# DATED 2017

**(1) [Please insert Trust]**

**(2) [Please insert Provider]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**MODEL AGREEMENT**

**RELATING TO**

**[MATERNITY SURVEY 2017]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\*Please note the square brackets throughout this contract where further attention is needed.**

**THIS AGREEMENT** is made the day of 2017

**BETWEEN**

1. **[ ]** of [ ] (“the Trust**”**) which expression shall include its permitted successors and assigns; and
2. **[ ]** of [ ] (“the Provider”) which expression shall include its permitted successors and assigns.

**INTRODUCTION**

(A) The Provider has entered into an agreement with the Trust to carry out the [Maternity Survey 2017] (“the Services”), as detailed in Schedule 1.

(B) The Provider agrees to provide the Services on the terms and conditions set out below.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. INTERPRETATION
   1. The headings in this Agreement shall not affect its interpretation.
   2. References to any statute or statutory provision shall be deemed to include a reference to any amendment or re‑enactment thereof or substitution from time to time and any rules orders regulations and delegated legislation made thereunder and shall include a reference also to any past statutory provisions (as from time to time amended or re-enacted) which such statute or statutory provision directly or indirectly has replaced.
   3. If there is any conflict between the provisions of this Agreement and the provisions of the Schedules to this Agreement the provisions of this Agreement shall prevail.
   4. Neither Party nor its personnel shall in any circumstances hold themselves out as being the servant or agent of the other Party other than in the circumstances expressly permitted by the other Party in writing.
   5. Neither Party nor its personnel shall in any circumstances hold themselves out as being authorised to enter into any contract on behalf of the other Party or in any other way to bind such other Party to the performance variation release or discharge of any obligation other than in the circumstances expressly permitted by such other Party in writing.
2. CONTRACT TERM
   1. This Agreement shall commence with effect from [please insert date] (the “Commencement Date”) and, subject to earlier termination in accordance with its terms, shall continue in force until [the Provider has completed its obligations as set out in this Agreement] (the ‘Termination Date’).
3. BREACH AND TERMINATION
   1. If the Provider does not carry out the Services in accordance with this Agreement the Trust may
4. require the Provider to remedy the default within such time as the Trust may reasonably specify by providing or providing again (as the case may be) without further charge to the Trust such part of the Services as required in accordance with this Agreement; and/or
5. itself provide or procure the provision of the Services or any part of the Services until the Trust shall be satisfied that the Provider is again able to carry out the Services in accordance this Agreement. If the cost to the Trust of executing or procuring such Services exceeds the amount which would have been payable to the Provider for carrying out the Services, the excess shall be paid by the Provider to the Trust in addition to any other sums payable by the Provider to the Trust in respect of the breach; and/or
6. without determining the whole of the Agreement, determine the Agreement in respect of part of the Services only and thereafter provide or procure the provision of such part of the Services itself.
   1. The remedies of the Trust under this Clause may be exercised concurrently in respect of any default by the Provider.
   2. Either Party may terminate this Agreement by serving written notice on the other Party in the event:
      1. of serious or persistent unremedied breach of the other Party’s obligations under this Agreement; and
      2. that the other party is declared insolvent, enters into an arrangement or composition with or for the benefit of a creditor, has an administrator, receiver or administrative receiver appointed over all or any part of it assets or ceases or threatens to cease to carry on its business.
   3. The Trust may terminate this Agreement in the event that the circumstances described in Clause 14 occur.
   4. The Trust may terminate this Agreement by giving when it considers that the Provider has completed all its obligations under this Agreement or by [please insert relevant period] months written notice to the Provider.
   5. This Agreement shall terminate automatically in the event that the Parties are no longer legally able to carry out the Services.
   6. The Parties may elect to terminate this Agreement in accordance with Clause 12.2, should the circumstances described in Clause 12.2, occur.
   7. The provisions of Clauses 6, 7, 8, 10, 11, 19, 20 and 21 shall survive the expiry or early termination of this Agreement, howsoever caused.
7. THE SERVICE
   1. The Provider shall be solely responsible for providing the Services which shall for the avoidance of doubt include all matters relating to the recruitment, employment, engagement and termination of employment or any other contract of all persons engaged or to be engaged in the provision of the Services including independent contractors and the acts and omissions of such persons.
   2. The Provider shall carry out any other necessary checks in relation to staff that the Trust reasonably requires the Provider to carry out including police checks.
   3. The Provider shall comply with and it shall ensure that all staff are informed and aware of the standard of performance they are required to provide pursuant to the terms of this Agreement and are able to meet that standard. The adherence of the staff to such standards of performance shall be routinely monitored and remedial action shall be promptly taken where such standards are not attained.
   4. In the case of circumstances which, acting reasonably, the Trust considers constitute an emergency or a serious disruption to the Services, the Trust shall be permitted to require the immediate removal of any particular member or members of the staff or others employed or engaged by the Provider from the provision of the Services and any such requirement by the Trust shall not give rise to any liability whatsoever on the part of the Trust to the Provider or any other party and shall not affect in any way the obligations of the Provider to carry out the Services to the Agreement .
   5. The Provider shall provide all premises, equipment and materials and other things whatsoever required for the provision of the Services in accordance with this Agreement.
   6. [The Provider shall submit monitoring reports as set out in Schedule 4.] [Please delete if monitoring reports are not appropriate. If monitoring reports are desirable, please delete square brackets and include details of when and how these should be provided and what details should be included within Schedule 4]
8. PAYMENT
   1. The Trust shall pay to the Provider the sums set out in Schedule 3 inclusive of VAT (if applicable) for the provision of the Services in accordance with this Agreement.
9. DATA PROTECTION
   1. The Trust and the Provider acknowledge that for the purposes of the Data Protection Act 1998 (“the 1998 Act”), the Trust is the Data Controller and the Provider is the data processor of any Personal Data.
   2. The Provider shall comply with the 1998 Act and any other applicable data protection legislation and must not do, or omit to do anything which would cause the Trust to be in breach of the 1998 Act or any other applicable data protection legislation. In particular the Provider agrees to comply with the obligations placed on the Trust by the seventh data protection principle (“the Seventh Principle”) set out in the 1998 Act, namely:
      1. to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Trust by the Seventh Principle;
      2. only to process Personal Data for and on behalf of the Trust, in accordance with the instructions of the Trust and for the purpose of performing the Services in accordance with the Agreement and to ensure compliance with the 1998 Act;
      3. allow the Trust to audit the Provider’s compliance with the requirements of this Clause 6.1 on reasonable notice and/or to provide the Trust with evidence of its compliance with the obligations set out in this Clause 6.
   3. Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Provider providing the Trust with reasonable assistance in complying with subject access requests served on the Trust under Section 7 of the 1998 Act and the Provider consulting with the Trust prior to the disclosure by the Provider of any Personal Data in relation to such requests.
   4. The Provider shall ensure that access to the Personal Data is limited to:
      1. those employees who need access to the Personal Data to meet the Provider’s obligations under this Agreement; and
      2. in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee’s duties.
   5. The Provider shall ensure that all employees:
      1. are informed of the confidential nature of the Personal Data;
      2. have undertaken training in the laws relating to handling personal data; and
      3. are aware both of the Provider’s duties and their personal duties and obligations under the 1998 Act, any other applicable legislation and this Agreement.
   6. The Provider shall take reasonable steps to ensure the reliability of any of the Provider’s employees who have access to the Personal Data.
   7. The Provider shall notify the Trust immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of Personal Data.
   8. The Provider agrees to indemnify and keep indemnified and defend at its own expense the Trust against all costs, claims, damages or expenses incurred by the Trust or for which the Trust may become liable due to any failure by the Provider or its employees or agents to comply with any of its obligations under this Agreement.
   9. In this Clause 6, the following words and Phrases shall have the following meaning:
      1. ‘Personal Data’ has the meaning set out in section 1(1) of the 1998 Act and relates only to personal data, or any part of such personal data, of which the Trust is the Data Controller and in relation to which the Provider is providing services under this Agreement.
      2. ‘Data Controller’ has the meaning set out in section 1(1) of the 1998 Act.
      3. ‘Processing and process’ have the meaning set out in section 1(1) of the 1998 Act.
10. RESPONSIBILITY FOR LIABILITIES
    1. Each Party is responsible for the acts and omissions of its own staff and others engaged by it.
    2. The Provider shall indemnify and keep indemnified in full the Trust against all claims, costs, damages, expenses, payments and liabilities whatsoever arising whether before or during the term of this Agreement out of or in connection with or in respect of any person employed or engaged by the Provider in connection with the provision of the Services (or the termination of such employment or engagement) which, for the avoidance of doubt, shall include any claim made by any third party arising out of or in connection with or in respect of the employment or engagement of any of the aforesaid persons, where and only to the extent that such claims, costs, damages, expenses, payments and liabilities were due to the acts or defaults of the Provider.
    3. The Provider shall take out and maintain appropriate insurance to fully cover its obligations and prospective liabilities under this Agreement.
    4. The Provider must provide evidence of its compliance with Clause 7.2 within a reasonable period of time following a written request to do so, which shall include written details of the insurance policy and the Provider shall comply with the Trust’s reasonable requests in relation to such matters.
11. CONFIDENTIALITY
    1. The Parties shall not and shall ensure that their staff and all other persons engaged by them including independent contractors do not disclose to any person other than a person duly authorised by the Parties any information of a confidential nature received or acquired by them in connection with the other Party hereto or this Agreement including without prejudice to the generality of the foregoing:
       1. financial or other confidential information about or relating to the other Party, and
       2. any Personal Data as defined in the Data Protection Act 1998

other than to the extent expressly permitted by this Agreement (including, for the avoidance of doubt, the Services), provided that such obligation shall not prevent either Party from disclosing information of confidential nature where it is required to do so by judicial, administrative, governmental or regulatory process or otherwise by applicable law including, without limitation, under the Freedom of Information Act 2000.

1. VARIATIONS
   1. The Parties may agree variations to this Agreement including the Services, in accordance with this Clause 9.
   2. In order to be valid, agreed variations shall be in writing and signed on behalf of both the Parties.
2. ACCRUED RIGHTS AND REMEDIES

Neither the expiration nor the termination of this Agreement shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either of the Parties.

1. DISPUTE RESOLUTION
   1. In the event of a dispute arising out of this Agreement the authorised representatives of the Parties as set out in Schedule 2 shall use their best endeavours to attempt to resolve any such dispute.
   2. If the said authorised representatives are unable to resolve any dispute within twenty (20) working days of the dispute arising, the matter shall immediately be referred jointly by the Parties to the Chief Executives (or similar officers) of the Parties, who will attempt to resolve the matter.
   3. If the dispute remains unresolved for thirty (30) working days after the date of referral to the persons referred to in Clause 11.2 above, Clause 23 shall apply.
2. FORCE MAJEURE
   1. Neither Party shall be liable to the other Party for any failure to perform its obligations under this Agreement where such performance is rendered impossible by circumstances beyond its control (a “Force Majeure Event”) but nothing in this condition shall limit the obligations of such Party affected by such Force Majeure Event to use its best endeavours to fulfil its obligations under this Agreement.
   2. If a Force Majeure Event continues for a period of three (3) months or more after commencement of the Force Majeure Event either Party may elect to terminate this Agreement.
3. PUBLICITY

Neither Party must advertise or publicly announce that it is involved in the Services or this Agreement without prior written consent of the other Party.

1. CORRUPT GIFTS, PAYMENTS OF COMMISSIONS
   1. If the Provider or any of its staff or other persons engaged by it do anything in relation to this Agreement which constitutes an offence under the Prevention of Corruption Acts 1889 to 1916 (whether directly involving the Trust or not) the Trust may:
      1. in writing terminate the Provider’s involvement in this Agreement immediately in accordance with Clause 3; and
      2. recover from the Provider the amount of any loss resulting from that termination.
2. NOTICES
   1. Any notice or other document to be served on either Party under the provisions of or in connection with this Agreement shall be sufficiently served if it is left at or delivered to or sent by registered post or through the recorded delivery system addressed to the relevant authorised representative for each Party at the appropriate address for each Party as set out in Schedule 2 of this Agreement (“the Authorised Representatives”).
   2. Any notice or document if sent by registered post or through the recorded delivery system shall be deemed to have been sufficiently served 48 hours after the time of posting (unless returned by the Post Office undelivered).
   3. Either Party may, by serving written notice on the other Party, change the identity of its Authorised Representative and/or its address for the service of notices.
3. TRANSFER AND SUB-CONTRACTING

Neither Party may assign, novate, sub-contract, transfer, or otherwise dispose of the whole or any part of this Agreement or any rights or obligations under it without the other Party’s previous written consent, provided that the Parties shall be permitted to transfer this Agreement to a successor to its business, without first obtaining the other’s prior written consent.

1. ENTIRE AGREEMENT

This Agreement and the documents referred to herein embody the entire understanding of the parties relating to all matters dealt with by any other provisions of this Agreement at the date hereof. This Agreement shall prevail over any inconsistent terms and conditions relating to the subject matter of this Agreement and any other agreement between the parties or referred to in correspondence or elsewhere and any conditions or stipulations to the contrary are hereby excluded and extinguished.

1. DISCRIMINATION

The Parties, in carrying out their responsibilities under this Agreement shall ensure that all their staff and other persons engaged by them including agents and sub-contractors comply with each and every one of the provisions of the law which prohibit discrimination on the grounds of age, sexual orientation, disability, sex, colour, race, ethnic or national origin or religion.

1. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the avoidance of doubt, no third party (except, to the extent expressly permitted in this Agreement) shall have any rights in respect of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 and the Parties shall not require the consent of any person to any variation of or amendment to this Agreement.

1. INTELLECTUAL PROPERTY
   1. The Parties agree that each Party shall, subject to any written agreement to the contrary, retain all and any intellectual property properly belonging to it and not developed in relation to the Services and brought to the Parties’ joint working in accordance with this Agreement.
   2. Copyright and all other Intellectual Property Rights in the information and data templates and any formats, or tables or other works arising from the performance of the Services (‘the Results’) shall belong to the Trust.
2. THE TRANSFER REGULATIONS
   1. The parties acknowledge that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (the "Transfer Regulations") may apply at any time before or after the termination or expiry of this Agreement or upon the early termination or variation of this Agreement. In circumstances where the Transfer Regulations do apply, the Provider shall comply with its obligations under the Transfer Regulations.
   2. In the event of expiry or termination of the Agreement, the Provider and the Trust shall co-operate fully to ensure an orderly handover in relation to all aspects of the Services to alternative providers and shall at all times act in such a manner as to not adversely affect the delivery of the Services or the obligations of the parties under this Agreement.
   3. If requested to do so by the Trust, the Provider shall co‑operate fully during the discussions and any transfer of the Services to any alternative provider(s) and this co‑operation shall extend to allowing for access to, and providing copies of information which is necessary in order to achieve an effective transition to a new provider without disruption to routine operational requirements. The transfer shall be arranged to reduce to a minimum any interruption of the provision to the Trust of the Services.
   4. The Provider shall, within 14 days of a written request from the Trust, provide such full, accurate and up to date information relating to the Provider's staff employed or engaged in providing the Services (or a part of the Services) to the Trust including without limitation the identity of the employees who will transfer, the age of those employees, information contained in the statements of employment particulars for those employees (eg. remuneration, hours of work, holiday entitlements), information relating to any collective agreements which apply to those employees, instances of any disciplinary action within the preceding 2 years taken by the Provider in respect of those employees in circumstances where the statutory dispute resolution procedures apply, instances of any grievances raised by those employees within the preceding 2 years taken by the Provider in respect of those employees in circumstances where the statutory dispute resolution procedures apply and instances of any legal actions taken by those employees against the Provider in the previous 2 years and instances of potential legal actions which might be brought by those employees where the Provider has reasonable grounds to believe that such actions might occur.
   5. In the event that any employees of the Provider transfer to the Trust or any third party as a result of the provisions of this clause or at any time pursuant to the Transfer Regulations:
3. the Provider shall indemnify and keep indemnified in full the Trust against all claims, costs, damages, expenses, payments and liabilities whatsoever arising whether before or during the term of this Agreement out of or in connection with or in respect of any person employed or engaged by the Provider in connection with the provision of the Services (or the termination of such employment or engagement) which, for the avoidance of doubt, shall include any claim made by any third party arising out of or in connection with or in respect of the employment or engagement of any of the aforesaid persons, where and only to the extent that such claims, costs, damages, expenses, payments and liabilities were due to the acts or defaults of the Provider, its servants or agents before such transfer and while such persons were in the employment of the Provider;
4. the Provider warrants that it shall comply in full with all its obligations under the TUPE Regulations including without limitation those under Regulation 11 and 13 and shall indemnify and keep indemnified the Trust against all claims, liabilities, losses and costs (including reasonable legal costs) arising from any breach of the warranty in this Clause 21.5(b);
5. the indemnities in this Clause 21 shall continue to apply after the expiry or termination of this Agreement without any limitation in time and, in particular but without limitation, shall continue to apply in respect of any employee of the Provider whose contract or employment transfers to the Trust on the expiry or termination of this Agreement and if on the expiry or termination of this Agreement the contract of employment of any employee engaged or employed by the Provider in the provision of the Services to the Trust shall pass to a new provider the Provider shall, on written request by the Trust, provide to the new provider a written and binding indemnity in respect of each and every employee in the same terms as those set out in Clause 21.5(a) and 21.5(b) above with the substitution of a reference to the new provider for each reference to the Trust.

22 FREEDOM OF INFORMATION

22.1 The Provider acknowledges that the Trust is subject to the requirements of the Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (which are issued under Section 45 and 46 of the FOIA respectively), the FOIA and the Environmental Information Regulations 2004 and the Provider shall assist and cooperate with the Trust (at their own expense) to enable the Trust to comply with these Information disclosure obligations.

22.2 Where the Provider receives a Request for Information in relation to Information which it is holding on behalf of the Trust, it shall (and shall procure that its sub-contractors shall):

* + - 1. transfer the Request for Information to the Trust as soon as practicable after receipt and in any event within two Working Days (as defined in the FOIA) of receiving a Request for Information;
      2. provide the Trust with a copy of all Information in its possession or power in the form that the Trust requires within five Working Days (or such other period as the other Party may specify) of the Trust’s requesting that Information; and
      3. provide all necessary assistance as reasonably requested by the Trust to enable the Trust 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 2004.

22.3 The Trust shall be responsible for determining at its absolute discretion whether any Information:

(a) is exempt from disclosure under the Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (which are issued under Section 45 and 46 of the FOIA respectively), the FOIA or the Environmental Information Regulations 2004;

(b) is to be disclosed in response to a Request for Information.

22.4 In this Clause 22, the following words and Phrases shall have the following meaning:

* + - 1. “**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
      2. “**Information**” has the meaning given under section 84 of the Freedom of Information Act 2000; and
      3. “**Requests for Information**” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004.

23 APPLICABLE LAW

This Agreement shall be governed by and construed according to the Laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

**IN WITNESS WHEREOF** the parties or their duly authorised representatives have signed this Agreement the day and year first before written

**Signed by** )

for and on behalf of  )

**[Trust]** )…………………………………………

**Signed** **by** )

for and on behalf of )

**[Provider] )** …….………………………………….

**SCHEDULE 1**

**THE SERVICES**

[Please insert Specification]

SCHEDULE 2

AUTHORISED REPRESENTATIVES

|  |  |
| --- | --- |
| **PARTY NAME** | **AUTHORISED REPRESENTATIVE** |
| **[ ]** | [ ] |
| **[ ]** | [ ] |

SCHEDULE 3

**PAYMENT PROVISIONS**

**[Need to insert payment details and amounts]**

**SCHEDULE 4**

MONITORING

[Do you need this section? Please see Clause 4.6]

[1. The Provider shall provide to the Trust quarterly reports which shall detail:]