions of Clauses 16.1 and 16.2 shall not apply to any Confidential Information received by either Party:
     1. which is or becomes public knowledge (otherwise than by breach of this Clause 16);
     2. which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
     3. which is received from a third party who lawfully acquired it and who is under no obligation to the disclosing Party restricting its disclosure;
     4. is independently developed by the receiving Party without access to the Confidential Information; or
     5. which are required to be disclosed by a statutory, legal or parliamentary authority, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 15 (*Transparency and Freedom of information*).
  3. Nothing in this Clause 16 shall prevent the Authority:
     1. disclosing any Confidential Information obtained from the Contractor (excluding Commercially Sensitive Information) for the purpose of:

the examination and certification of the Authority’s accounts; or

any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

* + 1. disclosing any Confidential Information (excluding the Commercially Sensitive Information) obtained from the Contractor:

to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the Information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to this Agreement,

provided that in disclosing information under this Clause 16.4 the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

* 1. Nothing in this Clause shall prevent any Party from using any non-confidential and non-proprietary techniques, ideas or know-how gained from the other Party during the performance of this Agreement or in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights of the other Party or any third party.
  2. The provisions under this Clause are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
  3. The Parties recognise the potential social value in sharing with third parties information relating to the Programme and the Outcomes (including, without limitation, data relating to the nature, volume and effectiveness of interventions with Participants). Without prejudice to the other provisions of this Agreement, the Parties shall use reasonable endeavours to respond positively to reasonable requests for such information and where to do so would put one of the Parties in breach of this Agreement, the affected Party shall consider, at their discretion but acting in good faith, whether to give prior written consent to such an act on that occasion. In such circumstances, the Parties agree that no breach of this Agreement shall arise (provided that such consent shall be required on every occasion such information is sought).

1. Publicity

Except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, or otherwise in accordance with any publicity guidelines agreed in writing by the Parties from time to time, neither Party shall make any press announcement or publicise this Agreement or the Programme in any way.

1. Intellectual Property[[44]](#footnote-44)
   1. **OPTION 1:** [The Contractor hereby grants to the Authority a royalty-free, non-exclusive, non-sublicensable and non-transferable (except to an assignee or transferee of any of the Authority’s rights or benefits under this Agreement in accordance with its terms) [perpetual (subject to the termination rights in Clause 21 (*Default and Termination*))] licence to use the Intellectual Property Rights which the Contractor owns or has the right to sub-license as of the date of this Agreement (the “**Background IPR**”), or that the Contractor acquires rights to, creates or otherwise develops as part of the provision of the Programme under this Agreement (the “**Foreground IPR**”) solely to the extent needed for the Authority to carry out its duties or exercise any of its rights under or in connection with the Programme in this Agreement.
   2. The Contractor shall use all reasonable endeavours (provided that the Contractor shall not be required to incur any material costs or expenses) to ensure that any of its Foreground IPR:
      1. vest, and remain vested throughout the term of this Agreement in the Contractor; or
      2. are licensed to the Contractor, and remain licensed to the Contractor throughout the term of this Agreement (with the Contractor also having the right to grant sub-licenses to the Authority in accordance with Clause 18.1).
   3. Where a claim or proceeding is made or brought against the Authority arising out of the Authority’s use of Intellectual Property Rights licensed to the Authority under Clause 18.1 which results in an infringement of any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of Clause 19 (*Indemnities*) shall apply.
   4. Where a claim or proceeding described in Clause 18.3 has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement (and otherwise than as a result of a breach of this Clause 18 by the Contractor) then the Authority shall indemnify the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.
   5. **OPTION 2:** [The Contractor hereby:
      1. assigns to the Authority on a worldwide basis and by way of present assignment all of its current and future rights, title and interest in and to any Intellectual Property Rights that the Contractor acquires rights to, creates or otherwise develops as part of its provision of the Programme under this Agreement (the “**Foreground IPR**”), including all statutory and common law rights attaching to the Foreground IPR and the right to sue (and retain damages recovered) in respect of any infringement or unauthorised use, or any other cause of action arising from ownership, of the Foreground IPR; and
      2. grants to the Authority a royalty-free, non-exclusive and non-transferable (except to an assignee or transferee of any of the Authority’s rights or benefits under this Agreement in accordance with its terms) [perpetual (subject to the termination rights in Clause 21 (*Default and Termination*))] licence to use the Intellectual Property Rights which the Contractor owns or has the right to sub-license as of the date of this Agreement (the “**Background IPR**”), solely to the extent needed for the Authority to carry out its duties or exercise any of its rights under or in connection with the Programme as set out in this Agreement.
   6. The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-sublicensable and [non-]transferable [(except to an assignee or transferee of any of the Contractor’s rights or benefits under this Agreement in accordance with its terms)] perpetual licence to use, modify and otherwise exploit the Foreground IPR for any purpose [other than licensing to third parties for revenue generation].
   7. The Contractor shall all use reasonable endeavours (provided that the Contractor shall not be required to incur any material costs or expenses) to ensure that any of the Background IPR are licensed to the Contractor, and remain licensed to throughout the term of this Agreement (with the Contractor also having the right to grant sub-licenses to the Authority in accordance with Clause 18.5.2).
   8. Where a claim or proceeding is made or brought against the Authority arising out of the Authority’s use of:
      1. the Foreground IPR as assigned to the Authority under Clause 18.5.1 at the date of that assignment which results in an infringement of any Intellectual Property Rights of a third party; or
      2. the Background IPR licensed to the Authority under Clause 18.5.2 which results in an infringement of any Intellectual Property Rights of a third party, unless such infringement has arisen out of the use of any Background IPR by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement,

then the Contractor shall indemnify the Authority at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of Clause 19 (*Indemnities*) shall apply.

* 1. Where a claim or proceeding described in Clause 18.8 has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement (and otherwise than as a result of a breach of this Clause 18 by the Contractor) then the Authority shall indemnify the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.]

1. Indemnities
   1. Contractor’s Indemnity
      1. The Contractor shall, subject to Clause 19.3 (Limitation of Liability), be responsible for, and shall release and indemnify the Authority or any Authority Related Party on demand from and against all liability for Direct Losses arising from:

death or personal injury;

loss of or damage to property; and

third party actions, claims and/or demands (other than any which are the subject of the indemnity in Clause 19.1.2‎) brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the negligent performance, breach or non-performance by the Contractor of its obligations under this Agreement.

* + 1. The Contractor shall, subject to Clause 19.3 (Limitation of Liability), be responsible for, and shall release and indemnify the Authority or any Authority Related Party, on demand from and against all liability for Losses arising from third party actions, claims or demands brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Agreement to the extent that there are no other remedies available to the Authority under this Agreement.
  1. Authority’s Indemnity
     1. The Authority shall, subject to Clause 19.3 (Limitation of Liability), be responsible for, and shall release and indemnify the Contractor or any Contractor Related Party on demand from and against all liability for Direct Losses arising from:

death or personal injury;

loss of or damage to property; and

third party actions, claims and/or demands brought against the Contractor or any Contractor Related Party,

which may arise out of, or in consequence of, the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement) or the negligent performance, breach or non-performance by the Authority of its obligations under this Agreement.

* 1. Limitation of Liability
     1. Notwithstanding any other provision of this Agreement, neither Party (the “**First Party**”) shall be in breach of, or under any liability to make any payment to the other Party (the “**Second Party**”) in respect of, this Agreement to the extent that the breach or payment obligation arises as a direct result of:

any breach by the Second Party of its obligations under this Agreement;

the First Party acting on a written notice issued by the Second Party; or

the negligence or wilful misconduct of the Second Party or any of their Related Parties,

other than to the extent that such actions of the Second Party would not have occurred but for a breach by the First Party of its obligations under this Agreement.

* + 1. The aggregate amount of the liability of each Party in respect of any claim under this Agreement (other than in respect of death or personal injury caused by its negligence, or fraud or fraudulent misrepresentation or any other liability that cannot be excluded by Law where no limit shall apply), when taken together with any other claims made under this Agreement, shall not exceed:

the relevant amounts specified in the Required Insurances (for this purpose the Authority shall be deemed to have the same levels of insurance as the Contractor is required to maintain[[45]](#footnote-45)) and

where no relevant amount is specified, the aggregate amount in respect of those claims exceeds [*amount to be inserted for uninsured losses*]).

* 1. Limitation of Indemnity

An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.

* 1. Notification of Claims

Where either Party (the“**Indemnified Party**”) wishes to make a claim under this Agreement against the other (the“**Indemnifying Party**”) in relation to a claim made against it by a third party (a“**Third-Party Claim**”), the Indemnified Party shall give written notice setting out full particulars of the relevant claim as soon as reasonably practicable after receiving the claim.

* 1. Conduct of Claims

Subject to the rights of the insurers under the Required Insurances:

* + 1. on the giving of notice by the Indemnified Party under Clause 19.5 the Indemnifying Party may elect at its own expense and with all reasonable assistance and co-operation of the Indemnified Party to take conduct of the Third-Party Claim;
    2. the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third-Party Claim within six months of being notified of such Third-Party Claim (or such other period as the Parties may agree), take any action to settle or prosecute the Third-Party Claim or make any admission or concession in connection with the Third-Party Claim.
  1. Costs of Claims

The Indemnifying Party shall, if it wishes to have conduct of any Third-Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third-Party Claim by the Indemnifying Party.

* 1. *Mitigation*

The Indemnified Party shall at all times take all reasonable steps to avoid or mitigate any Loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

1. Force Majeure
   1. On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party or ability to and any action proposed to mitigate its effect.
   2. As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement. Such amendments may include but are not limited to:
      1. an amendment to the obligations of that Party;
      2. an extension of the time period for performance of any particular obligation under the Agreement;
      3. an extension of the Operational Period and Expiry Date;
      4. an amendment to the Evidence required in order to claim Outcomes Payments;
      5. an amendment to the definition of the Outcomes;
      6. an amendment to the Outcome Payment applicable for a given Outcome,

and, in each case, such amendments may be made for the period during which the Force Majeure Event is continuing or for the remainder of the term of the Agreement.[[46]](#footnote-46)

* 1. [The Parties have agreed that, if the following Force Majeure Events occur the Agreement will be amended in the following manner:
     1. [*Parties to include details of any anticipated Force Majeure Events which they wish to prescribe an outcome for*.][[47]](#footnote-47)
  2. If no such terms are agreed on or before the date falling sixty (60) Working Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Agreement or, in the case of the Contractor, it is unable to collect or provide any Evidence required to claim Outcomes Payments or its ability to achieve the Outcomes is materially and adversely affected, then either Party may terminate this Agreement by giving no less than twenty (20) Working Days’ written notice to the other Party.
  3. Where either Party serves a termination notice pursuant to Clause 20.4, the Authority shall, provided the Contractor has acted in good faith to mitigate the effects of the Force Majeure Event and complied with the provisions of Clause 20.4, pay the No Fault Termination Sum within 20 Working Days of the date this Agreement terminates pursuant to such notice.
  4. The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement.
  5. No Party shall be entitled to bring a claim or exercise a contractual or common law right for a breach of obligations under this Agreement by the other Party, or shall incur any liability to the other Party for any Losses incurred by that other Party to the extent that a Force Majeure Event occurs and the Party is prevented from carrying out obligations by that Force Majeure Event.

1. Default and Termination
   1. Performance Improvement Plan
      1. If during the Operational Period there is a Performance Failure or Negative Outcomes Assessment then the Contractor shall:

notify the Authority promptly upon becoming aware of such Performance Failure or Negative Outcomes Assessment; and

provide the Authority as soon as reasonably practicable and in any event within twenty (20) Working Days with a draft Performance Improvement Plan.

* + 1. The Authority shall (acting reasonably) either approve the draft Performance Improvement Plan within twenty (20) Working Days of receipt or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Authority and the Contractor shall meet to discuss the Authority’s concerns. The Contractor shall submit a revised Performance Improvement Plan to the Authority for approval within ten (10) Working Days of the meeting, which the Authority shall (acting reasonably) either approve or reject within ten (10) Working Days of receipt. If the Contractor does not receive notice from the Authority that it does not accept the draft Performance Improvement Plan within the twenty (20) Working Day time period or if applicable the further ten (10) Working Day time period, the Contractor’s draft Performance Improvement Plan shall be deemed to be agreed.
    2. Once agreed, the Contractor shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.
    3. If a Performance Improvement Plan cannot be agreed, then either Party may escalate the matter for resolution in accordance with the Dispute Resolution Procedure to resolve any disagreement over the terms of the Performance Improvement Plan or any disagreement over whether the Performance Failure or a Negative Outcomes Assessment is one which is capable of being addressed through a Performance Improvement Plan.
  1. Termination on Contractor Default

Subject to Clause 21.3 (Rectification), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

* 1. Rectification
     1. If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.
     2. The Termination Notice must specify:

the type and nature of Contractor Default that has occurred, giving reasonable details; and

that in the case of any Contractor Default falling within limbs (e), (f) and (g) of the definition of Contractor Default this Agreement will terminate on the Working Day falling forty (40) Working Days after the date the Contractor receives the Termination Notice, unless the Contractor rectifies the Contractor Default within twenty (20) Working Days after the date the Contractor receives the Termination Notice; or

that in the case of any other Contractor Default (not being limbs (e), (f) or (g)), this Agreement will terminate on the date falling forty (40) Working Days after the date the Contractor receives the Termination Notice.

* + 1. If the Contractor rectifies the Contractor Default within the time period specified in the Termination Notice it shall as soon as possible notify the Authority and the Termination Notice will be deemed to be revoked and this Agreement will continue.
    2. If in the case of a Contractor Default falling within limbs (e), (f) or (g) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice, the Authority may give notice stating that this Agreement will terminate on the date falling five (5) Working Days after the date of service of such notice.
  1. Authority Default
     1. If an Authority Default has occurred and is continuing and the Contractor wishes to terminate this Agreement, it must serve a Termination Notice on the Authority.
     2. The Termination Notice must specify the Authority Default which has occurred entitling it to terminate.
     3. This Agreement shall terminate on the Working Day falling forty (40) Working Days after the date the Authority receives the Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Working Days of receipt of the termination notice.
     4. If the Authority rectifies the Authority Default within the time period specified in the Termination Notice it shall as soon as possible notify the Contractor and the Termination Notice will be deemed to be revoked and this Agreement will continue.
  2. Payment on Authority Default
     1. On termination of this Agreement pursuant to Clause 21.4(Authority Default), the Authority shall pay the Authority Default Termination Sum to the Contractor within twenty (20) Working Days of the Termination Date.
     2. Any and all sums irrevocably paid by the Authority to the Contractor under Clause 21.6.1 or Clause 21.6.2 shall be in full and final settlement of each Party’s rights and claims against the other for breaches and/or termination of this Agreement whether under contract, tort, restitution or otherwise, but without prejudice to:

any antecedent liability of the Contractor to the Authority which the Authority has been unable to set off pursuant to this Agreement;

any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum; and

any liabilities arising in respect of any breach by either Party of their obligations under Clause 22 (*Continuing obligations on termination*) which arise or continue after the Termination Date to the extent not taken into account in the calculation of the Authority Default Termination Sum or other payment of compensation on termination pursuant to this Agreement.

* 1. Voluntary Termination
     1. Either Party may terminate this Agreement by service of not less than six (6) months’ written notice upon the other provided no such notice may be served in the eighteen (18) months immediately following the Programme Commencement Date.
     2. Where the Authority serves a termination notice pursuant to this Clause 21.6, it shall pay the Authority Default Termination Sum on the date this Agreement terminates pursuant to that notice.
     3. Where the Contractor serves a termination notice pursuant to this Clause 21.6, the Contractor shall be entitled to receive payments in respect of Outcomes achieved after the date of termination that relate directly to the delivery of the Programme prior to that date but (subject to Clause ‎22.1) not otherwise.

1. Continuing obligations on termination

Save as otherwise expressly provided in this Agreement, and notwithstanding the provisions of Clause 21.6.2:

* 1. termination or expiry of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and
  2. termination or expiry of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under Clause 6 (*Authority Obligations*) (to the extent necessary to enable the Contractor to submit accurate information and invoices for payment pursuant to Clause 9.12 (Payments following termination) of this Agreement), Clause 9 (*Payment provisions*), Clause 12.1, Clause 13 (*Insurance*), Clause 15 (*Transparency and Freedom of information*), Clause 16 (*Confidentiality*), Clause 18 (*Intellectual Property*), Clause 19 (*Indemnities*), Clause 21.4 (Authority Default), Clause 23 (*Transition to another contractor*), Clause 24 (*TUPE and Employees*), Clause 25 (*Pensions*), Clause 35 (*Notices*) and Clause 37 (*Counterparts*) or under any other provision of this Agreement which is expressed to survive termination or expiry or which is required to give effect to such termination or the consequences of such termination or expiry.

1. Transition to another contractor
   1. Duty to Co-operate

During the final six (6) months of the Operational Period (where this Agreement expires by effluxion of time) or during the period of any Termination Notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Programme (or any part of the Programme) to the Authority or any other person (a “**Replacement Contractor**”), and for the purposes of this Clause 23 the meaning of the term “co-operate” shall include:

* + 1. liaising with the Authority and/or any Replacement Contractor, and providing reasonable assistance and advice concerning the Programme and its transfer to the Authority or to such Replacement Contractor;
    2. subject always to the Contractor’s obligations under the Data Protection Legislation, and subject to Clause 16 (*Confidentiality*), providing to the Authority and/or to any Replacement Contractor all and any information concerning the Programme which is reasonably required for the efficient transfer of responsibility for their performance but information which is Commercially Sensitive Information of the Contractor, shall not be provided;
    3. continue to deliver the Programme to existing Participants; and
    4. performing its obligations as set out in the Demobilisation Plan.
  1. Transfer of Responsibility

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Programme to a Replacement Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Operational Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

1. TUPE and Employees

Transferring In

* 1. *No Employee Transfer*
     1. The Authority and/or the Existing Service Provider (together, the “**Current Employers**” and each a “**Current Employer**”) and the Contractor do not anticipate that there are any individuals presently employed by the Current Employers whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Delivery Partner of) services in connection with the delivery of the Programme pursuant to this Agreement [or the Services][[48]](#footnote-48), have effect after the Programme Commencement Date as if originally made between those persons and the Contractor and/or relevant Delivery Partner. However, in the event of a proposed TUPE transfer by application of the law, the provisions of this Clause 24 shall apply.
  2. Authority and Existing Service Provider Employee Transfer
     1. The Authority and the Contractor agree that, by virtue of the transfer to the Contractor of responsibility for the provision of (or procuring the provision by any Delivery Partner of) services in connection with the delivery of the Programme pursuant to this Agreement [or the Services][[49]](#footnote-49), the contract of employment of any employee employed by the Current Employers who is wholly or mainly engaged in the provision of those services immediately prior to the Programme Commencement Date (an “**Existing Transferring Employee**”) will have effect as if originally made between the Existing Transferring Employee and the Contractor (or Delivery Partner), pursuant to TUPE.
     2. Upon the Programme Commencement Date, the Current Employers shall remain responsible for the employment of any employee employed by the Current Employers who is not an Existing Transferring Employee.
     3. [If it is agreed or subsequently agreed that there are Existing Transferring Employees, then:

the Current Employers shall, ten (10) Working Days from the date on which it was determined that an individual was an Existing Transferring Employee, have the opportunity to offer continued employment to the Existing Transferring Employee; and

the Contractor shall procure that no Existing Transferring Employee to whom the Current Employers have offered a position in accordance with Clause 24.2.3(a) shall be dismissed by reason of redundancy until (i) the period for acceptance of the Current Employers’ offer has expired and (ii) that offer has been declined or has not been accepted by the Existing Transferring Employee.][[50]](#footnote-50)

* + 1. In the event that any employee who is not an Existing Transferring Employee claims that their employment should have transferred to the Contractor and/or Delivery Partner pursuant to TUPE, the Current Employers shall promptly notify the Contractor and/or Delivery Partner of any assertion or claim and afford the Contractor and/or Delivery Partner the opportunity to challenge, if appropriate and acting reasonably, such assertion or claim.
    2. The Authority shall indemnify the Contractor against:

[any costs reasonably incurred by the Contractor (or by a relevant Delivery Partner and for which the Contractor is responsible) until the period for acceptance of the Current Employers’ offer (referred to in ‎24.2.3(a)) has expired; and]

any Losses incurred by the Contractor or any relevant Delivery Partner in connection with any claim or demand by any Existing Transferring Employee arising from any act, fault or omission of the Current Employers in relation to any Existing Transferring Employee prior to the Programme Commencement Date (except where such act, fault or omission arises as a result of the Contractor or any relevant Delivery Partner's failure to comply with Regulation 13 of TUPE).

* + 1. [Subject to Clause 24.2.5(a)] all amounts payable to or in relation to any employee employed by the Current Employers (including but not limited to the Existing Transferring Employees), in respect of the period to the close of business on the date of the Programme Commencement Date shall be for the account of the Current Employers. All amounts payable to in or in relation to an Existing Transferring Employee in respect of the period following the date of the Programme Commencement Date shall be for the account of the Contractor (or the relevant Delivery Partner).
  1. *Compliance with Legislation and TUPE*
     1. The Contractor shall comply and shall use reasonable endeavours to procure that each Delivery Partner and all persons employed or engaged by a Delivery Partner in connection with the provision of the Programme [or any of the Services][[51]](#footnote-51) shall, as far as applicable, comply with Legislation and Applicable Policies, including on health and safety at work and on anti-discrimination and equal opportunities.
     2. The Contractor and/or any Delivery Partner shall:

provide details of any measures (within the meaning of Regulation 13 of TUPE) proposed in connection with the transfers of employment contemplated under Clause 24.2 of this Agreement in good time prior to the Programme Commencement Date to enable the Current Employers to perform their obligations under Regulation 13(2); and

if so requested by the Current Employers, participate in an information and consultation process with the appropriate representatives of the Existing Transferring Employees prior to the Programme Commencement Date.

* + 1. The Contractor shall indemnify and hold harmless the Current Employers against any Direct Losses arising from any fault or omission of the Contractor and or any Delivery Partner in relation to any Existing Transferring Employee after the Programme Commencement Date, including but not limited to any failure by the Contractor to comply with its obligations under TUPE.

*Transferring Out*

* 1. *Expiry, Termination or a Transfer Change*
     1. On the Operational Period End Date or the Termination Date (if earlier) (the **“Programme Termination Date”**), the Current Employers and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any of services in connection with the delivery of the Programme pursuant to this Agreement [or the provision of any of the Services][[52]](#footnote-52).
     2. For the purposes of this Clause 24, **“Transferring Employees”** shall mean those employees who are wholly or mainly engaged in the provision of services in connection with the delivery of the Programme pursuant to this Agreement [or the provision of any of the Services][[53]](#footnote-53) immediately prior to the Programme Termination Date whose employment transfers to a Future Service Provider on substantially the same or equivalent terms and conditions, pursuant to TUPE.
     3. The Contractor shall take reasonable steps to ensure the Authority is aware of the proposed number of Transferring Employees and the Parties agree to then co-operate to identify a final list of Transferring Employees, in each case, prior to the Programme Termination Date.
     4. Upon the Programme Termination Date, the Contractor shall remain responsible for the employment of any employee employed by the Contractor who is not a Transferring Employee.
     5. In the event that any employee who is not a Transferring Employee claims that their employment should transfer (or should have transferred) to a Future Service Provider pursuant to TUPE, the Contractor and/or Delivery Partner shall promptly notify the Future Service Provider of any assertion or claim and afford the Future Service Provider the opportunity to challenge, if appropriate and acting reasonably, such assertion or claim.
     6. The Contractor shall indemnify the Authority and any Future Service Provider against:

any Losses incurred by the Future Service Provider in connection with any claim or demand by any Transferring Employee arising from any act, fault or omission of the Contractor and/or Delivery Partner in relation to any Transferring Employee prior to the Programme Termination Date (except where such act, fault or omission arises as a result of the Authority’s or the Future Service Provider’s failure to comply with Regulation 13 of TUPE); and

any Losses arising from or in connection with a claim by any person that they should have transferred to the Future Service Provider under the provisions of TUPE.

* + 1. All amounts payable to or in relation to any employee employed by the Contractor and/or any Delivery Partner (including but not limited to the Transferring Employees) in respect of the period to the close of business on the date of the applicable Programme Termination Date shall be for the account of the Contractor and/or any Delivery Partner. All amounts payable to in or in relation to a Transferring Employee in respect of the period following the date of the Programme Termination Date shall be for the account of the Future Service Provider.
    2. The Authority shall:

provide details of any measures (within the meaning of Regulation 13 of TUPE) proposed in connection with the transfer of employment contemplated under Clause 24.4 of this Agreement in good time prior to the Programme Termination Date to enable the Contractor and/or any Delivery Partner to perform their obligations under Regulation 13(2); and

if so requested by the Contractor and/or any Delivery Partner, participate in an information and consultation process with the appropriate representatives of the Transferring Employees prior to the Programme Termination Date.

* + 1. The Authority shall indemnify and hold harmless the Contractor against any Direct Losses arising out of a claim by a Transferring Employee in connection with any act, fault or omission of the Authority and/or any Future Service Provider after the Programme Termination Date, including but not limited to any failure by the Authority or any Future Service Provider to comply with its or their obligations under TUPE.
  1. *Delivery Partners*

In the event that the Contractor enters into any agreement in connection with this Agreement, it shall impose obligations on its Delivery Partners in the same terms as those imposed on it pursuant to this Clause ‎24. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this Clause 24 [and/or the Delivery Partner’s failure to comply with such terms].

* 1. *Conduct of Claims*

Clauses 19.5 to 19.7 of this Agreement shall apply where any claim is made in respect of the indemnities given under this Clause 24.

1. Pensions

*No Employee Transfer*

* 1. The Current Employers and the Contractor do not anticipate that there are any individuals presently employed by the Current Employers who are, or who are eligible to be, prior to the Programme Commencement Date, members of the Local Government Pension Scheme whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for provision of (or procuring the provision by any Delivery Partner of) the Programme [or any of the Services][[54]](#footnote-54) in accordance with this Agreement and in accordance with TUPE, have effect after the Programme Commencement Date (or at any other time) as if originally made between those persons and the Contractor and/or relevant Delivery Partner.

*[Authority and Existing Service Provider Employee Transfer*

* 1. If it is agreed or subsequently agreed that there are Existing Transferring Employees whose contracts of employment do have effect after the Programme Commencement Date as if originally made between those persons and the Contractor and/or relevant Delivery Partner and that any of the provisions of Clause 24.2 apply, the Authority and the Contractor and/or any relevant Delivery Partner shall agree the terms of providing pension provision in accordance with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 in respect of pensionable service on or after the Programme Commencement Date for, or in respect of, any such persons who are, or who are eligible to be, prior to the Programme Commencement Date, members of the Local Government Pension Scheme (the “**Eligible Employees**”).]
  2. [Any terms agreed between the Authority and the Contractor and/or any relevant Delivery Partner pursuant to Clause 25.2 shall be directly enforceable by any Eligible Employee against the Contractor and/or any relevant Delivery Partner and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to them by the Contractor and/or any relevant Delivery Partner under the terms agreed pursuant between the Authority and the Contractor and/or any relevant Delivery Partner pursuant to Clause 25.2 in their own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.]

*Co-operation on Expiry or Termination*

* 1. On the termination or expiry of this Agreement (for whatever reason) for a reasonable period both before and after such termination or expiry, the Contractor undertakes to co-operate fully with the Current Employers (and any successor that provides to the Current Employers services in the nature of any of or any part of the Programme) in order to deal with the pension rights of Transferring Employees for future programmes whereby Transferring Employees are provided with pension benefits which are broadly similar to or better than those with which they were provided under this Agreement.

1. Dispute Resolution Procedure
   1. Any dispute or difference arising out of or in connection with this Agreement (whether such disputes are in contract or tort or arise out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this Clause 26.
   2. The Parties shall each use reasonable endeavours to resolve a dispute by means of a prompt, bona fide discussion at a managerial level appropriate to the dispute in question.
   3. In the event that a dispute is not resolved within five (5) Working Days of it having been referred to a managerial level for discussion then any Party may refer it to the Chief Executive or equivalent officer of each Party for resolution and the same shall meet for discussion within ten (10) Working Days thereafter or such longer period as the Parties may agree.
   4. If the dispute is not resolved within ten (10) Working Days of escalation of the dispute in accordance with Clauses 26.2 or 26.3, either Party may refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.
   5. If the Parties cannot agree on a mediator, the Parties shall appoint a mediator nominated by CEDR.
   6. The Parties shall use their reasonable endeavours to conclude the mediation within twenty (20) Working Days of referral of the dispute to mediation.
   7. If the Parties do not conclude a binding agreement settling the relevant dispute within the time period referred to in Clause 26.6, either Party may notify the other Party of its intention to refer the dispute to litigation and for such purposes the Parties agree that the English courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.
   8. Except to obtain interim or injunctive relief, neither party may bring any proceedings in the courts in relation to any dispute until the procedure in Clauses 26.1 to 26.6 (inclusive) has been completed.
   9. Where any Dispute is referred to litigation pursuant to Clause 26.7, the courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations or the mediator and, where appropriate, to order financial compensation to be paid by one Party to the other.
   10. The Parties shall continue to comply with, observe and perform all of their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 26 and shall give effect to every recommendation of the mediator and the courts delivered under this Clause 26, provided that the Contractor shall not be obliged to accept new referrals from the date on which a dispute has been formally notified by one Party to the other where the dispute has arisen in respect of a breach of the Authority’s Obligations under this Agreement. For the avoidance of doubt the Contractor shall at all times continue to deliver the Programme in relation to Participants that are already engaged in the Programme irrespective of the subject matter of the dispute.
2. Change in Ownership
   1. Restricted Share Transfer
      1. A Change in Ownership may only occur to a Suitable Third Party.
      2. A Change in Ownership may only occur with the prior written consent of the Authority. Provided that where the Change in Ownership:

is to an entity which is an existing Investor or Delivery Partner; or

it is a transfer of shares in the Contractor that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000),

the Authority shall not withhold or delay its consent to such Change in Ownership.

* 1. Notification

The Contractor shall provide the Authority with at least ten (10) Working Days’ prior written notice of any Change in Ownership.

1. Warranties and Representations
   1. Each Party warrants and represents to the other Party that on the date of this Agreement:
      1. it is properly constituted and (where applicable) incorporated under the laws of [England and Wales][[55]](#footnote-55) and has the corporate power to own its assets and to carry on its business as it is now being conducted;
      2. it has the corporate power and any relevant regulatory permissions and/or authorisations required to enter into and to exercise its rights and perform its obligations under this Agreement;
      3. all action necessary by it to authorise the execution of and the performance of its obligations under this Agreement has been taken;
      4. the obligations expressed to be assumed by it under this Agreement are legal, valid, binding and enforceable to the extent permitted by law;
      5. the execution, delivery and performance by it of this Agreement does not contravene any provision of:

any existing Legislation, either in force or enacted but not yet in force, binding on it;

its constitutional documents;

any order or decree of any court or arbitrator which is binding on it; or

any obligation which is binding upon it or upon any of its assets or revenues, compliance with which will or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

* + 1. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement; and
    2. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues,

and the other Party relies upon such warranties and representations.

* 1. Each warranty and representation in this Clause 28 shall be construed as a separate warranty or representation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or representation or any other term of this Agreement.

1. Prevention of Fraud and Bribery
   1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any of its Staff, have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Contractor shall not during the term of this Agreement:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Authority or any of the Authority’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Contractor shall during the term of this Agreement:
      1. establish, maintain and enforce, and require that the Contractor Related Parties establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that the Contractor does not commit tax evasion facilitation offences as defined under that Act;
      3. keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Authority on request; and
      4. take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
   4. The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 29.1 and/or 29.2, or has reason to believe that it has or any of its Staff have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Contractor makes a notification to the Authority pursuant to Clause 29.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 12 (Information and audit).
   6. If the Contractor is in breach of Clauses 29.1 and/or 29.2, the Authority may by notice:
      1. require the Contractor to remove from performance of this Agreement any of the Contractor’s Staff whose acts or omissions have caused the Default; or
      2. immediately terminate this Agreement.
   7. Any notice served by the Authority under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).
2. Conflicts of Interest
   1. Each Party warrants to the other that at the date of this Agreement it does not have (and is not aware that it will have in the future) any interest in any matter where there is or is reasonably likely to be a conflict of interest between its interest and that of the other Party or the Potential Participants.
   2. If a Party becomes aware of any such conflict of interest or any potential conflict of interest it shall promptly notify the other Party. The Parties shall discuss the actual or potential conflict and shall use reasonable endeavours to eliminate or avoid the conflict or minimise its impact, taking into account in particular any statutory duties of the Authority and the interests of the Potential Participants and Participants.
3. Entire Agreement
   1. The Parties acknowledge that this Agreement sets forth the entire agreement between them with respect to the provision of the Programme and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties. It is agreed that:
      1. no Party has relied on or shall have any claim or remedy arising under or in connection with any statement, representation, warranty or undertaking made by or on behalf of the other Party in relation to Programme that is not expressly set out in this Agreement;
      2. the only right or remedy of a Party in relation to any provision of this Agreement shall be for breach of this Agreement; and
      3. except for any liability in respect of a breach of this Agreement, neither Party shall owe any duty of care or have any liability in tort or otherwise to the other party in relation to the Programme.
   2. Nothing in this Clause 28 shall limit any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.
4. No partnership or agency
   1. Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Authority and the Contractor.
   2. Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold themselves out as having authority or power to bind the Authority in any way.
5. Amendments and waivers
   1. No amendment of this Agreement shall be effective unless it is in writing.
   2. No failure to exercise, or delay in exercising, any right under this Agreement or provided by Law shall affect that right or operate as a waiver of the right. The single or partial exercise of any right under this Agreement or provided by Law shall not preclude any further exercise of it.
   3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 35 (*Notices*).
6. Severance
   1. Each provision of this Agreement is severable and distinct from the others and the Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.
   2. If any provision of this Agreement is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this Agreement would not negate the commercial intent and purpose of the Parties under this Agreement.
   3. If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the Parties under this Agreement.
7. Notices
   1. Any notice required by this Agreement to be given by any Party to any other Party shall be in writing and shall be served personally[, by email][[56]](#footnote-56) or by sending the same by registered post or recorded delivery to the following:

|  |  |  |
| --- | --- | --- |
|  | Contractor | Authority |
| Address: |  |  |
| For the attention of: |  |  |
| Tel: |  |  |
| Email: |  |  |

* 1. Any notice served personally will be deemed to have been served on the Working Day of delivery, any notice sent by post will be deemed to have been served two Working Days after it was posted [and any notice sent by email will be deemed to have been served when it is delivered provided that if the notice is delivered or received after 5 p.m. London time or on a day which is not a Working Day then the notice shall be deemed to have been delivered or received (as applicable) at 9 a.m. London time on the next Working Day].

1. Contracts (Rights of Third Parties) Act 1999

The Parties agree that this Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained therein are excluded, save that Delivery Partners shall have the right to enforce any indemnities given in their favour under Clause 24 (*TUPE and Employees*).

1. Counterparts

This Agreement may be executed in any number of counterparts, and by each Party on a separate counterpart. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

1. Law and jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to all disputes arising between the parties out of or in connection with this Agreement, including disputes arising out of or in connection with the creation, validity, effect, interpretation, performance or non-performance of, termination, or the legal relationships established by, this Agreement, claims for set-off and counterclaims, and any non-contractual obligations arising out of or in connection with this Agreement. For these purposes each Party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of that jurisdiction.

**IN WITNESS** whereof the Parties have executed this Agreement on the date first written.

**[EXECUTED** by [*AUTHORITY*]

The common seal of  
[*AUTHORITY*]was hereunto affixed in the presence of:

Attesting Officer:]

***OR***

[**EXECUTED** for and on behalf of

[*AUTHORITY*]

…………………………………….  
Authorised Signatory][[57]](#footnote-57)

**EXECUTED** for and on behalf of

[*CONTRACTOR*]

…………………………………….  
Authorised Signatory

1. Authority Requirements and Obligations
   1. Programme Specification

[***Drafting Note***: *This section will often include a brief description of the Programme being established, and the parameters which the Authority will not allow the Contractor to alter without its permission. Generally, this section will not include precise details of how the intervention is to be carried out since one of the purposes of an outcomes contract is to allow the Contractor flexibility in how it achieves the Outcomes. If this section is populated with a relatively detailed specification or Tender submission it may be worth including an acknowledgement that the Parties agree that the details of the delivery of the Programme may be altered in order to better meet the needs of Participants and achieve the Outcomes. Also consider whether such alterations may be made by agreement of the Parties at a Review Meeting rather than by formal amendment of the contract.*

*Consider including:*

* *the referral pathway;*
* *the maximum number of Participants who may be engaged in the Programme (if any).*

[***Drafting Note***: *It may also be appropriate for this section to contain key performance indicators (“****KPIs****”). There are two forms these can take:*

*(i) either the cumulative value of Outcomes invoiced which can then feed into Satisfactory Level of Outcomes and Minimum Expected Outcomes definitions;*

Outcomes Levels

|  |  |  |
| --- | --- | --- |
| Testing Date | Cumulative Value of Outcomes invoiced (£ excluding VAT) | |
| Low Case | Base Case |
|  |  |  |
|  |  |  |

*(ii) KPIs which measure details of the provision of the Programme, these can be used to define the Satisfactory Level of Outcomes however, careful thought will need to be given as to what these KPIs measure and whether failure to meet the required target for any one on its own should be sufficient to trigger a Performance Improvement Process. This type of KPI is more likely to be useful where the Programme is relatively prescriptive so less common for an outcomes contract. Consider restricting these to measures of Participant safety/engagement rather than focussing on Contractor Performance.*

|  |  |  |
| --- | --- | --- |
| Key Performance Indicator | Low Case | Base Case |
|  |  |  |
|  |  |  |

[Key Personnel[[58]](#footnote-58)

The following individuals shall be “**Key Personnel**” in the applicable roles for the following periods:

|  |  |  |  |
| --- | --- | --- | --- |
| **Key Personnel** | **Role** | **Time period** | **Employing organisation** |
|  |  |  |  |

]

* 1. Applicable Policies

[***Drafting Note***: *The Authority will determine what these are depending on the nature of the contract but common policies to be included include safeguarding and information sharing policies. All policies should be shared with the Contractor and Delivery Partner before being included here.*]

* 1. Authority Obligations

[*Consider including the following types of requirements:*

The Authority shall:

* [[provide [•] referrals of Potential Participants by [•]th of each [year]/[month] of the Operational Period until [•] (the “**Required Referrals**”)] OR [provide [•] referrals of Potential Participants who, in the reasonable opinion of the Contractor having conducted an Initial Assessment, have [*insert additional requirements to take part in the Programme*] [and who have] [agreed to participate in the Programme] by [•]th of each [year]/[month] of the Operational Period until [•] (the “**Required Referrals**”)]. Where the Contractor, acting reasonably, disputes that a referral meets the definition of Potential Participant it will promptly raise this with the Authority and, unless it is subsequently agreed that the individual did meet the definition or is otherwise accepted as a Required Referral, such referral will not count to the Authority’s Required Referrals;][[59]](#footnote-59)
* [provide support with communications and promotion of the Programme including communicating with [*insert relevant stakeholders*];]
* [provide space for [•] members of staff of the Delivery Partner to work with the [*insert relevant team*] team at the Authority’s offices and give such individuals access to information on Participants either by access to IT systems or by handover by their Personal Advisor;]
* [provide the following data at the timings/frequency indicated in the table below:[[60]](#footnote-60)]

|  |  |  |
| --- | --- | --- |
|  | Data | Timing/frequency |
|  |  |  |
|  |  |  |

* 1. Authority Mobilisation Obligations

[*Insert relevant obligations, may include items such as access to and training on Authority IT systems, provision of certain data, initial referrals and publicity of the programme.*]

* 1. [Service Specification][[61]](#footnote-61)

[*Insert service specification.*]

1. Payment Schedule

###### Basis of Payment

[***Drafting Note***: *The basis of payment will vary and may need to be heavily tailored to meet the requirements of the particular circumstances of the SIB structure, however, the following represents a simple payment schedule which may be used for many straightforward SIBs:*

* + - 1. The Authority shall pay the Contractor the following Outcomes Payments for each of the Outcomes achieved for which the Contractor provides the relevant Evidence:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Outcome | Outcome Payment (£ excluding VAT) | Evidence |
|  |  |  |  |
|  |  |  |  |

* + - 1. The Contractor shall provide the report and invoice referred to in Clause 9.2 on a quarterly basis from the Commencement Date until the Expiry Date.
      2. [The Authority shall not be obliged to make Outcomes Payments with a total in excess of £[•] (excluding VAT) [per Participant]/[in respect of [*insert particular Outcomes*] Outcomes] unless otherwise agreed in writing between the Parties.][[62]](#footnote-62)
      3. [Once the Authority has made Outcome Payments to the Contractor of at least £[•] (excluding VAT) in aggregate it shall not be obliged to make any further Outcomes Payments under this Agreement unless otherwise agreed in writing between the Parties.][[63]](#footnote-63)]
      4. [*Include details of Service Payments (if any).*]

1. Deed of Assurance

**DATED 20[ ]**

**[DELIVERY PARTNER] (1)**

**[AUTHORITY] (2)**

**[CONTRACTOR] (3)**

**DEED OF ASSURANCE**

**THIS DEED OF ASSURANCE** is made on the [•] day of [•] 20[•]

**BETWEEN:**

1. **[DELIVERY PARTNER]** (Company No. [•]) whose registered office is at [•] (the“**Delivery Partner**”)
2. **[AUTHORITY]** of [•] (the“**Authority**”), (which expression includes its permitted successors in title and assigns); and
3. **[CONTRACTOR]** (Company No. [•]) whose registered office is at [•] (the“**Contractor**”)

BACKGROUND

1. By an outcomes contract dated [•] 20[•] (the “**Outcomes Contract**”) the Authority has appointed the Contractor to establish the Programme and deliver the Outcomes (as such terms are defined therein).
2. The Delivery Partner has been appointed by the Contractor under a contract dated [•] 20[•] (the “**Delivery Partner Contract**”) to carry out the Services (as defined therein).
3. The Delivery Partner is obliged under the Delivery Partner Contract to give a warranty in this form in favour of the Authority.
4. The Delivery Partner and the Contractor have agreed to execute this Deed in favour of the Authority.
   * 1. DEFINITIONS AND INTERPRETATIONS
        + 1. Unless expressly defined otherwise in this Deed any defined term in this Deed shall have the same meaning given to such term in the Delivery Partner Contract.

|  |  |
| --- | --- |
| 1. “**Intellectual Property Rights**” | 1. means all (i) registered or unregistered: trade marks; copyright; service marks; patents and utility models; designs; database rights, and applications for any of the foregoing; and (ii) rights in trade secrets and other confidential information or know-how; and |
| 1. “**Investor(s)**” | 1. means any organisation providing funding to the Contractor in connection with the Outcomes Contract. |

* + 1. WARRANTY
       - 1. The Delivery Partner warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Delivery Partner Contract in accordance with and to the standard required by the Delivery Partner Contract, provided always that the Delivery Partner has no liability hereunder which is greater or of a longer duration than that it owes to the Contractor under the Delivery Partner Contract.
         2. The Delivery Partner shall have no liability under Clause 2.1 or Clause **‎**10 of this Deed that is greater or of longer duration than it would have had, and shall be entitled in any proceedings by the Authority to rely on any limitation in the Delivery Partner Contract and to raise equivalent rights in defence of liability as it would have against the Contractor under the Delivery Partner Contract.
         3. Notwithstanding anything in this Deed and not withstanding any payments which may be made by the Authority to the Delivery Partner, the Authority and the Delivery Partner will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authority has given written notice to the Delivery Partner pursuant to Clause 7.1 or Clause 7.3.
    2. [AUDIT[[64]](#footnote-64)
       - 1. Subject to Clause 3.2, the Delivery Partner shall, not more than two (2) times per annum, allow the Authority’s Authorised Representative (or his or her nominee) access on reasonable notice during normal working hours to any premises used by the Delivery Partner for the delivery of the Services (save where the Delivery Partner, acting reasonably, believes such access may breach any applicable Legislation or have a detrimental impact on Participants or the Programme) for the purpose of:

monitoring and inspecting performance of the Services;

inspecting any or all records and documents in the possession, custody or control or held by the Delivery Partner in connection with the provision of the Services;

interviewing Delivery Partner employees, officers or agents in connection with the provision of the Services; and

inspecting equipment, systems (including any quality assurance systems) and procedures used by the Delivery Partner to provide the Services.

Notice for such access shall not be required in cases of emergency.

* + - * 1. The Authority may be entitled (save where the Delivery Partner, acting reasonably, believes such access may breach any applicable Legislation or have a detrimental impact on Participants or the Services) to access premises used by the Delivery Partner for the provision of the Programme more than two (2) times per annum where such additional access is necessary to monitor compliance with statutory obligations of the Parties or to establish that a Performance Improvement Plan has been implemented in accordance with its terms.
        2. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 3 unless an audit identifies a Delivery Partner Default by the Delivery Partner in which case the Delivery Partner shall reimburse the Authority for all of the Authority’s identifiable, reasonable costs and expenses properly incurred in the course of the audit.]
    1. INTELLECTUAL PROPERTY

The Delivery Partner shall comply with the obligations in the Delivery Partner Contract relating to Intellectual Property Rights.

* + 1. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed shall not be exercised during the subsistence of the Outcomes Contract. They may be assigned without the consent of the Delivery Partner on two (2) occasions only and the Authority will notify the Delivery Partner in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Delivery Partner will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

* + 1. AUTHORITY’S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Delivery Partner including without prejudice to the generality of the foregoing any remedies in negligence.

* + 1. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY
       - 1. The Delivery Partner will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Delivery Partner Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) Working Days’ prior written notice specifying the Delivery Partner’s ground for terminating or treating as terminated or repudiated the Delivery Partner Contract or its employment under it or discontinuing or suspending its performance of it and stating the amount (if any) of monies outstanding under the Delivery Partner Contract. Within such period of notice:

the Authority may give written notice to the Delivery Partner that the Authority will become the client under the Delivery Partner Contract to the exclusion of the Contractor. On receipt of such notice, the Delivery Partner will admit that the Authority as its client under the Delivery Partner Contract and the Delivery Partner Contract will be and remain in full force and effect notwithstanding any of the said grounds;

if the Authority has given notice under Clause 7.1(a) or under Clause 7.3, the Authority shall accept liability for the Contractor’s obligations under the Delivery Partner Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Delivery Partner that properly has been included in the Delivery Partner’s specified grounds pursuant to Clause 7.1 (and which has been notified to the Authority) and which is capable of remedy; and

if the Authority has given such notice under Clause 7.1(a) or under Clause 7.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Delivery Partner under the Delivery Partner Contract accruing due after the service of the Delivery Partner’s notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Delivery Partner Contract.

* + - * 1. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Delivery Partner, the Delivery Partner will not be under any duty to obey any direction or instruction from the Authority unless and until the Authority has given notice under Clause 7.1(a) and Clause 7.3.
        2. The Delivery Partner further covenants with the Authority that if the employment of the Contractor under the Outcomes Contract is terminated or if the Outcomes Contract is terminated by the Authority the Delivery Partner, if requested by the Authority by notice in writing and subject to Clause 7.1(b) and Clause 7.1(c), will accept the instructions of the Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Delivery Partner Contract and will if so requested in writing enter into a novation agreement in the form set out in Appendix 1 to this Deed whereby the Authority is substituted for the Contractor under the Delivery Partner Contract.
        3. If the Delivery Partner is requested to enter into a novation agreement pursuant to Clause 7.3, the Contractor agrees to enter into the same at the request of the Authority.
        4. Where the Delivery Partner has given rights in relation to the Delivery Partner Contract similar to those contained in this Clause to the Investor then if both the Authority and the Investor serve notice under Clause 7.1(a) or Clause 7.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Investor but will prevail over any notice served by any other person.
        5. The Contractor acknowledges that the Delivery Partner will be entitled to rely on a notice given to the Delivery Partner by the Authority under Clause 7.3 as conclusive evidence that the Contractor’s employment under the Outcomes Contract has been terminated or that the Outcomes Contract has been terminated by the Authority.
        6. The Authority may by notice in writing to the Delivery Partner appoint another person to exercise its rights under this Clause 7 subject to the Authority remaining liable to the Delivery Partner as guarantor for its appointee in respect of its obligations under this Deed.
    1. LIMITATION

Without prejudice to the provisions of Clause 7.1, the Authority shall not be entitled to take any action or proceedings against the Delivery Partner pursuant to this Deed unless and until the Outcomes Contract has been terminated.

* + 1. NO VARIATION TO DELIVERY PARTNER CONTRACT WITHOUT AUTHORITY’S CONSENT

The Contractor and the Delivery Partner undertake with the Authority not to vary or depart from the terms and conditions of the Delivery Partner Contract without the prior written consent of the Authority (such consent to be sought in accordance with the Outcomes Contract), and agree that no such variation or departure made without such consent shall be binding upon the Authority, or affect or prejudice the Authority’s rights hereunder, or under the Delivery Partner Contract or in any other way.

* + 1. SEVERABILITY

If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

* + 1. WAIVER
       - 1. No term or provision of this Deed shall be considered as waived by any party to this Deed unless a waiver is given in writing by that party.
         2. No waiver under Clause 11.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Deed unless (and only to the extent) expressly stated in that waiver.
    2. THE CONTRACTOR’S INCLUSION AS PARTY

The Contractor has agreed to be a party to this Deed for the purpose of Clause 9 and for acknowledging that the Delivery Partner shall not be in breach of the Delivery Partner Contract by complying with the obligations imposed on it by this Deed.

* + 1. COUNTERPARTS

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

* + 1. GOVERNING LAW AND JURISDICTION

This Deed and any non-contractual obligations arising out of, or in connection with, it shall be governed by, and interpreted in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to any disputes which may arise out of or in connection with this Deed. For these purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of that jurisdiction.

* + 1. THIRD PARTY RIGHTS

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This Clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

* + 1. NOTICES

Any notice to be given by either party hereunder will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand after 5.00 pm on any day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 5.00 pm on a Working Day and otherwise on the next Working Day.

**IN WITNESS** whereof this Deed has been entered into on the date stated at the beginning of this Deed and executed as deed by the Delivery Partner and intended to be and is delivered on the date specified above.

**EXECUTED** as a **DEED**   
by [*DELIVERY PARTNER*]acting by [two of its directors or a  
director and its secretary] ***OR*** [a director in the presence of the specified witness]:

…………………………………….  
[Director]

[…………………………………….  
[Director/Secretary]]

***OR***

[Witness -

Signed: …………………..

*I confirm that the above named signatory has executed this document in my presence*

Print name: …………………..

Address: …………………..][[65]](#footnote-65)

***OR***

**EXECUTED** as a **DEED** by [*NAME OF ATTORNEY*]as attorney for or on behalf of [*DELIVERY PARTNER*] in the presence of the specified witness

Signed: [[66]](#footnote-66) …………………..

Print name: …………………..

Witness -

Signed: …………………..

*I confirm that the above named signatory has executed this document in my presence*

Print name: …………………..

Address: …………………..

**[EXECUTED** by [*AUTHORITY*]

The common seal of  
[*AUTHORITY*] was hereunto affixed in the presence of:

Attesting Officer:]

***OR***

[**EXECUTED** for and on behalf of

[*AUTHORITY*]

…………………………………….  
Authorised Signatory][[67]](#footnote-67)

**EXECUTED** for and on behalf of

[*CONTRACTOR*]

…………………………………….  
Authorised Signatory

1. Form of Deed of Novation

**THIS DEED** is made on [•] 20[•]

**BETWEEN:**

1. **[DELIVERY PARTNER]** (Company No. [•]) whose registered office is at [•] (the “**Delivery Partner**”);
2. **[AUTHORITY]** of [•] (the “**Authority**”, which expression includes its permitted successors in title and assigns); and
3. **[CONTRACTOR]** (Company No. [•]) whose registered office is at [•] (the “**Contractor**”).

**WHEREAS**

1. By an outcomes contract dated [•] 20[•] (the “**Outcomes Contract**”) the Authority has appointed the Contractor to establish the Programme and deliver the Outcomes (as such terms are defined therein).
2. The Delivery Partner has been appointed by the Contractor under a contract dated [•] 20[•] (the “**Delivery Partner Contract**”) to carry out the Services (as defined therein).
3. The Outcomes Contract has been terminated by the Authority.
4. The parties wish the rights, obligations and liabilities of the Contractor under the Agreement to be novated in full from the Contractor to the Authority.

IT IS AGREED

1. STATUS OF AGREEMENT

The parties acknowledge and agree that notwithstanding any previous correspondence and actions of the parties, the Delivery Partner Contract is in full force and effect and capable of novation in accordance with the terms of this Deed.

1. TRANSFER OF RIGHTS AND OBLIGATIONS
   1. With effect from the date of this Deed (the “**Novation Date**”), the Contractor irrevocably transfers all of its rights and obligations under Delivery Partner Contract to the Authority and the Authority shall enjoy all the rights and benefits of the Contractor under Delivery Partner Contract, and all references to the Contractor in Delivery Partner Contract shall be read and construed as references to the Authority.
   2. As from the Novation Date, the Authority undertakes to the Contractor to perform the obligations set out in Delivery Partner Contract for which it is liable and be bound by its terms in every way as if the Authority had been a party to it in place of the Contractor.
   3. As from the Novation Date, the Contractor undertakes to the Authority to continue to perform the obligations set out in Delivery Partner Contract for which it is liable and be bound by its terms in every way as if the Authority had been a party to it in place of the Contractor.
2. RELEASE AND CLAIMS
   1. With effect from the Novation Date, the Contractor and the Contractor release each other from all obligations to the other under Delivery Partner Contract.
   2. With effect from the Novation Date, the Contractor releases and discharges the Contractor from all liabilities, claims and demands arising under or in connection with Delivery Partner Contract, except that nothing in this Deed shall affect or prejudice any liability claim or demand that either the Contractor or the Contractor may have against the other relating to matters arising or events occurring before the Novation Date.
3. GENERAL
   1. Unless otherwise defined herein, capitalised words used herein have the meaning given in the Delivery Partner Contract.
   2. In the event of any inconsistencies between this Deed and Delivery Partner Contract, this Deed shall take precedence. Subject to the amendments in this Deed, the terms of Delivery Partner Contract remain in full force and effect un-amended.
   3. Each of the parties shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as may from time to time be necessary or desirable to give full effect to the provisions of this Deed.
4. Third Party Rights

No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to this Deed. This Clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

1. Governing Law and Interpretation

This Deed and any non-contractual obligations arising out of, or in connection with, it shall be governed by, and interpreted in accordance with, English law. The English courts shall have exclusive jurisdiction in relation to any disputes which may arise out of or in connection with this Deed. For these purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of that jurisdiction.

**IN WITNESS** of which this document is executed as a deed and is delivered on the date first set out above

**EXECUTED** as a **DEED**   
by [*DELIVERY PARTNER*]acting by a director in the presence of the specified witness:

…………………………………….  
Director

Witness -

Signed: …………………..

*I confirm that the above named signatory has executed this document in my presence*

Print name: …………………..

Address: …………………..

**EXECUTED** as a **DEED**   
by [*CONTRACTOR*]acting by a director in the presence of the specified witness:

…………………………………….  
Director

Witness -

Signed: …………………..

*I confirm that the above named signatory has executed this document in my presence*

Print name: …………………..

Address: …………………..

**EXECUTED** as a **DEED** by [*AUTHORITY*]

The common seal of  
[*AUTHORITY*] was hereunto affixed in the presence of:

Attesting Officer:

1. Processing, Personal Data and Data Subjects[[68]](#footnote-68)

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

* + - 1. The contact details of the Authority’s Data Protection Officer or, if not applicable, its data protection lead are: [Insert contact details].
      2. The contact details of the Contractor’s Data Protection Officer or, if not applicable, its data protection lead are: [Insert contact details].
      3. Each Processor shall comply with any further written instructions of the Controller with respect to Processing by the Processor.
      4. Any such further instructions shall be incorporated into this Schedule where practicable.

**Table 1: Contractor and Authority Relationship[[69]](#footnote-69)**

| **Description** | **Details** |
| --- | --- |
| Identity of the Controller  and Processor | The Parties acknowledge that for the purposes of the applicable Data Protection Legislation, the [Authority] is the Controller and the [Contractor] is the Processor.  [The Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of: [*Insert**the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties*]]  [**Guidance:** The designation of the Authority as the Controller and the Contractor as the Processor are square bracketed as these designations must be assessed on a case-by-case basis on the data flows, e.g. the Contractor may be the Controller for some data, and the Processor for others. You may need to vary this section where (in the rare case) the Authority and Contractor have a different relationship. For example where the Parties are Joint Controllers of some Personal Data, in which case the additional wording in square brackets can be used. [[70]](#footnote-70) |
| Subject matter of the  Processing | *[This should be a high level, short description of what the Processing is about i.e. its subject matter of the contract.*  *Example: The Processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]*  Duration of the Processing *[Clearly set out the duration of the Processing including dates]* |
| Nature and purposes of  the Processing | *[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment Processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data  being Processed | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data  Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular*  *website etc]* |
| Plan for return and  destruction of the data  once the Processing is  complete  UNLESS requirement  under union or member  state law to preserve that  type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

1. Mobilisation and Demobilisation Plans
   1. Mobilisation Plan

[*Section to include details of actions required to take place before the Programme may commence. These may include recruitment and training of staff (by the Contractor or Initial Delivery Partner), promotion of the programme, etc.*]

* 1. Demobilisation Plan

[*Section to include details of the wind down process, this may include tapering down of staff numbers (of the Contractor or Delivery Partner), any final data analysis/reports to measure the success of the programme, etc.*]

1. Required Insurances

[Levels of cover to be reviewed on project by project basis, consider whether it is necessary for each of the Insurances to be maintained by each of the Contractor and each Delivery Partner]

* + 1. The Contractor Insurances

The Contractor shall procure and maintain the following insurances (Contractor Insurances):

* + - * 1. professional indemnity insurance to provide an indemnity of not less than [two million] pounds (£[2,000,000]) [in respect of any one claim or series of claims arising out of one incident]/[per annum][[71]](#footnote-71);
        2. employer’s liability insurance to provide an indemnity of not less than [ten million] pounds (£[10,000,000]) in respect of any one claim or series of claims arising out of one incident; and
        3. third party public liability to provide an indemnity of not less than [ten million] pounds (£[10,000,000]) in respect of any one claim or series of claims arising out of one incident.
    1. The Delivery Partner Insurances

The Contractor shall ensure that Delivery Partners shall procure and maintain the following Insurances (Delivery Partner Insurances):

* + - * 1. professional indemnity insurance to provide an indemnity of not less than [five million] pounds (£[5,000,000]) [in respect of any one claim or series of claims arising out of one incident]/[per annum][[72]](#footnote-72);
        2. employer’s liability insurance to provide an indemnity of not less than [ten million] pounds (£[10,000,000]) in respect of any one claim or series of claims arising out of one incident; and
        3. third party public liability to provide an indemnity of not less than [ten million] pounds (£[10,000,000]) in respect of any one claim or series of claims arising out of one incident.

Any other insurances that may be required by law.

1. Management Information

In accordance with Clause 12.1 of the Agreement and in addition to the other provisions of this Agreement the Contractor shall comply with the following specific management Reporting Requirements:

It is required that at specified intervals the following reports are produced subject to the necessary source data being available:

**Monthly**

**Quarterly**

**Annually**

1. Commercially Sensitive Information

* 1. Commercially Sensitive Contractual Provisions

|  |  |  |
| --- | --- | --- |
| Contractual Provision | Time Period | Reason for Confidentiality |
|  |  |  |
|  |  |  |

* 1. Commercially Sensitive Material

|  |  |  |
| --- | --- | --- |
| Material | Time Period | Reason for Confidentiality |
| [Any Private Data] | [2 years following date of receipt] | [*insert reason*] |
|  |  |  |

1. Transparency Report

*[Guidance Notes: This Transparency Schedule should ideally be included along with procurement documents and be the subject of discussions, negotiations and/or evaluations.*

*This Transparency Schedule includes a table with data elements to be reported and shared during the course of the Agreement. In this Transparency Schedule, ‘the default is open’, which means that the default position is that all data elements in this Transparency Schedule must be reported by the Contractor to the Authority (unless such information is held by the Authority), and the latter may use these data in any way, including publication as open data using an open data license.*

*The table below may be marked up by the Authority in advance of a procurement process to state whether certain information will be held by the Authority and therefore need not be reported or will not be applicable to the Programme. It may also be used by the Contractor to alter the default position, provide explanations, and/or suggest revisions in respect of each data element. Please note that even if the Contractor seeks to opt-out of providing the data under this mechanism, the data may be required and/or shared through other lawful mechanisms.*

*The table below is based on open data definitions available on the GO Lab website at* https://indigo-data-standard.readthedocs.io/en/latest/index.html **.** *The table**may include more rows / data elements than may be necessary to share in many scenarios. For example, some parties may only want to share basic description data and/or data on outcomes, whereas the table includes data elements on inputs and activities. Therefore, a column on Data Type is included. Additional row / data elements are available for more inputs and activities on the GO lab website.*

*Where this is table is used in market engagement and procurement procedures prior to contracting, please note that changes to this table are anticipated throughout the procurement and contract performance. Such changes, however significant, should be anticipated by market actors and would not require re-procurement.]*

The Contractor shall, no later than 30 days following the relevant Reporting Date, provide each of the Contractor Data Elements to the Authority.

Definitions:

“**Contractor Data Element**” means each Data Element for which no “X”, “N/A” or “AD” is marked in the column entitled “Reported Data” in the Transparency Report Table;

“**Data Element**” means each of the data elements listed in the column entitled “Data Element Name” in the Transparency Report Table;

“**Private Data**” means each Data Element for which a “X” is marked in the column entitled “Private Data” in the Transparency Report Table;

“**Reporting Date**” means, in respect of each Data Element:

* 1. where “Quarterly” is entered in the column entitled “Report Frequency” in the Transparency Report Table, each [31 March, 30 June, 30 September and 31 December][[73]](#footnote-73) during the term of this Agreement and the Expiry Date or Termination Date (if any) of this Agreement;
  2. where “Start/Change” is entered in the column entitled “Report Frequency” in the Transparency Report Table, the Commencement Date and any date thereafter on which the relevant Contractor Data Element changes;
  3. where “Completion” is entered in the column entitled “Report Frequency” in the Transparency Report Table, the Expiry Date or Termination Date (if any) of this Agreement; and

“**Transparency Data**” means each Data Element for which no “X” is marked in the column entitled “Public Data” in the Transparency Report Table.

**Transparency Report Table**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| # | Data Type | Data Element Name | Reported Data | Report Frequency | Public Data | Private Data | Notes |
|  | **Data Type** is to clarify whether the element is a basic description of the programme / project (Basic) or describes inputs, activities and/or outcomes. This is because, for example, some parties may only want to share basic descriptions and outcomes. **Definitions for Data Elements** are provided by the International Network for Data on Impact and Government Outcomes (INDIGO) as at the date of this Agreement. See: https://indigo-data-standard.readthedocs.io/en/latest/index.htmlINDIGO also offers a template excel sheet for sharing data. | | *Mark (i) “X” if this will NOT be reported; (ii) “N/A” if not applicable to the Programme; or (iii) “AD” if data already held by Authority.* | | *Mark “X” if NOT to be shared with the public.* | *Mark “X” if NOT to be shared with other IB parties.* | *Contractor’s explanation and/or agreed revisions.* |
| 1 | Basic | Report Date [Format for all dates: YYYY-MM-DD] |  | Quarterly |  |  |  |
| 2 | Basic | Report Submitted By [*insert name of organisation]* |  | Quarterly |  |  |  |
| 3 | Basic | Report Submitted To [*insert name of organisation]* |  | Quarterly |  |  |  |
| 4 | Basic | Report Period Start |  | Quarterly |  |  |  |
| 5 | Basic | Report Period End |  | Quarterly |  |  |  |
| 6 | Basic | Impact Bond Name |  | Start/Change |  |  |  |
| 7 | Basic | Alternative Names |  | Start/Change |  |  |  |
| 8 | Basic | Stage of Development |  | Start/Change |  |  |  |
| 9 | Basic | Jurisdiction |  | Start/Change |  |  |  |
| 10 | Basic | Dates - Date outcomes contract signed |  | Start/Change |  |  |  |
| 11 | Basic | Dates - Date contracts between all parties signed |  | Start/Change |  |  |  |
| 12 | Basic | Dates - Anticipated completion date |  | Start/Change |  |  |  |
| 13 | Basic | Dates - Actual completion date |  | Completion |  |  |  |
| 14 | Basic | Dates - Start date of service provision |  | Start/Change |  |  |  |
| 15 | Basic | Dates - Anticipated end date of service provision |  | Start/Change |  |  |  |
| 16 | Basic | Dates - Actual end date of service provision |  | Completion |  |  |  |
| 17 | Input | Overall project finance - Total investment commitment - Currency |  | Start/Change |  |  |  |
| 18 | Input | Overall project finance - Total investment commitment - Amount - Min[[74]](#footnote-74) |  | Start/Change |  |  |  |
| 19 | Input | Overall project finance - Total investment commitment - Amount - Exact |  | Start/Change |  |  |  |
| 20 | Input | Overall project finance - Total investment commitment - Amount - Max[[75]](#footnote-75) |  | Start/Change |  |  |  |
| 21 | Basic | Overall project finance - Maximum potential outcome payment - Currency |  | Start/Change |  |  |  |
| 22 | Basic | Overall project finance - Maximum potential outcome payment - Amount |  | Start/Change |  |  |  |
| 23 | Input | Overall project finance - Maximum potential loss |  | Start/Change |  |  |  |
| 24 | Input | Overall project finance - Maximum potential return type |  | Start/Change |  |  |  |
| 25 | Input | Overall project finance - Maximum potential return |  | Start/Change |  |  |  |
| 26 | Basic | Overall project finance - Configuration of the Contracting Parties |  | Start/Change |  |  |  |
| 27 | Input | Overall project finance - Investor repayment |  | Completion |  |  |  |
| 28 | Input | Overall project finance - Total outcome payments made - Currency |  | Start/Change |  |  |  |
| 29 | Basic | Overall project finance - Total outcome payments made - Amount |  | Completion |  |  |  |
| 30 | Basic | Purpose and classifications - Social challenge |  | Start/Change |  |  |  |
| 31 | Basic | Purpose and classifications - Intervention |  | Start/Change |  |  |  |
| 32 | Basic | Purpose and classifications - Policy sector |  | Start/Change |  |  |  |
| 33 | Basic | Purpose and classifications - Primary SDG goal |  | Start/Change |  |  |  |
| 34 | Basic | Purpose and classifications - Secondary SDG goals |  | Start/Change |  |  |  |
| 35 | Basic | Purpose and classifications - Primary SDG target |  | Start/Change |  |  |  |
| 36 | Basic | Purpose and classifications - Secondary SDG targets |  | Start/Change |  |  |  |
| 37 | Basic | Service and beneficiaries - Target population |  | Start/Change |  |  |  |
| 38 | Basic | Service and beneficiaries - Targeted number of unique service users or beneficiaries (total) |  | Start/Change |  |  |  |
| 39 | Basic | Service and beneficiaries - Unit type of targeted service users or beneficiaries |  | Start/Change |  |  |  |
| 40 | Basic | Service and beneficiaries - Unit description of targeted service user or beneficiaries |  | Start/Change |  |  |  |
| 41 | Basic | Service and beneficiaries - Actual number of unique service users or beneficiaries engaged (total) |  | Completion |  |  |  |
| 42 | Basic | Service and beneficiaries - Unit type of actual service users or beneficiaries engaged |  | Start/Change |  |  |  |
| 43 | Basic | Service and beneficiaries - Unit description of actual service user or beneficiaries engaged |  | Completion |  |  |  |
| 44 | Basic | [Changes to project due to COVID-19][[76]](#footnote-76) |  | Start/Change |  |  |  |
| 45 | Basic | Outcome Fund |  | Start/Change |  |  |  |
| 46 | Basic | For each service provision area: Location - Name |  | Start/Change |  |  |  |
| 47 | Basic | For each service provision area: Location - Postcode |  | Start/Change |  |  |  |
| 48 | Basic | For each service provision area: Location - Country |  | Start/Change |  |  |  |
| 49 | Basic | For each service provision area: Location - Lat/Lng - Lng |  | Start/Change |  |  |  |
| 50 | Basic | For each service provision area: Administrative geography - Name |  | Start/Change |  |  |  |
| 51 | Basic | For each service provision area: Administrative geography - Code Type |  | Start/Change |  |  |  |
| 52 | Basic | For each service provision area: Administrative geography - Code |  | Start/Change |  |  |  |
| 53 | Basic | For each Intervention / Service & For each organisation involved: Organisation ID |  | Start/Change |  |  |  |
| 54 | Basic | For each Intervention / Service & For each organisation involved: Organisation Role Category |  | Start/Change |  |  |  |
| 55 | Activity | For each Intervention / Service: Description\* |  | Start/Change |  |  |  |
| 56 | Activity | For each Intervention / Service: Organisation (Outcome Payer) |  | Start/Change |  |  |  |
| 57 | Activity | For each Intervention / Service: Planned Service - Start |  | Start/Change |  |  |  |
| 58 | Activity | For each Intervention / Service: Planned Service - End |  | Start/Change |  |  |  |
| 59 | Activity | For each Intervention / Service: Actual Service - Start |  | Start/Change |  |  |  |
| 60 | Activity | For each Intervention / Service: Actual Service - End |  | Completion |  |  |  |
| 61 | Activity | For each Intervention / Service: Alterations to service - Description |  | Start/Change |  |  |  |
| 62 | Activity | For each Intervention / Service: Alterations to service - Reason |  | Start/Change |  |  |  |
| 63 | Outcome | For each outcome: Maximum potential outcome payment - Currency |  | Start/Change |  |  |  |
| 64 | Outcome | For each outcome: Maximum potential outcome payment - Amount |  | Start/Change |  |  |  |
| 65 | Outcome | For each outcome: Performance - Type [Interim / Final] |  | Start/Change |  |  |  |
| 66 | Outcome | For each outcome: Performance Period - Start |  | Start/Change |  |  |  |
| 67 | Outcome | For each outcome: Performance - Period - End |  | Start/Change |  |  |  |
| 68 | Outcome | For each outcome: Total actual outcome payments made - Currency |  | Quarterly |  |  |  |
| 69 | Outcome | For each outcome: Total actual outcome payments made- Amount |  | Quarterly |  |  |  |
| 70 | Outcome | For each outcome: Alterations to payment commitment - Description |  | Start/Change |  |  |  |
| 71 | Outcome | For each outcome: Alterations to payment commitment - Reason |  | Start/Change |  |  |  |
| 72 | Input | For each Investor or investment: Organisation ID |  | Start/Change |  |  |  |
| 73 | Input | For each Investor or investment: Currency |  | Start/Change |  |  |  |
| 74 | Input | For each Investor or investment: Investment Commitment - Amount - Min[[77]](#footnote-77) |  | Start/Change |  |  |  |
| 75 | Input | For each Investor or investment: Investment Commitment - Amount - Exact |  | Start/Change |  |  |  |
| 76 | Input | For each Investor or investment: Investment Commitment - Amount - Max[[78]](#footnote-78) |  | Start/Change |  |  |  |
| 77 | Input | For each Investor or investment: Maximum Potential loss |  | Start/Change |  |  |  |
| 78 | Input | For each Investor or investment: Maximum Potential Return Type |  | Start/Change |  |  |  |
| 79 | Input | For each Investor or investment: Maximum Potential Return |  | Start/Change |  |  |  |
| 80 | Input | For each Investor or investment: Investment Type |  | Start/Change |  |  |  |
| 81 | Input | For each Intermediary Service: Organisation |  | Start/Change |  |  |  |
| 82 | Input | For each Intermediary Service: Organisation Role Category |  | Start/Change |  |  |  |
| 83 | Input | For each Intermediary Service: Organisation "Other" Role Description |  | Start/Change |  |  |  |
| 84 | Outcome | For each outcome: Target Population |  | Start/Change |  |  |  |
| 85 | Outcome | For each outcome: Targeted number of service users or beneficiaries (total) |  | Start/Change |  |  |  |
| 86 | Outcome | For each outcome: Unit type of targeted Service users or beneficiaries |  | Start/Change |  |  |  |
| 87 | Outcome | For each outcome: Unit description of Service user or beneficiaries |  | Start/Change |  |  |  |
| 88 | Outcome | For each outcome: Outcome metric target |  | Start/Change |  |  |  |
| 89 | Outcome | For each outcome: Other target for meeting outcome metric target |  | Start/Change |  |  |  |
| 90 | Outcome | For each outcome: Outcome validation method |  | Start/Change |  |  |  |
| 91 | Outcome | For each outcome: Data source for outcome validation |  | Start/Change |  |  |  |
| 92 | Outcome | For each outcome: Policy sector |  | Start/Change |  |  |  |
| 93 | Outcome | For each outcome: Primary SDG goal |  | Start/Change |  |  |  |
| 94 | Outcome | For each outcome: Secondary SDG goals |  | Start/Change |  |  |  |
| 95 | Outcome | For each outcome: Primary SDG target |  | Start/Change |  |  |  |
| 96 | Outcome | For each outcome: Secondary SDG targets |  | Start/Change |  |  |  |
| 97 | Outcome | For each outcome: Currency |  | Start/Change |  |  |  |
| 98 | Outcome | For each outcome: Price Per Unit - Amount |  | Start/Change |  |  |  |
| 99 | Outcome | For each outcome: Maximum Price if all targets achieved - Amount |  | Start/Change |  |  |  |
| 100 | Outcome | For each outcome: Contracted increases to outcome pricing |  | Start/Change |  |  |  |
| 101 | Outcome | For each outcome: Price Description |  | Start/Change |  |  |  |
| 102 | Outcome | For each outcome: Results Reported - [project vs. outcome] |  | Quarterly |  |  |  |
| 103 | Outcome | For each outcome: Results Reported - Result type |  | Quarterly |  |  |  |
| 104 | Outcome | For each outcome: Results Reported - Period - Start |  | Quarterly |  |  |  |
| 105 | Outcome | For each outcome: Results Reported - Period - End |  | Quarterly |  |  |  |
| 106 | Outcome | For each outcome: Results Reported - Period Outcomes achieved |  | Quarterly |  |  |  |
| 107 | Outcome | For each outcome: Results Reported - Number engaged |  | Quarterly |  |  |  |
| 108 | Outcome | For each outcome: Results Reported - Number with positive outcomes |  | Quarterly |  |  |  |
| 109 | Outcome | For each outcome: Results Reported -Other Description of result |  | Quarterly |  |  |  |
| 110 | Outcome | For each outcome: Results Reported -Outcomes validator(s) |  | Quarterly |  |  |  |
| 111 | Outcome | For each outcome: Results Reported -Evaluation Documents |  | Quarterly |  |  |  |
| 112 | Input | Payments: Outcome(s) [for which payment is made] |  | Quarterly |  |  |  |
| 113 | Input | Payments: Period - Start |  | Quarterly |  |  |  |
| 114 | Input | Payments: Period - End |  | Quarterly |  |  |  |
| 115 | Input | Payments: Payer Organisation |  | Quarterly |  |  |  |
| 116 | Input | Payments: Recipient Organisation |  | Quarterly |  |  |  |
| 117 | Input | Payments: Type |  | Quarterly |  |  |  |
| 118 | Input | Payments: Currency |  | Quarterly |  |  |  |
| 119 | Input | Payments: Amount |  | Quarterly |  |  |  |
| 120 | Activity | Relevant website(s): Title |  | Start/Change |  |  |  |
| 121 | Activity | Relevant website(s): URL |  | Start/Change |  |  |  |
| 122 | Basic | Scenario(s): Scenario Name |  | Start/Change |  |  |  |
| 123 | Basic | Scenario(s): Overall project finance - Maximum potential outcome payment - Currency |  | Start/Change |  |  |  |
| 124 | Basic | Scenario(s): Overall project finance - Maximum potential outcome payment - Amount |  | Start/Change |  |  |  |

1. ***Drafting Notes:*** This is an Outcomes Contract designed for use in impact bonds in the UK. This Outcomes Contract has been drafted for use where the commissioning authority is contracting either with an investor owned SPV which then contracts with one or more “Delivery Partners” in order to deliver the Programme or directly with the entity which will be primarily responsible for the Programme (although it may also engage further “Delivery Partners” to assist it in providing the Programme). Where the latter structure is used commissioners should ensure that appropriate funding is in place to ensure that the Contractor is adequately protected from the financial risks inherent in entering onto an Outcomes Contract. In either case the success of the Programme is likely to depend on a building a strong working relationship between the “Authority(ies)”, the “Delivery Partner(s)” and the “Investor(s)” and any manager of the Programme. [↑](#footnote-ref-1)
2. ***Drafting Note:*** This contract is drafted on a single Authority basis, amendments will be required for the contract to be used for multiple commissioners. Outcomes contracts commonly have multiple commissioners; this can be structured in different ways. Before deciding on the contracting structure the commissioners should consider how they want the programme to work; some questions to ask are: Do they want a single programme or a framework? How will the Contractor be managed, will there be a single point of contact or do each of the commissioners want to be involved? Who will be responsible for referrals and what happens if one commissioner is not meeting their referral targets? What happens if one commissioner wants to end their involvement in the programme but the others wish to continue?

   Three examples of typical structures which can be used and some of the key issues commissioners should consider when entering into these structures are set out below:

   A single Authority enters into a contract on behalf of multiple commissioners. In this case this contract may be used by commissioners with minimal alterations. However, commissioners should:

   ensure that they have a robust agreement between themselves to allocate responsibility for payments and “Authority Obligations”;

   ensure referral responsibilities are clear and what would happen if one commissioner under refers;

   consider what would happen if Authority Obligations are not met. I.e. if one commissioner defaults can the whole Agreement be terminated and if so who would be responsible for paying the Authority Default Termination Sum, or would it be possible to continue the contract with the remaining commissioners, would this require an increase to the Outcomes Payments and if so who would be responsible for this;

   consider whether the contracting Authority is permitted to make changes to the contract on behalf of other commissioners and what controls should be exercised over this discretion.

   Multiple commissioners enter into a contract within the same area with split responsibilities. For example, a CCG and a Local Authority where one entity is responsible for payment and the other is responsible for referrals or liaising with the Contractor. Commissioners should:

   split the responsibilities of the Authority in this Agreement between the two commissioners and consider whether any of the rights of the Authority should apply only to one of the commissioners or if they should apply to both;

   ensure that they have an agreement between themselves as to responsibility for their obligations and what would happen if they failed to meet such obligations;

   in this case both commissioners would be required to agree to any changes to the contract.

   Multiple commissioners enter into a contract for the Contractor to provide the same programme to commissioners in different areas. Commissioners should:

   consider whether it is preferable for all commissioners to sign the same contract or to have a framework contract which can be acceded to by other commissioners. The benefits of this model are that it is easier for commissioners to join and leave the programme and commissioners can agree slightly different terms so negotiations pre-signing are likely to be less protracted (similarly any amendments are likely to be easier to negotiate). There may be a disadvantage compared to signing a single agreement in terms of pricing as the Contractor may not have the same assurances in terms of the size of the Programme and so efficiencies of scale may not apply;

   where multiple commissioner sign the same contract ensure commissioners are only responsible for Authority Obligations for their own areas;

   ensure referral responsibilities are clear and what would happen if one commissioner under refers;

   decide what the outcome would be if one commissioner defaults on its obligations (i.e. would the whole contract terminate or just cease the provision in that area, if the latter, what are the cost implications);

   where all commissioners sign a single contract note that any changes would be required to be approved by all parties whereas if a framework agreement were used it should be possible to make at least certain types of changes on a bilateral basis between the Contractor and a single commissioner. [↑](#footnote-ref-2)
3. ***Drafting Note:*** Note that this is only likely to be appropriate where the Authority has full responsibility for referrals. Also consider whether it would be preferable to agree an increase to the rate card if referrals drop below the level of the Required Referrals rather than terminating the programme. This requirement may be particularly problematic for contracts with multiple commissioners where all commissioners risk the contract being terminated and being asked to pay the Authority Default Termination Sum as a result of the failure of one commissioner to provide its share of referrals. Ways to mitigate this risk include removing the requirement for a set number of referrals (although this is likely to be unpalatable to the Contractor where they are reliant on a commissioner for referrals), allowing other local authority areas to use up excess capacity (again this will be problematic for a Contractor where the overall level of referrals is below that required to make the Programme viable), or using a ratchet to increase Outcome Payments where referrals are below a certain level. [↑](#footnote-ref-3)
4. ***Drafting Note:*** Consider including when Authority controls access to Evidence required to invoice for Outcomes. [↑](#footnote-ref-4)
5. ***Drafting Note:*** Note that this clause puts the Contractor in the position it would have been in had the contract run to Expiry and it had achieved the [Minimum Expected] (usually set at the base case) level of Outcomes. [↑](#footnote-ref-5)
6. ***Drafting Note***: Delete as appropriate. [↑](#footnote-ref-6)
7. ***Drafting Note***:These dates tend to be on a six monthly basis up to the end of the operational period but can be varied to fit in with the expected life cycle of the Programme. There is generally no value in having a review very early on in the Programme as there will not be sufficient data to review and no or very few Outcomes may yet have been achieved. [↑](#footnote-ref-7)
8. ***Drafting Note:*** Include if separate payments are being made for Services. [↑](#footnote-ref-8)
9. ***Drafting Note:*** Where a substantial part of the programme is expected to be delivered by one or more subcontractors of a Delivery Partner consider whether this definition should include such subcontractors. Alternatively, some of the requirements in relation to Delivery Partners could be amended so that they apply to such subcontractors. [↑](#footnote-ref-9)
10. ***Drafting Note:*** Include if Clause 29.2 is to be included in the agreement. [↑](#footnote-ref-10)
11. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-11)
12. ***Drafting Note:*** *Note that this should allow time for data to be gathered and Outcome Payments to be claimed.* [↑](#footnote-ref-12)
13. ***Drafting Note***: Delete as appropriate. [↑](#footnote-ref-13)
14. ***Drafting Note:*** Include where the Authority wishes to identify any key personnel. [↑](#footnote-ref-14)
15. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-15)
16. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-16)
17. ***Drafting Note:*** Where the Contractor is also receiving external grant funding for outcomes this may need to be amended. [↑](#footnote-ref-17)
18. ***Drafting Note:*** The Parties may wish to tailor this definition to make it specific to the relevant intervention. [↑](#footnote-ref-18)
19. ***Drafting Note:*** to be included if relevant. [↑](#footnote-ref-19)
20. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-20)
21. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-21)
22. ***Drafting Note:*** Include as applicable. [↑](#footnote-ref-22)
23. ***Drafting Note:*** Common conditions precedent (to the extent not already provided prior to the execution of this Agreement) include secure funding commitment, entry into/agreement of Delivery Partner contract(s) and agreement as to information sharing arrangements. [↑](#footnote-ref-23)
24. ***Drafting Note:*** These paragraphs are only required if there are conditions precedent to the Commencement Date. [↑](#footnote-ref-24)
25. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-25)
26. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-26)
27. ***Drafting Note:*** Include where the Authority wishes to identify any key personnel. Note that Contractors are likely to find the second sentence difficult to accept as they will argue that they have little control over this. [↑](#footnote-ref-27)
28. ***Drafting Note***: Include all relevant parties who should have a right to be present at such meetings even if not party to this contract. This may include investors, delivery partners and also participant spokespersons. [↑](#footnote-ref-28)
29. ***Drafting Note***: Include all relevant parties who should have a right to be present at such meetings even if not party to this contract. This may include investors, delivery partners, participant spokespersons. Note that this may be a different group from those entitled to attend the more regular meetings. [↑](#footnote-ref-29)
30. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-30)
31. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-31)
32. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-32)
33. ***Drafting Note***: Outcomes Contracts can result in a supply of services which would be subject to VAT but may also take effect as a grant depending on the terms of the contract. Please seek independent advice as to the tax treatment of any agreement you enter into based on this template Outcomes Contract. [↑](#footnote-ref-33)
34. ***Drafting Note:*** Include where separate Services are being contracted for. [↑](#footnote-ref-34)
35. ***Drafting Note:*** Where a Contractor purchases standard services such as exercise classes or after school clubs which assist it in delivery of the Programme it is likely that the provider of such classes will not agree to sign up to the full suite of audit and inspection rights or TUPE clauses that the Authority would have with Delivery Partners (nor would it be proportionate for them to do so) and such contracts should be excluded if this is part of the Contractor’s delivery plan. The types of service which may be purchased in this way can be specified either in this contract or by reference to the Tender Submission. [↑](#footnote-ref-35)
36. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-36)
37. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-37)
38. ***Drafting Note:*** Some SIBs include a profit share for Delivery Partners as an incentive for Delivery Partners. [↑](#footnote-ref-38)
39. ***Drafting Note:*** Delivery Partner agreements (in common with most service agreements) may include the ability to withhold payments for breach of service level KPIs – if any of the Outcomes are connected with this service level provision this clause may inadvertently prohibit this ability. [↑](#footnote-ref-39)
40. ***Drafting Note:*** Consider whether this is appropriate; some Delivery Partners may wish to receive payment based on Outcomes but this should be agreed between all parties to the SIB, including the Authority. [↑](#footnote-ref-40)
41. ***Drafting Note***: Consider whether a Deed of Assurance is appropriate for this Agreement. [↑](#footnote-ref-41)
42. ***Drafting Note:*** Consider whether (i) necessary if this is right is included in the Deed of Assurance; and (ii) appropriate in all circumstances, for example it may make sense to exclude this right in respect of Delivery Partners which are NHS entities given adequate oversight already exists and rights to inspect treatment by the Authority will be particularly sensitive. [↑](#footnote-ref-42)
43. ***Drafting Note:*** To be reviewed on case-by-case basis in case the Contractor is also subject to FOIA in which case this section would need to be modified. [↑](#footnote-ref-43)
44. ***Drafting Note***: This clause provides the following options:

    **OPTION 1:** the Contractor retains all IP developed under the contract, but grants a [perpetual], non-exclusive licence to the Authority to use that IP to carry out its duties and exercise any of its rights under the contract (Clauses 19.1-19.4); or

    **OPTION 2:** the Contractor assigns all IP developed under the contract to the Authority, but receives a licence back to the Authority to use that IP on an ongoing basis, subject to any restrictions imposed in the contract (Clauses 19.5-19.9). In each case, the liability provisions have been aligned with the contractual position. Please delete as appropriate. [↑](#footnote-ref-44)
45. ***Drafting Note:*** the Authority should check its insurances are equivalent to those required to be maintained by the Contractor, or where this is not appropriate given the activities the Authority is undertaking, it should seek a carve out from this provision for such type of liability (for example by adding “with the exception of Professional Indemnity Insurance for which the insured level of the Authority will be deemed to be £[x]”. [↑](#footnote-ref-45)
46. ***Drafting Note:*** It will be much easier for the Parties to agree a fair resolution if the Contractor’s financial model is shared at the start of the contract, this means that, should assumptions change as a result of the Force Majeure Event, it is relatively easy to agree the result of that on the financial model. [↑](#footnote-ref-46)
47. ***Drafting Note:*** Where there are foreseeable events or types of events for which should they occur the Parties have agreed in advance a resolution they can include provision here to record the agreed resolution. This may be detailed drafting or simply the principle on which the change to the contract will be based. If there are no such events this clause may be deleted. [↑](#footnote-ref-47)
48. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-48)
49. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-49)
50. ***Drafting Note***: If the Contractor and/or the Delivery Partner is relying on these Existing Transferring Employees this could be problematic - consider whether appropriate. [↑](#footnote-ref-50)
51. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-51)
52. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-52)
53. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-53)
54. ***Drafting Note***: to be included where there are payments for both outcomes and specified services. [↑](#footnote-ref-54)
55. ***Drafting Note:*** To be confirmed. [↑](#footnote-ref-55)
56. ***Drafting Note***: Parties to determine whether they are happy to receive notices by email. [↑](#footnote-ref-56)
57. ***Drafting Note:*** Select appropriate execution block for Authority. [↑](#footnote-ref-57)
58. ***Drafting Note:*** Include where the Authority wishes to identify any key personnel. [↑](#footnote-ref-58)
59. ***Drafting Note***: To be included if relevant. Many SIBs will include a minimum referral volume, the second option is more appropriate where an Initial Assessment is required to determine whether a particular individual is suitable for inclusion in the Programme or where the Contractor is not taking the risk that referrals will not agree to participate in the Programme. [↑](#footnote-ref-59)
60. ***Drafting Note***: It may be necessary for the Authority to provide certain data in order for the Contractor to monitor the success of the programme or to claim outcomes payments. [↑](#footnote-ref-60)
61. ***Drafting Note***: Include if specific services are being commissioned and paid for as a service contract and not by way of payment for Outcomes. [↑](#footnote-ref-61)
62. ***Drafting Note***: Include where there is a cap on Outcome Payments per Participant or for a particular type of Outcome. [↑](#footnote-ref-62)
63. ***Drafting Note***: Include where there is an overall cap on Outcomes Payments. [↑](#footnote-ref-63)
64. ***Drafting Note:*** Consider whether appropriate in all circumstances, for example it may make sense to exclude this right in respect of Delivery Partners which are NHS entities given adequate oversight already exists and rights to inspect treatment by the Authority will be particularly sensitive. [↑](#footnote-ref-64)
65. ***Drafting Note:*** Select appropriate execution block for Delivery Partner. [↑](#footnote-ref-65)
66. ***Drafting Note:*** The attorney should sign their own name. [↑](#footnote-ref-66)
67. ***Drafting Note:*** Select appropriate execution block for Authority. [↑](#footnote-ref-67)
68. ***Drafting Note:*** The Authority and the Contractor need to consider the type of Personal Data that will be shared between them and determine who is the Controller/Processor, and complete the details in this table as fully as possible. [↑](#footnote-ref-68)
69. ***Drafting Note:*** Most SIBs involve data flows extending beyond just the Contractor and Authority, e.g. personal data may also flow to a Delivery Partner or a Sponsor. If so, a separate data processing agreement can be entered into with the applicable parties, or their relationship can be set out here with additional tables added. [↑](#footnote-ref-69)
70. ***Drafting Note:*** Article 58 of the 2018 Act deals with joint controllers. A joint controller situation arises where two or more controllers jointly determine the purposes and means of processing. [↑](#footnote-ref-70)
71. ***Drafting Note:*** Note that it may be impracticable to obtain PII on a single claim or series of claims basis, consider whether it would be appropriate to include an annual minimum sum. [↑](#footnote-ref-71)
72. ***Drafting Note:*** Note that it may be impracticable to obtain PII on a single claim or series of claims basis, consider whether it would be appropriate to include an annual minimum sum. [↑](#footnote-ref-72)
73. ***Drafting Note:*** This can be amended to align with regular reporting under the Programme. [↑](#footnote-ref-73)
74. ***Drafting Note:*** Only required where data point 19 is not available. [↑](#footnote-ref-74)
75. ***Drafting Note:*** Only required where data point 19 is not available. [↑](#footnote-ref-75)
76. ***Drafting Note:*** Consider whether relevant. [↑](#footnote-ref-76)
77. ***Drafting Note:*** Only required where data point 76 is not available. [↑](#footnote-ref-77)
78. ***Drafting Note:*** Only required where data point 76 is not available. [↑](#footnote-ref-78)