

DATED

201[\*]

(1) OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

and




(2) [THE SUPPLIER]

## SERVICES AGREEMENT

**PLEASE VIEW/PRINT THIS AGREEMENT IN COLOUR**

This Agreement contains drafting notes and wording in different colours, please use this key to determine what each colour means.

KEY:

	Drafting note to aid drafting of the agreement - read the note, then delete once you have understood and acted upon it.
	Optional wording - consider whether the wording is needed
	This must be completed

**THIS AGREEMENT** is dated [DATE]

## **PARTIES**

- (1) OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED incorporated and registered in England and Wales with company number 09519056 whose registered office is at Jericho Building - Activate Learning - Oxford Campus, Oxpens Road, Oxford, OX1 1SA (**OxLEP**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**);

## **BACKGROUND**

- (A) OxLEP has requested proposals and quotations to provide the services relating to [DESCRIBE SERVICES]
- (B) On the basis of the Supplier's quote, OxLEP has selected the Supplier to provide the services relating to [DESCRIBE SERVICES] and the Supplier agrees to provide such services on the terms set out in this Agreement.

## **PRIORITY CLAUSE**

- (1) This Agreement is made up of the following parts:
  - (i) This introduction page
  - (ii) [Funder Requirements](#)
  - (iii) Agreed Terms
  - (iv) Particulars
- (2) If there is any conflict or ambiguity between the parts of the documents listed in this clause, a part contained higher in the list shall have priority over one contained lower in the list.

## **INTERPRETATION**

- (3) The definitions and rules of interpretation in Schedule 1 shall apply in this Agreement.

## **PARTICULARS**

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<p><b>Services:</b></p>	<p>[BRIEF DESCRIPTION OF SERVICES] described in Schedule 2</p>
<p><b>OxLEP's representative:</b></p>	<p>Name: [NAME]</p> <p>Title: [TITLE]</p> <p>Email: [EMAIL]</p> <p>Telephone: [NUMBER]</p> <p>Postal Address: [POSTAL ADDRESS]</p>
<p><b>Supplier's Manager:</b></p>	<p>Name: [NAME]</p> <p>Title: [TITLE]</p> <p>Email: [EMAIL]</p> <p>Telephone: [NUMBER]</p> <p>Postal Address: [POSTAL ADDRESS]</p> <p>Or any replacement individual appointed by the Supplier, being the person responsible for managing the Services on behalf of the Supplier.</p>
<p><b>Supplier's VAT number:</b></p>	<p>[NUMBER]</p>
<p><b>Commencement Date:</b></p>	<p>[INSERT DATE WHEN THE SERVICES WILL COMMENCE] or as amended by the Funder Requirements.</p>
<p><b>Initial Term:</b></p>	<p>[INSERT PERIOD] months starting on the Commencement Date, unless terminated earlier in accordance with clause 16.</p>
<p><b>Charges:</b></p>	<p>The sums payable for the Services, as set out in Schedule 3</p>

**Invoice Address:**

[INSERT OXLEP ADDRESS FOR INVOICING]

## FUNDER REQUIREMENTS

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*[Include appropriate clauses from the funding agreement (if there is a funding agreement). Appropriate clauses will be those that govern how OxLEP must apply its relevant funds. We have included sample clauses below, but **these are illustrative only**). Please discuss with Lyn Davies if you have any queries.]*

### Part 1

#### 1. Contract Period and Provision of the Services

- 1.1 This Agreement is conditional on the prior completion of the Funding Agreement.
- 1.2 If the Funding Agreement has not completed by the proposed commencement date set out in the Particulars, then the Commencement Date shall be postponed until the Funding Agreement has completed.

#### 2. Records, Monitoring and Review

- 2.1 Subject to Agreed Term [x] below the Supplier shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records either in original or as certified true copies on commonly used data carriers safely and orderly until OxLEP informs the Supplier that keeping the documents is no longer required in connection with the Funding Agreement. Documents existing in electronic format only must be kept on computer systems which meet accepted security standards and ensure that the documents may be relied up for the exercise of the audit rights of OxLEP under this Agreement.

#### 3. State Aid

- 3.1 Nothing in this Agreement shall be deemed to constitute a State Aid between OxLEP and the Supplier.
- 3.2 [The Services provided by the Supplier in respect of [Oxfordshire businesses/Oxfordshire beneficiaries] to the [NAME OF PROJECT] project are a State Aid to the final beneficiaries. OxLEP is responsible for managing the State Aid compliance elements of the [NAME OF PROJECT] project, notwithstanding this the Supplier shall provide information to OxLEP, if required, to enable OxLEP to manage State Aid compliance.]
- 3.3 [No payment shall be made from [Oxfordshire businesses/Oxfordshire beneficiaries] for the Services provided under this Agreement and OxLEP shall be responsible for managing State Aid compliance in line with the relevant provisions of [the De Minimis Regulation (Commission Regulation (EU) No 1407/2013 of 18 December 2013)/ the General Block Exemption Regulation (Commission Regulation (EU) No 651/2014 of 17 June 2014)].





## **AGREED TERMS**

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### 1. COMMENCEMENT AND DURATION

- 1.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Term, unless terminated earlier in accordance with clause 15 (Termination) or extended pursuant to clause 1.2.
- 1.2 If OxLEP wishes to extend this Agreement beyond the expiry of the Initial Term, it shall give the Supplier at least [two] months' written notice of such intention prior to the expiry of the Initial Term provided always that OxLEP shall not be entitled to extend the Initial Term by more than [NUMBER] years.

*[You may want to change the amount of notice given depending on the complexity of the particular agreement.]*

### 2. SUPPLIER'S RESPONSIBILITIES

- 2.1 The Supplier warrants and represents that all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the pre-qualification questionnaire (if applicable), its Quote and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to OxLEP in writing prior to the date of this Agreement.
- 2.2 The Supplier shall:
- (a) provide the Services and the Deliverables in accordance with Schedule 2;
  - (b) ensure that the Services and Deliverables will conform in all respects with Schedule 2 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by OxLEP;
  - (c) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
  - (e) co-operate with OxLEP in all matters relating to the Services, and comply with OxLEP's instructions;
  - (f) before the date on which the Services are to start, obtain and at all times, maintain during the term of this Agreement, all necessary licences and consents and comply with all Applicable Laws in relation to:

- (i) the Services; and
- (ii) the installation and use of the Supplier's Equipment;
- (g) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of OxLEP's premises from time to time and that have been communicated to it;
- (h) hold all OxLEP Materials and OxLEP Equipment in safe custody at its own risk and maintain OxLEP Materials and OxLEP Equipment in good condition until returned to OxLEP, and not dispose of or use OxLEP Materials or OxLEP Equipment other than in accordance with OxLEP's written instructions or authorisations; and
- (i) not do or omit to do anything which may cause OxLEP to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

2.3 Time is of the essence in relation to Milestones for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to OxLEP's right to terminate this Agreement and any other rights it may have), OxLEP may:

- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
- (c) hold the Supplier accountable for any loss and additional costs incurred; and
- (d) have any sums previously paid by OxLEP to the Supplier in respect of the affected Services refunded by the Supplier.

*[If time is of the essence in relation to certain deadlines it means that OxLEP can terminate the agreement if a deadline is missed. Where no dates for performance have been agreed, then the Supplier has to carry out the Services within a reasonable time. As such, it is better to specify the timing for the performance of any obligations.]*

2.4 In relation to the Supplier's personnel, the Supplier shall:

- (a) when requested by OxLEP on reasonable grounds and on reasonable notice, make available to OxLEP records of all personnel involved in the provision of the Services;
- (b) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks

assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this Agreement;

- (c) ensure that the Supplier's Manager has authority to bind the Supplier on all matters relating to the Services (including by signing Change Orders);
- (d) when requested by OxLEP on reasonable grounds, cease to use any member of the Supplier's personnel specified by OxLEP for the provision of the Services.

### **3. OXLEP'S OBLIGATIONS**

3.1 OxLEP shall:

- (a) upon request from the Supplier provide all reasonable assistance in connection with this Agreement;
- (b) provide the Supplier with reasonable co-operation in all matters relating to the Services; and
- (c) provide to the Supplier such information as the Supplier may reasonably request in order to carry out the Services.

### **4. CHANGE CONTROL**

*[This clause sets out the process to request a change to the Services. The procedure in this clause is straightforward and will be suitable where the Services are not too complex. If the Services are particularly complicated, consider whether this clause will enable a Supplier to make required changes with OxLEP's approval and if in doubt speak to Lyn Davies].*

4.1 If OxLEP wishes to make a change to the Services:

- (a) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and
- (b) the Supplier shall, within 10 Business Days of receiving OxLEP's request at clause 4.1(a), provide a draft Change Order to OxLEP.

4.2 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to OxLEP.

4.3 If the Supplier submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, OxLEP shall not unreasonably withhold or delay consent to it.

4.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with clause 20 (Dispute Resolution procedure).

4.5 No proposed changes shall come into effect until a relevant Change Order has been signed by both parties.

## **5. CHARGES AND PAYMENT**

5.1 In consideration of the provision of the Services by the Supplier, OxLEP shall pay the Charges.

5.2 The Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise specified in Schedule 3, the Charges shall be deemed to include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

5.3 Unless otherwise set out in Schedule 3 the Charges are exclusive of value added tax (“VAT”) where VAT is applicable. OxLEP shall pay to the Service Provider any VAT chargeable on the Contract Price subject to the provision to OxLEP of a proper VAT invoice.

5.4 The Supplier shall invoice OxLEP for the Charges at the intervals specified, or on the achievement of the Milestones indicated in Schedule 2. If no intervals are specified, the Supplier shall invoice OxLEP at the end of each month for Services performed during that month.

5.5 OxLEP shall pay each undisputed invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.

5.6 Where an invoice is disputed, the parties shall seek to resolve the dispute promptly and, if necessary, the matter shall be dealt with in accordance with clause 20 (Dispute Resolution). OxLEP shall be under no obligation to pay the disputed charge until the dispute has been resolved. For the avoidance of doubt, where an invoice is disputed in part, the OxLEP shall pay such part of the invoice which is not in dispute in accordance with clause 5.5.

5.7 Each invoice shall:

- (a) be submitted to the address of OxLEP specified in the Particulars;
- (b) contain a detailed breakdown of Services supplied;
- (c) be supported by any information required by OxLEP to substantiate such invoice; and
- (d) comply with any other provisions in Schedule 3 in respect of invoices.

- 5.8 Interest shall be payable on overdue amounts at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.
- 5.9 OxLEP may, at any time, set off any liability of the Supplier to OxLEP against any liability of OxLEP to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by OxLEP of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 5.10 In the event of termination or expiry of this Agreement, the Supplier shall repay to OxLEP any part of the Charges which it has been paid in respect of Services not provided by the Supplier at the date of termination or expiry.

## **6. AUDIT**

- 6.1 The Supplier shall provide to OxLEP at no cost to OxLEP access to such information as OxLEP may reasonably require as to the provision of the Services and the performance of the Supplier's obligations under the Agreement and render OxLEP all reasonable assistance in connection with OxLEP's monitoring and review of Services.
- 6.2 The Supplier shall permit OxLEP, or its nominated auditor, to access the Supplier's premises and records on reasonable notice in order to audit the Supplier's performance of the Agreement.
- 6.3 The Supplier shall co-operate fully and promptly with any audit undertaken pursuant to this clause 6 to ensure that any audit can be carried out smoothly.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 In relation to OxLEP Materials:
- (a) OxLEP and its licensors shall retain ownership of all Intellectual Property Rights in OxLEP Materials; and
  - (b) OxLEP grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify OxLEP Materials for the term of this Agreement for the purpose of providing the Services to OxLEP.
- 7.2 In relation to the Deliverables:
- (a) the Supplier assigns to OxLEP, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
  - (b) the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and

- (c) the Supplier shall, promptly at OxLEP's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as OxLEP may from time to time require for the purpose of securing for OxLEP all right, title and interest in and to the Intellectual Property Rights assigned to OxLEP in accordance with clause 7.2(a).

### 7.3 The Supplier:

- (a) warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding OxLEP Materials) by OxLEP shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify OxLEP in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by OxLEP arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding OxLEP Materials).

*[Generally, the Supplier should bear the risk that its services infringe third party rights. At the very least, the Supplier should be aware of whether any part of the services or deliverables has been copied or extracted from a third party source. As such, it should be able to give an unqualified warranty of non-infringement of copyright, database right, unregistered design rights and rights in confidential information. It is common for the supplier to give a warranty that the IPRs in the services and deliverables do not infringe any third party's IPRs and to indemnify the customer for any losses if there is any infringement.]*

*[There is no corresponding IPR indemnity from OxLEP to the Supplier if any OxLEP Materials which are licensed to the supplier under Clause 7.1 are found to infringe a third party's IPRs. A Supplier with a good bargaining position may insist on this.]*

## 8. INSURANCE

During the term of this Agreement and for a period of 6 years after the expiry or termination of this Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than [£2 million], employer's liability insurance at an amount not less than [£10 million] and public liability insurance at an amount not less than [£5 million] to cover the liabilities that may arise under or in connection with this Agreement and shall produce to OxLEP on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

*[The figures in orange are suggested figures for the typical contract OxLep is likely to enter into. However, in each case, please consider whether the insurance amounts are appropriate given the value and nature of the services and the potential risks involved. If you wish to reduce these suggested*

*figures, please speak with Lyn Davies. Please also note that the level of insurance cover should be considered when negotiating the limitation of the supplier's liability]*

## **9. COMPLIANCE WITH LAWS AND POLICIES**

- 9.1 The Supplier shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Agreement.
- 9.2 The Supplier shall comply with the OxLEP policies set out in Schedule 4 and any other OxLEP policy which is communicated to it in writing by OxLEP from time to time.

## **10. DATA PROTECTION**

*[Include the blue parts of this clause and Schedule 5 if the Supplier will be processing large amounts of personal data under this Agreement].*

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, OxLEP is the controller and the Supplier is the processor. *[Schedule 5 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.]*
- 10.3 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that personal data only on the documented written instructions of OxLEP unless the Supplier is required by Applicable Law to otherwise process that personal data;
  - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
  - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of OxLEP has been obtained and the following conditions are fulfilled:



- (i) the Supplier has provided appropriate safeguards in relation to the transfer; and
  - (ii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred.
- (e) assist OxLEP, at OxLEP's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation;
  - (f) notify OxLEP without undue delay on becoming aware of a personal data breach;
  - (g) if and when required by OxLEP, delete or return personal data and copies thereof to OxLEP unless required by Applicable Law to store the personal data;
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by OxLEP or OxLEP's designated auditor; and
  - (i) [\[indemnify OxLEP against any loss or damage suffered by OxLEP in relation to any breach by the Supplier of its obligations under this clause 10\].](#)

10.4 OxLEP consents to the Supplier appointing the third party processors listed in Schedule 5. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 10 and which reflect the requirements of the Data Protection Legislation. As between OxLEP and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this. As between OxLEP and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 10.

10.5 If and when required by OxLEP any Personal Data held under or in connection with the Agreement must be securely destroyed and/or permanently deleted.

## 11. CONFIDENTIALITY

11.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information belonging to the other party except as permitted by clause 11.2.

11.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement,

provided it shall ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 12. PUBLICITY AND ADVERTISING

The Supplier shall not without prior consultation with OxLEP seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Services and shall, where reasonably practicable, agree joint press releases with OxLEP.

## 13. INDEMNITY

13.1 The Supplier shall indemnify OxLEP against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by OxLEP arising out of or in connection with:

- (a) any breach of the warranty contained in clause 2.1;
- (b) the Supplier's breach or negligent performance or non-performance of this Agreement;
- (c) [any claim made against OxLEP by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier, its employees, agents or subcontractors.]

13.2 This indemnity shall not cover OxLEP to the extent that a claim under it results from OxLEP's negligence or wilful misconduct.

*[Indemnities are for situations where the Supplier has control of the situation and OxLEP does not, but an unlimited breach of contract indemnity can be seen as unfair. A different approach would be to ask the Supplier to indemnify OxLEP against its breach of certain important clauses only. This may be more practical, especially where OxLEP's risk is low - in which case clauses 13.1(b) and 13.1(c) can be deleted.]*

*If you are unsure or have any queries about this clause, please contact Lyn Davies].*

## 14. LIMITATION OF LIABILITY

### 14.1 Nothing in this Agreement:

- (a) shall limit or exclude the Supplier's or OxLEP's liability for:
  - (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
  - (iv) any other liability which cannot be limited or excluded by applicable law;
- (b) shall limit or exclude the Supplier's liability for its indemnity obligations contained in this Agreement.

### 14.2 Subject to clause 14.1:

- (a) neither party to this Agreement shall have any liability to the other party for any indirect or consequential loss arising under or in connection with this Agreement;
- (b) the Supplier's total liability to OxLEP, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £[NUMBER]; and

*[Consider the value of the agreement when completing clause 14.2(b).]*

*The usual commercial position is that liability is limited at the contract value. If the value of the contract is quite low compared with the potential risks with the Services, it may be more appropriate to link the limitation of liability to the Supplier's insurance cover limit.*

*If OxLEP's bargaining position is particularly good, you may wish to remove clause 14.2(b) altogether which would render the Supplier's liability uncapped].*

- (c) OxLEP's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £[FIGURE].

*[Although OxLEP is likely to be taking on less risk than the Supplier, it is a good idea to limit its liability as well. OxLEP's liability cap should not be higher than the Supplier's and ideally should be lower (for example, the annual charges under the contract).*

*If you are unsure or if you have any questions about liability, please contact Lyn Davies]*

## 15. TUPE

The parties shall comply with their respective obligations contained in Schedule 6 of this Agreement.

*[TUPE may apply on the commencement or termination of this Agreement where:*

- Services are outsourced;*
- Services are re-tendered from one supplier to another supplier; or*
- Services are brought back-in house on termination of this Agreement.*

*TUPE is a complicated area of law with obligations on parties to inform and sometimes consult affected employees on the transfer; failure to do so attracts compensation of up to 13 weeks' gross pay per affected employee. Therefore we would recommend taking legal advice as soon as a potential TUPE issue arises.]*

## 16. TERMINATION

16.1 OxLEP shall have the right to terminate the Agreement in whole or in part without cause at any time by giving not less than **[3 months]** written notice to the Supplier. For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

*[Clause 16.1 gives OxLEP the right to terminate without cause on the giving of written notice to the Supplier. This gives OxLEP maximum flexibility, but you are likely to find that the Supplier asks for this right to be reciprocal - in which case amend the word 'OxLEP' to 'Both parties' and the word 'Supplier' to 'other'.*

*When deciding the amount of notice of termination that needs to be given, consider the Services the Supplier is providing under the Agreement and how long the Initial Term is. The Supplier will want a sufficient notice period to allow a smooth and orderly exit.*

*The Supplier may also request that this termination right should only arise after a minimum amount of time. This may be a reasonable request if the Supplier will be dedicating significant resources and time to supply the Services.*

*The Supplier may also ask for a right to compensation in the event of early termination. The Agreement currently excludes such a right to compensation but this may have to be reconsidered if the Supplier has a good bargaining position and is investing significant resources into supplying the Services.]*

16.2 OxLEP shall have a right to terminate this Agreement in whole or in part with immediate effect by giving written notice to the Supplier if:

- (a) it fails to meet any Milestones for reasons within the Supplier's control; or
- (b) the Supplier fails to meet the Service Levels for **[6]** consecutive months.

*[Clause 16.2 can be deleted OxLEP does not need a right to terminate if Milestones or Service Levels are not met for this particular contract].*

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

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this Agreement;
- (d) an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court or creditor to appoint a receiver or manager or which entitle a court to make a winding up order, or the other party takes or suffers any similar or analogous action in consequence of a debt, or an arrangement or compensation is made by the other party with its creditors or an application to the court for protection from its creditors is made by the other party; or
- (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.4 Without affecting any other right or remedy available to it, OxLEP may terminate this Agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a breach of clause 9 (Compliance with laws and policies) or clause 2.1 (Warranty);
- (b) there is a change of control of the Supplier; or
- (c) OxLEP's funding is reduced (including, for the avoidance of doubt, totally withdrawn).

## **17. CONSEQUENCES OF TERMINATION**

17.1 On termination or expiry of this Agreement:

- (a) the Supplier shall immediately deliver to OxLEP all Deliverables whether or not then complete, and return all of OxLEP Materials and OxLEP's Equipment. If the Supplier fails to do so, then OxLEP may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe

keeping of all Deliverables, OxLEP Materials and OxLEP's Equipment in its possession and will not use them for any purpose not connected with this Agreement;

- (b) any Personal Data held under or in connection with the Agreement must be securely destroyed and/or permanently deleted;
- (c) the Supplier shall, if so requested by OxLEP, provide all assistance reasonably required by OxLEP to facilitate the smooth transition of the Services to OxLEP or any replacement supplier appointed by it; and
- (d) the following clauses shall continue in force: clause 6 (Audit), clause 7 (Intellectual Property Rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 13 (Indemnity), [clause 15 \(TUPE\)](#), clause 17 (Consequences of termination), clause 20 (Multi-tiered Dispute Resolution Procedure) and clause 21 (General).

17.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 18. FORCE MAJEURE

18.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) interruption or failure of utility service.

18.2 A party shall not be liable if delayed in or prevented from performing its obligations due to a Force Majeure Event, provided that it:

- (a) promptly notifies the other of the Force Majeure Event and its expected duration; and
  - (b) uses best endeavours to minimise the effects of that event.
- 18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 18.4 If, due to a Force Majeure Event, a party:
  - (a) is or shall be unable to perform a material obligation; or
  - (b) is delayed in or prevented from performing its obligations for a total of more than 60 days;the other party may, within 30 days, terminate the Agreement on immediate notice.

## **19. NOTICES**

- 19.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 19.2 Any notice shall be deemed to have been received:
  - (a) if delivered by hand, on signature of a delivery receipt; and
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service.
- 19.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **20. DISPUTE RESOLUTION**

- 20.1 If a dispute arises out of or in connection with this Agreement (Dispute) then the parties shall follow the procedure set out in this clause 20:
  - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Supplier's Manager and OxLEP's Representative shall attempt in good faith to resolve the Dispute;
  - (b) if the Supplier's Manager and OxLEP for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless

otherwise agreed between the parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice.

20.2 No party may commence any court proceedings under clause 21.16 in relation to the whole or part of the Dispute until 21 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

## 21. GENERAL

21.1 **Inadequacy of Damages** - Without prejudice to any other rights or remedies that OxLEP may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, OxLEP shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

21.2 **Rights and Remedies** - The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

21.3 **Assignment and other dealings** - The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

21.4 OxLEP may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

21.5 **Variation** - Subject to clause 4 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21.6 **Waiver** - A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.7 **Severance** - If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

21.8 If any provision or part-provision of this Agreement is deemed deleted under clause 21.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.



- 21.9 **Entire Agreement** - This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.10 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.11 **No Partnership** - Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 21.12 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 21.13 **Third Party Rights** - This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, save in relation to any Successor Supplier (as defined in Schedule 1).
- 21.14 **Counterparts** - This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 21.15 **Governing Law** - This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 21.16 **Jurisdiction** - Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it.

## SCHEDULE 1 - INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

### 1.1 Definitions.

<b>Applicable Laws:</b>	all applicable laws, statutes, regulations from time to time in force.
<b>Business Day:</b>	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Business Hours:</b>	the period from 9.00 am to 5.00 pm on any Business Day.
<b>Change Order:</b>	a document setting out proposed changes to the Services.
<b>Confidential Information:</b>	information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of a party for the time being confidential to that party and trade secrets including, without limitation, technical data and know-how relating to the business of a party or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, whether or not such information (if in anything other than oral form) is marked confidential.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:</b>	as defined in the Data Protection Legislation.
<b>Deliverables:</b>	any outputs of the Services and any other documents, products or materials provided by the Supplier to OxLEP as specified in Schedule 2 and any other documents, products and materials provided by the Supplier to OxLEP in relation to the Services (excluding the Supplier's Equipment).
<b>Data Protection Legislation:</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic

Communications Regulations 2003 (SI 2003/2426) as amended, and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

- Effective Date:** the date on which the Services are first commenced and supplied by the Supplier, notwithstanding the date of this Agreement
- Employment Liabilities:** means all pay, benefits, PAYE payments, national insurance contributions, pension contributions and other amounts payable to or in respect of the employment or engagement of any person;
- Employment Liabilities:** means any costs, claims, demands or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities.
- Employee Liability Information:** mean the information required pursuant to Regulation 11 of TUPE.
- Funding Agreement:** the agreement between (1) [INSERT FUNDER] (as managing authority for the [INSERT NAME] Programme and (2) OxLEP for [INSERT PURPOSE OF FUNDING AGREEMENT] [to be entered into on [DATE] OR dated [DATE]].
- Initial Term:** means [X] months starting on the Commencement Date, unless terminated earlier in accordance with clause 16.
- Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which

subsist or will subsist now or in the future in any part of the world.

<b>Invitation to Quote:</b>	the invitation for providers to bid for the provision of the Services.
<b>Milestone:</b>	a date by which a part of the Services is to be completed, as set out in Schedule 2.
<b>Outgoing Supplier:</b>	means any outgoing provider of services akin to the Services prior to the Effective Date
<b>OxLEP's Equipment:</b>	any equipment, including tools, systems, cabling or facilities, provided by OxLEP, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.
<b>OxLEP Materials:</b>	all documents, information, items and materials in any form (whether owned by OxLEP or a third party), which are provided by OxLEP to the Supplier in connection with the Services.
<b>Quote:</b>	the Supplier's response to the Invitation to Quote.
<b>Regulation 821:</b>	<a href="#">Commission Implementing Regulation (EU) No 821. 2014 of 28 July 2014 Supplementing Regulation 1303.</a>
<b>Regulation 1303:</b>	<a href="#">means Regulation (EU) No 1303/2013 of the European Parliament of 17 December 2013 which sets out the common provisions on the Structural and Investment Funds, as amended.</a>
<b>Services:</b>	the services set out in Schedule 2, including services which are incidental or ancillary to such services.
<b>Structural and Investment Funds:</b>	<a href="#">means together the European Regional Development Fund (ERDF) and the European Social Fund (ESF).</a>
<b>State Aid</b>	any advantage granted by public authorities through state resources on a selective basis to any organisation that could potentially distort competition and trade in the European Union.
<b>Successor Supplier:</b>	means any property manager providing services akin to the Services supplied by OxLEP on or prior to the relevant Termination Date
<b>Supplier's Equipment:</b>	any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to OxLEP and used directly or indirectly in the supply of the Services.
<b>Term:</b>	the term of this agreement, as determined in accordance with clause 1.

<b>Termination:</b>	means the termination or expiry of all or part of this Agreement.
<b>Termination Date:</b>	means the date or dates on which Termination takes effect.
<b>TUPE:</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or consolidated from time to time.
<b>Transferring Employees</b>	means the employees listed in the written notice delivered by OxLEP to the Supplier not less than 14 days before the Effective Date.

1.2 Clause and Schedule headings shall not affect the interpretation of this Agreement and references to clauses and Schedules are to the clauses and Schedules of this Agreement.

1.3 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 The Schedules form part of this Agreement and any reference to this Agreement includes the Schedules.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa and a reference to a gender includes the other gender.

1.9 A reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

1.11 A reference to writing or written includes email.

1.13 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.

1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## SCHEDULE 2 - SERVICES DETAILS

- Services: [LIST SERVICES PROVIDED UNDER THIS AGREEMENT]
- [Service Levels:]
- OxLEP Materials: [SPECIFY]
- OxLEP's Equipment: [SPECIFY]
- Supplier's Equipment: [SPECIFY]
- Milestones: [Milestones can be set out here, including the date by which they are due, or in Schedule 3 with the payment terms if payment is related to Milestones].
- Timetable: [TIMETABLE FOR PERFORMANCE OF SERVICES]
- Deliverables: [DELIVERABLES FOR SERVICES]
- Acceptance criteria: [ACCEPTANCE CRITERIA]
- For the purpose of clause 16.3(b) 'material breach' shall include, but not be limited to the Supplier [INSERT ACTS/OMISSIONS ON THE PART OF THE SUPPLIER THAT WILL CONSTITUTE MATERIAL BREACH]

*[Consider whether you wish to add any definition of 'material breach' here. This links to clause 16.3(b) (Termination). If you define it here, then this adds clarity for both parties about the circumstances in which clause 16.3(b) shall apply. Without this, 16.3(b) can still be used, but the term 'material breach' will be open to interpretation. OxLEP could however still use clause 16.1 to terminate the agreement but this is designed for termination in the absence of breach and would not entitle OxLEP to claim damages for breach of contract]*

### SCHEDULE 3 - CHARGES, COSTS AND PAYMENT

**Charges:** [SPECIFY]

- The total charges for the Services are £[AMOUNT].
- The fixed price is calculated as follows: [CALCULATION METHOD]

**Payment terms:** [SPECIFY]

**Costs of third party materials and services charged in addition to the Charges:**

The following materials and services procured from third parties shall be invoiced to OxLEP in addition to the Charges: [INSERT DETAILS]

## **SCHEDULE 4 - OXLEP POLICIES**

[Please insert any OxLEP Policies that the Supplier must comply with here.]



## SCHEDULE 5 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

### 1. Processing By the Supplier

1.1 SCOPE: [INSERT]

1.2 NATURE: [INSERT]

1.3 PURPOSE OF PROCESSING: [INSERT]

1.4 DURATION OF THE PROCESSING: [INSERT]

### 2. Types of Personal Data

[Insert]

### 3. Categories of Data Subject

[Insert]

## SCHEDULE 6 - TUPE

### 1. Definitions

Defined terms in this Schedule shall have the meanings set out in Schedule 1 or as otherwise defined in this Schedule.

### 2. TUPE on commencement

2.1 In the event that the parties agree that the provision of the Services from the Effective Date shall constitute a relevant transfer for the purposes of TUPE, or the provision of the Services give rise to a relevant transfer by operation of law, the parties agree that sub-paragraphs 2.2 to 2.3 and paragraphs 3 and 4 shall apply.

2.2 To the extent required by TUPE, the contracts of employment of the Transferring Employees shall have effect after the Effective Date as if originally made between Supplier and the employees except in so far as such contracts relate to:

- (a) benefits for old age, invalidity or survivors under any occupational pension scheme (within the meaning of the Pension Schemes Act 1993);
- (b) any Transferring Employee who objects to the transfer under regulation 4(7) of TUPE; or
- (c) any employee who is treated as dismissed prior to the relevant transfer under regulation 4(9) of TUPE.

2.3 Without prejudice to any obligation under regulations 11 and 13 of TUPE, each party shall provide such information, assistance and co-operation to the other party as may reasonably be required:

- (a) to ensure the smooth transfer of the Transferring Employees under TUPE and of the rights, powers, duties and liabilities relating to them;
- (b) to enable the parties and any Outgoing Supplier or Successor Supplier to discharge their obligations to inform and consult any appropriate representatives (as defined by regulation 13 of TUPE) about any such transfer sufficiently in advance to enable meaningful consultation to take place; and
- (c) to enable OxLEP to provide information to potential suppliers in advance of the Termination Date.

### 3. The Supplier's responsibilities

3.1 The Supplier shall be responsible for and shall indemnify and keep indemnified in full OxLEP against any Employment Liabilities incurred by OxLEP which arise out of or in connection with:

- (a) any failure by the Supplier to provide the information, assistance and co-operation required under this Schedule or any failure to comply with its obligations under regulations 13 and 14 of TUPE;
- (b) any claim by any Transferring Employee arising out of any act or proposal by the Supplier prior to or following the Effective Date which amounts to a repudiatory breach of the relevant Transferring Employee's contract of employment under regulation 4(11) of TUPE and/or a substantial change in working conditions to the material detriment of that Transferring Employee under regulation 4(9) of TUPE; and
- (c) all Employment Costs of any Transferring Employee from and including the Effective Date to and including the relevant Termination Date; and

#### **4. OxLEP's responsibilities**

4.1 OxLEP shall be responsible for and shall indemnify and keep indemnified in full the Supplier against all Employment Costs and Employment Liabilities incurred by the Supplier which arise out of or in connection with:

- (a) the employment or engagement (or the termination of the employment or engagement) of any Transferring Employee prior to the Effective Date save to the extent that the liability arises under regulation 4(9) or 4(11) of TUPE or as a result of the Supplier's failure to comply with regulation 13 of TUPE; and
- (b) any failure by the OxLEP or any Outgoing Supplier to provide the information, assistance and co-operation required under this Schedule or any failure to comply with its or their obligations under regulations 13 and 14 of TUPE.

4.2 Subject to sub-paragraph (c) below, if any person other than a Transferring Employee transfers or is alleged to transfer to the Supplier:

- (a) the Supplier may within 7 days of the transfer or alleged transfer, terminate such person's contract of employment; and
- (b) provided always that in so doing the Supplier uses its reasonable endeavours to minimise any liability, OxLEP shall be responsible for and shall indemnify and keep indemnified in full the Supplier against all Employment costs and Employment Liabilities incurred by the Supplier which arise out of or in connection with such person's contract of employment or its termination; or
- (c) in the event that the Supplier either notifies OxLEP in writing of its election to continue to employ any such person or fails or declines to terminate such person's contract of employment in accordance with sub-paragraph (a) above, then such person shall be deemed to be a Transferring Employee.

## 5. Termination assistance

5.1 Without prejudice to other provisions of this Agreement or to any rights or obligations under TUPE regarding Employee Liability Information, the Supplier shall at any time when reasonably requested or in any event during the last [six/three/one] month[s] of the Term:

- (a) subject to all Data Protection Legislation, upon request from OxLEP provide in respect of any employees assigned to any Services (the "Assigned Employees") full and accurate details of the identity, number, job title, gender, job description, salary or wages, bonus or commission, length of service, notice period, contracted hours of work, overtime worked (over at least a twelve month period), redundancy entitlement, retirement age, entitlement to holiday, sick leave/sick pay, maternity, paternity, adoption, special leave, any loan or leasing schemes, collective agreements, benefits in kind or matters relating to terms and conditions of employment (the "Recontracting Information");
- (b) provide the Recontracting Information promptly and at no cost to OxLEP;
- (c) notify OxLEP promptly in writing of any material changes to the Recontracting Information as and when such changes arise; and
- (d) not without the prior consent of OxLEP:
  - (i) assign any person to the Services or reassign any person away from the Services other than in the ordinary course of business;
  - (ii) increase the annual remuneration of any of the Assigned Employees other than pursuant to any annual pay review or in the ordinary course of business; or
  - (iii) not assign any person to the Services or reassign any person away from the Services other than in the ordinary course of business.

*[Use this clause only where it is envisaged or likely that a significant number of employees may be assigned to the Services and transfer on Termination: any prospective or Incoming Contractor is likely to require this information at an early stage and will expect the Supplier to be under an obligation not to 'dump' or cherry-pick transferring employees]*

## 6. TUPE on Termination

6.1 In the event that the parties agree that TUPE applies in respect of the provision after the Termination Date of any service which is fundamentally the same as all or any part of the Services, or Termination gives rise to a relevant transfer by operation of law, the parties agree that sub-paragraphs 6.2 to 6.5 shall apply.

6.2 Save where OxLEP has exercised its rights under clause 16.3, but without prejudice or to any rights or obligations under TUPE regarding Employee Liability Information, the Supplier shall no less than 30 days prior to the Termination Date provide to OxLEP a list of all employees assigned to the Service and whose contracts of employment will transfer to OxLEP or a

Successor Supplier pursuant to TUPE on the relevant Termination Date (the “Returning Employees”).

- 6.3 In relation to the Returning Employees, the Supplier shall be responsible for and shall indemnify and keep indemnified in full OxLEP and any Successor Supplier against all Employment Costs and Employment Liabilities incurred by OxLEP or a Successor which arise out of or in connection with:
- (a) the employment or engagement (or the termination of the employment or engagement) of any Returning Employee prior to the Termination Date save to the extent that the liability arises under Regulation 4(9) or 4(11) of TUPE or as a result of OxLEP or any Successor Supplier failure to comply with regulation 13 of TUPE; and
  - (b) any failure by the Supplier to provide the information, assistance and co-operation required under this Schedule or any failure to comply with its or their obligations under regulations 13 and 14 of TUPE.
- 6.4 In relation to the Returning Employees, OxLEP shall be responsible for, or shall procure that any Successor Supplier shall be responsible for, and shall indemnify and keep indemnified in full the Supplier against any Employment Liabilities incurred by OXLEP or any which arise out of or in connection with:
- (a) any failure by OxLEP or any Successor Supplier to comply with its obligations under regulations 13 and 14 of TUPE; and
  - (b) any claim by any Returning Employee arising out of any act or proposal by OxLEP or any Successor Supplier prior to or following the Termination Date which amounts to a repudiatory breach of the relevant Returning Employee’s contract of employment under regulation 4(11) of TUPE and/or a substantial change in working conditions to the material detriment of that Transferring Employee under regulation 4(9) of TUPE.
- 6.5 Subject to sub-paragraph (c) below, if any person other than a Returning Employee transfers or is alleged to transfer to the Supplier:
- (a) OxLEP or any Successor Supplier may within 7 days of the transfer or alleged transfer, terminate such person’s contract of employment; and
  - (b) provided always that in so doing OxLEP or any Successor Supplier uses its reasonable endeavours to minimise any liability, the Supplier shall be responsible for and shall indemnify and keep indemnified in full OxLEP and any Successor Supplier against all Employment costs and Employment Liabilities incurred by OxLEP and any Successor Supplier which arise out of or in connection with such person’s contract of employment or its termination; or
  - (c) in the event that OxLEP and any Successor Supplier either notifies the Supplier in writing of its election to continue to employ any such person or fails or declines to terminate such person’s contract of employment in accordance with sub-paragraph (a) above, then such person shall be deemed to be a Returning Employee.

Signed by [NAME OF DIRECTOR] for and on behalf of OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

.....

Director

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER]

.....

Director