

## LICENCE TO USE THE SERVICE

### SUBSCRIPTION AGREEMENT

#### PART A - SUBSCRIPTION AGREEMENT

1. This subscription agreement (the 'Agreement') is entered into by and between the 'Provider' and the 'Subscriber'.
2. By entering into the 'Agreement' to use the 'Services' the 'Subscriber' agrees to the 'Subscription terms and conditions'.

#### Part B - SUBSCRIPTION TERMS AND CONDITIONS

### 3. INTERPRETATION

3.1 In this agreement the following words and phrases have the following meaning:

'Agreement'	The subscription agreement entered into between the 'Provider' and the 'Subscriber' including the 'Subscription terms and conditions'
'Applicable law'	Any law, statute, regulation, byelaw or subordinate legislation in force from time to time in England and Wales to which a party is subject
'Authorised users'	These are: <ul style="list-style-type: none"><li>• the employees of the 'Subscriber' who are involved in administering the Local Government Pension Scheme, and</li><li>• any users not directly employed by the 'Subscriber' for whom the 'Subscriber' has been given authorisation by the 'Provider' to use the 'Services'</li></ul>
'Business day'	Any day which is not a Saturday, Sunday or public holiday in England.
'Commencement date'	The later of the following: <ul style="list-style-type: none"><li>• the date this 'Agreement' is signed by the 'Subscriber', or</li><li>• the date this 'Agreement' is signed by the 'Provider', or</li><li>• 1<sup>st</sup> October 2021</li></ul>

'Confidential information'

Any proprietary information belonging to the 'Provider', the 'Subscriber' or the 'Authorised users' including technical information and data, trade secrets or know-how, past, present or future research information, product plans, products, services, markets, customer lists and customers, users or potential users of any such information created or used in the provision of the 'Services', developments, inventions, processes, formulae, technology, designs, drawings, and other business and finance information and any and all information derived or obtained from any such information, and any other information clearly designated as being confidential (whether or not it is marked as confidential) or which ought reasonably to be considered to be confidential

'Data Protection legislation'

This constitutes:

- unless and until the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) is no longer directly applicable in the UK, the GDPR and any applicable national implementing laws as amended from time to time;
- the Data Protection Act 2018 to the extent that it relates to processing of 'Personal data' and privacy; and
- all 'Applicable law' about the processing of 'Personal data' and privacy

'Initial subscription period'

A period of 12 months beginning with the 'Commencement date'

'Intellectual property rights'

Patents, inventions, know-how trade secrets and other 'Confidential information', registered designs, copyrights, database rights, internet domain names, design rights, rights affording equivalent protection to copyright, database rights and design rights, topography rights, trade marks, business names, trade names, moral rights, registration of or an application to register any of the aforesaid items, and rights in the nature of any of the aforesaid items in any country, rights in the nature of unfair competition rights and rights to sue for passing off, 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

'Normal business hours'

09.00 am to 17.00 pm local UK time on each 'Business day'

‘Notice address’	<p>Notices sent to the ‘Provider’ under clause 24 must be sent to:  Pentag Ltd, 14 Moat Way, Swavesey, Cambridge, Cambridgeshire, CB24 4TR</p> <p>Notices sent to the ‘Subscriber’ under clause 24 must be sent to:  [Enter ‘Subscriber’ address to which any notices have to be sent]</p>
‘Personal data’	Has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679)
‘Provider’	Pentag Ltd. Registered Office: Bridge House, Orchard Lane, Great Glen, Leicestershire, LE8 9GJ. Registration number: 6185817. VAT registration number: 907143736.
‘Services’	The services to be delivered by or on behalf of the ‘Provider’ under this ‘Agreement’ as more particularly described in Annex 1 to this ‘Agreement’
‘Subscriber’	[Enter here the name and address of the body subscribing to the ‘Services’]
‘Subscription fee’	The subscription fee, as set out in clause 10, payable by the ‘Subscriber’ to the ‘Provider’ for the ‘Services’
‘Subscription terms and conditions’	The terms and conditions set out in this ‘Agreement’ and any additional schedules or annexures as appended.
‘Renewal subscription period’	A period of 12 months commencing at the end of the ‘Initial subscription period’ and each subsequent period of 12 months thereafter

3.2 The headings contained in this ‘Agreement’ are for convenience of reference only and shall not affect its interpretation or construction.

3.3 Unless the context requires otherwise, words denoting the singular shall include the plural and vice versa.

3.4 The word “including” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words is possible.

3.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by

or as contained in any subsequent re-enactment, modification or statutory extension thereof.

3.6 References to law includes all subordinate legislation made under that law.

3.7 References to clauses are to the clauses of this 'Agreement'.

#### **4. PROVISION OF THE 'SERVICES'**

4.1 For the duration that this 'Agreement' remains in force (see clause 11) the 'Provider' will give the 'Subscriber' and any 'Authorised users' access to the 'Services' on and subject to the terms and conditions of the 'Agreement'.

4.2 The 'Provider' reserves the right to amend the information and documents provided under the 'Services' and the manner in which they are presented, including the right to add or remove any information or documents, either temporarily or otherwise.

4.3 Subject to clauses 4.4 to 4.7, 9.1 and the circumstances specified in clauses 14.6(iii), 14.6(iv) and 16 the 'Provider' will use commercially reasonable endeavours to make the 'Services' available at all times during the period the 'Agreement' is in force but does not warrant that the use of the 'Services' will be uninterrupted.

4.4 The 'Provider' reserves the right to suspend the 'Services' if and for so long as any circumstances arise which prevent it from delivering the 'Services'.

4.5 The 'Provider' reserves the right to suspend the 'Services', or revoke individual User Names and Passwords, upon giving written notice to the 'Subscriber' if and for so long as the 'Provider' reasonably believes that one or more of the User Names and Passwords authorised for use by the 'Subscriber' or 'Authorised users' is being used by an unauthorised user. The 'Provider', in its written notice, shall provide details of the suspected unauthorised use of any User Names and Passwords to allow the 'Subscriber' to undertake any necessary investigations as to whether any unauthorised use has occurred. The Parties shall use their reasonable endeavours to resolve the issue to the satisfaction of both parties within 10 'Business days' of receipt of the 'Provider's' written notice. Where the 'Services' are suspended under this clause for 30 days or more the parties agree this will amount to a material breach of this 'Agreement'.

4.6 The 'Provider' also reserves the right to suspend the 'Services' in accordance with clause 10.5

4.7 The 'Services' are designed for internet access on office / home computers and laptops. The 'Provider' does not hold the 'Services' out as being designed for access on other mediums such as, but not limited to, tablets and smart phones.

## 5. LICENCE AND USE OF THE 'SERVICES'

5.1 Subject to the 'Subscriber's' and 'Authorised users' compliance with the provisions of this 'Agreement' the 'Provider' grants the 'Subscriber' and the 'Authorised users' a non-exclusive, non-transferable, non-assignable licence to use the 'Services' during the 'Initial subscription period' and any 'Renewal subscription period' whilst the 'Agreement' is in force.

5.2 The 'Subscriber' and 'Authorised users' shall not access all or any part of the 'Services' in order to build a product or service which competes with the 'Services'.

5.3 The 'Subscriber' and 'Authorised users' shall not licence, sell, lease, transfer, assign, distribute, disclose or otherwise commercially exploit, or otherwise make all or any part of the 'Services' available to any third party except the 'Authorised users', or in any other way seek to exploit the 'Services' on any commercial basis.

5.4 Subject to clause 5.5, except as may be allowed by any 'Applicable law' which is incapable of exclusion by agreement between the 'Subscriber' and the 'Provider', the 'Subscriber' and the 'Authorised users' shall not:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the 'Services' in any form or media or by any means; or
- (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the 'Services'.

5.5 The 'Subscriber' and 'Authorised users' may, without requiring the prior permission of the 'Provider', copy, duplicate, download, display, transmit or distribute:

- any part of the information, and
- any document

supplied under the 'Services' provided that any such action undertaken is only to the extent necessary for the purposes of internal research, internal training and the preparation of internal reports or responses to queries and it is accompanied by an acknowledgement of the source in the form:

© [or Copyright] PENtag or, as relevant, its information suppliers 20(year in which the copy is made) and, if regulations are reproduced, the Crown Copyright Guidance is adhered to – see <http://www.legislation.gov.uk/licence>

5.6 'Authorised users' may access the 'Services' on equipment in the 'Subscriber's' office(s), or remotely or at home using their own equipment or equipment provided by the 'Subscriber' or equipment authorised by the 'Subscriber'.

## **6. PROPERTY RIGHTS**

6.1 The copyright of all information and documents contained in the 'Services' is owned by the 'Provider' or by its information suppliers or both.

6.2 The 'Subscriber' accepts that its permission, and that of the 'Authorised users', to use the copyright information is limited to the rights expressly conferred by the 'Agreement' and undertakes that any copyright restrictions will be complied with.

6.3 The 'Subscriber' acknowledges that the 'Provider' and / or its licensors own all 'Intellectual property rights' in the 'Services'. Except as expressly stated herein, this 'Agreement' does not grant the 'Subscriber' or the 'Authorised users' any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licences in respect of the 'Services'.

## **7. FEEDBACK**

7.1 The 'Provider' shall have an irrevocable right to, at its discretion, incorporate into the 'Services' or otherwise use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information or documents provided by the 'Subscriber' or the 'Authorised users' relating to the 'Services'.

## **8. THE 'PROVIDER'S' OBLIGATIONS**

8.1 The 'Provider' will use reasonable endeavours to keep the information and documents provided under the 'Services' up to date.

8.2 The 'Provider' will use reasonable endeavours to remedy any reported error or inaccuracy in the information and documents provided under the 'Services' which it reasonably can do, subject to the 'Provider' accepting that there is such an error or inaccuracy and that the property rights to the information or document belong solely to the 'Provider', in accordance with clause 6.

8.3 The 'Provider' will supply to the 'Subscriber' a number of User Names and Passwords for the 'Subscriber' and any 'Authorised users' to gain access to the 'Services' whilst the 'Agreement' is in force. The initial number of User Names and Passwords will be decided by agreement between the 'Provider' and the 'Subscriber' and can subsequently be varied by written agreement.

8.4 The provisions of clauses 8.1 and 8.2 do not extend to information and documents provided under the 'Services' that have been prepared by a body other than the 'Provider'.

8.5 The 'Provider' shall, without affecting its other obligations under this 'Agreement', comply with all 'Applicable laws' and regulations with respect to its activities under this 'Agreement'.

## **9. THE 'SUBSCRIBER'S' AND 'AUTHORISED USER'S' OBLIGATIONS**

9.1 The 'Subscriber' and the 'Authorised users' are, to the extent permitted by law and except as otherwise expressly provided in this 'Agreement', solely responsible for procuring, maintaining and securing their network connections and telecommunications links from their systems to the 'Provider's' data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the 'Subscriber' or 'Authorised user's' network connections or telecommunications links or caused by the internet.

9.2 The 'Subscriber' and 'Authorised users' shall use reasonable endeavours to prevent any unauthorised access to, and use of, the 'Services' and in the event of becoming aware of any such unauthorised access or use, shall notify the 'Provider' within 20 'Business days' of becoming so aware.

9.3 The 'Subscriber' shall:

(a) provide the 'Provider' with:

- (i) all necessary co-operation in relation to this 'Agreement'; and
- (ii) all necessary access to such information as may be required by the 'Provider';

in order to provide the 'Services';

(b) without affecting its other obligations under this 'Agreement', comply with all 'Applicable laws' and regulations with respect to its activities under this 'Agreement';

(c) carry out all other 'Subscriber' responsibilities set out in this 'Agreement' in a timely and efficient manner. In the event of any delays in the 'Subscriber's' provision of such assistance as agreed

by the parties, the 'Provider' may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the 'Authorised users' use the 'Services' in accordance with the terms and conditions of this 'Agreement' and shall be responsible for any 'Authorised user's' breach of this 'Agreement';
- (e) obtain and maintain all necessary licences, consents, and permissions necessary for the 'Provider', its contractors and agents to perform their obligations under this 'Agreement' including, without limitation, the 'Services'; and
- (f) ensure that its network and systems comply with any relevant specifications provided by the 'Provider' from time to time.

9.4 If the 'Subscriber' undertakes pensions administration in relation to the Local Government Pension Scheme and intends to outsource or transfer all or part of that administration to another body the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before the outsourcing or transfer agreement is due to take effect.

9.5 If the 'Subscriber' undertakes pensions administration in relation to the Local Government Pension Scheme and that function is to be statutorily amalgamated with that of another body, or statutorily transferred to another body (including a new body), the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before the amalgamation or transfer is due to take effect.

9.6 If the 'Subscriber' intends to enter into an agreement to undertake, or has transferred to it, the pensions administration of another body or bodies in relation to the Local Government Pension Scheme the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before the agreement or transfer is due to take effect.

9.7 If the 'Subscriber' intends to enter into a partnership agreement with another (existing) body or bodies under which its pensions administration in relation to the Local Government Pension Scheme is to be undertaken, the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before the partnership agreement is due to take effect.

9.8 If the 'Subscriber' intends to enter into a partnership agreement with another body or bodies to create a new body which will undertake its pensions administration in relation to the Local Government Pension Scheme the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before the partnership agreement is due to take effect.



9.9 If the 'Subscriber' has outsourced or transferred all or part of its pensions administration function in relation to the Local Government Pension Scheme to another body and intends to transfer that administration back in-house, or outsource or transfer that administration to another body, the 'Subscriber' shall promptly notify the 'Provider' accordingly and, in any event, no later than 40 'Business days' before that outsourcing or transfer is due to take effect.

9.10 The 'Subscriber' shall promptly notify the 'Provider' of any change in its contact details and, in any event, no later than 20 'Business days' after the change occurs.

9.11 The 'Subscriber' shall ensure that all and any electronic copies of information and documents provided under the 'Services' is immediately removed from all the personal electronic storage (including disks, memory sticks, etc.) of 'Authorised users' who cease to be 'Authorised users' and that all such formerly 'Authorised users' immediately destroy any hard copies of information and documents provided under the 'Services' which they hold.

## **10. 'SUBSCRIPTION FEES' AND PAYMENT**

10.1 The 'Subscriber' shall, in consideration of the 'Services', pay the applicable 'Subscription fee' due from time to time in accordance with this clause 10.

10.2 The 'Subscription fee' for the 'Initial subscription period' and the 'Subscription fee' for each 'Renewal subscription period' shall, unless otherwise agreed in writing between the 'Provider' and the 'Subscriber', be determined in accordance with Annex 2.

10.3 The 'Subscription fee' is exclusive of Value Added Tax (VAT) at the standard rate.

10.4 The 'Subscriber' shall pay 'Subscription fee' invoices (together with VAT at the standard rate prescribed by law) in full, and without deduction or set-off, in clear funds within 30 days of the date of each 'Subscription fee' invoice with payment being made by electronic transfer to the bank account specified on the invoice.

10.5. If the 'Subscriber' fails to pay an invoice within 30 days of the date of the invoice the 'Provider' reserves the right to provide the 'Subscriber' with 14 days' notice of suspension of the 'Services'. If the 'Subscriber' fails to make payment within the 14 days' notice period, access to the 'Services' will then be suspended and further access will not be given until such

time as the invoice is paid and the invoice amount has been credited to the bank account specified on the invoice.

10.6 If any invoice remains outstanding 60 days after the date of the invoice, the 'Provider' shall be entitled, without prejudice to any right, to immediately terminate this 'Agreement' and to pursue payment of outstanding sums due from the 'Subscriber'.

10.7 Subject to clause 10.8, any 'Subscription fee' paid is non-refundable and the failure of the 'Subscriber' and / or the 'Authorised users' to make use of the 'Services' or any part thereof will not entitle the 'Subscriber' to any refund of the 'Subscription fee' paid.

10.8. If the 'Agreement' is terminated in accordance with clause 12.3.2 (non-acceptance of variation to the 'Agreement') or clause 12.4.1 (as a result of a material breach by the 'Provider') a pro-rata refund of the 'Subscription fee' will be paid to the 'Subscriber' calculated on a daily basis by reference to the number of days from the date of termination to the end of that subscription period.

## **11. TERM OF THE 'AGREEMENT'**

11.1 The term of this 'Agreement' will commence (or be deemed to have commenced) on the 'Commencement date' and will, subject to clause 12, continue for the 'Initial subscription period'.

11.2 This 'Agreement' shall continue in force at the end of the 'Initial subscription period' unless, at least 30 days before the end of the 'Initial subscription period', the 'Provider' or the 'Subscriber' has given written notice to terminate the 'Agreement' at the end of the 'Initial subscription period'.

11.3 Where the termination event in clause 11.2 has not occurred, this 'Agreement' shall, subject to clause 12, continue in force for each 'Renewal subscription period' unless at least 30 days before the end of the 'Renewal subscription period', the 'Provider' or the 'Subscriber' has given written notice to terminate the 'Agreement' at the end of that 'Renewal subscription period'.

## **12. TERMINATION OF THE 'AGREEMENT'**

12.1 The following provisions of this clause 12 are without prejudice to any other rights or remedies to which the 'Provider' or the 'Subscriber' may be entitled.

12.2 The 'Provider' may terminate this 'Agreement' without liability to the 'Subscriber':

- 12.2.1 in the circumstances in clause 10.6 (non-payment of invoice);  
or
  - 12.2.2 in the circumstances set out in clauses 11.2 and 11.3 (notice to terminate the 'Agreement'); or
  - 12.2.3 if there is a change of control of the 'Subscriber'
- 12.3 The 'Subscriber' may terminate this 'Agreement' without liability to the 'Provider':
- 12.3.1 in the circumstances set out in clauses 11.2 and 11.3 (notice to terminate the 'Agreement'); or
  - 12.3.2 in the circumstances set out in clause 15.3 (non-acceptance of variation to the 'Agreement')
- 12.4 The 'Provider' or the 'Subscriber' may terminate this 'Agreement' without liability to the other party:
- 12.4.1 if the other party commits a material breach of any of the provisions of this 'Agreement' and, in the case of a breach capable of remedy, fails to remedy the breach within 30 days after receipt of a written notice to do so giving full particulars of the breach; or
  - 12.4.2 upon the other party passing a resolution for winding-up or having a petition to wind up presented against it or going into liquidation, whether voluntary or compulsory, or suffering a winding-up order being made against it or going into administration; or
  - 12.4.3 if the other party proposes a voluntary arrangement within the meaning of section 1 or section 253 of the Insolvency Act 1986, or an interim order is made in relation to the 'Provider' under section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations commenced by that party or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors; or
  - 12.4.4 a receiver or administrative receiver or administrator is appointed or an encumbrancer takes possession of the undertaking and assets (or any part thereof) of the other party;  
or
  - 12.4.5 the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or any statutory re-

enactment or modification thereof) or ceases to, or threatens to cease to, carry on its business or enters into a composition with its creditors; or

12.4.6 the other party takes or suffers any action similar or analogous to the events described in clauses 12.4.2 to 12.4.5 in any jurisdiction in consequence of debt; or

12.4.7 the other party ceases, or threatens to cease, to trade.

12.5 Upon termination of this 'Agreement' under clauses 12.2 to 12.4:

12.5.1 the licence granted under this 'Agreement' shall immediately terminate; and

12.5.2 any rights or obligations of the 'Subscriber', the 'Authorised users' or the 'Provider' which are outstanding at the effective date of the termination, or which are expressly stated to survive, or implicitly survive, the termination shall not be affected or prejudiced by the termination.

### **13. CONFIDENTIALITY**

13.1 The 'Subscriber' and 'Authorised users' agree to keep confidential any 'Confidential information' supplied by the 'Provider' to the 'Subscriber' and / or the 'Authorised users'. The 'Provider' undertakes to observe the same obligation to the 'Subscriber' and the 'Authorised users'. 'Confidential information' shall not be deemed to include information that:

- (i) is or becomes publicly known other than through any act or omission of the receiving party in breach of this 'Agreement'
- (ii) was in the receiving party's lawful possession before the disclosure (other than as a result of this 'Agreement')
- (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure, or
- (iv) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory body.

13.2 The 'Subscriber' and the 'Provider' may disclose the other party's 'confidential information' to its employees, officers, representatives, contractors, subcontractors 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'. The 'Subscriber' and the 'Provider' shall ensure that their employees, officers, representatives, contractors, subcontractors or advisers to whom they disclose the other party's 'confidential information' comply with this clause 13.

13.3 The provision of this clause 13 shall survive termination of this 'Agreement', however arising.

## 14. LIABILITY AND INDEMNITY

- 14.1 The 'Provider' makes no express or implied warranties as to the accuracy or fitness for a particular purpose of the information and documents contained in the 'Services'. Where information contained in the 'Services' has been prepared and written by the 'Provider' it represents the views of the directors of the 'Provider' and should not be treated as a complete and authoritative statement of the law. 'Subscribers' and 'Authorised users' may wish, or will need, to take their own legal advice on the interpretation of any particular piece of legislation, Court judgement, direction, Directive, Pensions Ombudsman determination, guidance from the Pensions Regulator and any other documents or sources of information referenced within the 'Services'. 'Subscribers' and 'Authorised users' assume sole responsibility for results obtained from the use of the 'Services' and for conclusions drawn from such use.
- 14.2 Where there are links in the 'Services' to other websites owned and operated by third parties, the 'Provider' is not responsible for, nor accepts any liability in respect of, the privacy practices or the content of those websites.
- 14.3 Where information or documentation in the 'Services' has been prepared by a body other than the 'Provider', the 'Provider' is not responsible for, nor accepts any liability in respect of, that information or documentation including, but not limited to, its accuracy and the functioning of any embedded links.
- 14.4 The 'Provider' makes no express or implied warranties that a 'Subscriber's' or 'Authorised user's' network connections, or those of any other network or service provider, or the telecommunication links or the equipment used to access the 'Services' will operate well or at all.
- 14.5 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by 'Applicable law', excluded from this 'Agreement'.
- 14.6 No liability whatsoever will be assumed by the 'Provider' to the 'Subscriber' or to 'Authorised users' in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any direct, indirect or consequential loss, financial or otherwise, damages, charges, expenses or inconvenience, or any other obligation or liability incurred by 'Subscribers' or 'Authorised users' including, but not limited to, lost profit, lost revenue, lost sales business, loss of anticipated savings, lost data, business interruption or loss of goodwill or reputation:

- (i) as a consequence of relying on information or documents provided under the 'Services'; or
- (ii) as a result of any error, omission or inaccuracy in the information and documents provided under the 'Services'; or
- (iii) in consequence of any failure or outage in the 'Subscriber's' or 'Authorised users' internet connection which results in the 'Services' not being available; or
- (iv) in consequence of the 'Subscriber' or 'Authorised users' failure to procure, maintain or secure appropriate network connections, telecommunication links and equipment which results in the 'Services' not being available or not working well; or
- (v) in consequence of a link to another website or resource being broken or the relevant resource no longer being available.

14.7 In the event of any loss or damage to 'Personal data' provided to the 'Provider' by the 'Subscriber' or 'Authorised users', the 'Subscriber's' and 'Authorised users' sole and exclusive remedy against the 'Provider' shall be for the 'Provider' to use reasonable commercial endeavours to restore the lost or damaged 'Personal data' from the latest back-up of such data maintained by the 'Provider' in accordance with the archiving procedure described in its Privacy Policy. The 'Provider' shall not be responsible for any loss, destruction, alteration or disclosure of 'Personal data' caused by any third party (except those third parties sub-contracted by the 'Provider' to process and back-up 'Personal data').

14.8 The 'Provider's' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this 'Agreement' shall, except in the case of negligence resulting in death or personal injury, be limited to half the 'Subscription fee' paid by the 'Subscriber' in the 12 months immediately preceding the date on which the claim arose.

## **15. VARIATION**

15.1 The 'Provider' reserves the right to amend the terms and conditions of this 'Agreement' at any time, provided that any such variation will only have effect from the date 14 days after the receipt by the 'Subscriber' of the written notice thereof sent to the 'Subscriber' in accordance with clause 24.

15.2 Any continued use of the 'Services' by the 'Subscriber' or the 'Authorised users' more than 14 days after receipt of written notice given under clause 15.1 will constitute the 'Subscriber's' consent to the variation except where the 'Subscriber' has served a notice of termination pursuant to clause 15.3.

15.3 If the 'Subscriber' does not consent to the variation then, subject to clause 15.4, notice must be served by the 'Subscriber' on the 'Provider' within 14 days after the date the notification of variation was received to terminate this 'Agreement'.

15.4 The 'Subscriber' may request an amendment to this 'Agreement' but any amendment shall only be effective from the date specified in an instrument varying the 'Agreement' which is signed by both the 'Provider' and the 'Subscriber' or their duly authorised representatives.

## **16. FORCE MAJEURE**

16.1 The 'Provider', nor any of its employees, agents or sub-contractors shall be deemed in breach of this 'Agreement' or under any liability whatsoever to the 'Subscriber' or the 'Authorised users' for any failure or delay in performing the 'Services' or any obligation under this 'Agreement' resulting from circumstances beyond their reasonable control, including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the employees of the 'Provider' or any other party), failure or downtime of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage (whether physical or electronic and including, but not limited to, viruses, malware, hacking, ransomware, etc.), compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, earthquake, flood, storm or default of suppliers or sub-contractors.

16.2 The 'Subscriber' nor the 'Authorised users' shall be deemed in breach of this 'Agreement' or under any liability whatsoever to the 'Provider' for any failure or delay in performing any obligation under this 'Agreement' resulting from circumstances beyond their reasonable control, including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the employees of the 'Subscriber' or any other party), failure or downtime of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage (whether physical or electronic and including, but not limited to, viruses, malware, hacking, ransomware, etc.), compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, earthquake, flood, storm or default of suppliers or sub-contractors.

16.3 The 'Provider' will not be liable for any defect in or failure of any product or services not provided by or on behalf of the 'Provider' (a "Third Party Default") and shall not be liable for any delay to or interruption or failure of the 'Services' to the extent that such delay, interruption or failure is attributable to a Third Party Default.

## **17. WAIVER**

17.1 No waiver by any party of any breach or non-fulfilment by any other party of any provisions of this 'Agreement' shall be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under this 'Agreement' shall constitute a waiver of that right or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise of it or the exercise of any other right, power or remedy provided by law or under this 'Agreement'.

17.2 Any waiver of any right, power or remedy under this 'Agreement' must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

## **18. SEVERANCE**

18.1 If any provision (or part of a provision) of this 'Agreement' is found by any court or administrative body or competent jurisdiction to be invalid, unenforceable or illegal, it shall be deemed to be deleted but that shall not affect the validity and enforceability of the remaining provisions (including any part of a provision) which shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification the parties agree is necessary to give effect to the commercial intention of the 'Provider' and the 'Subscriber' in relation to this 'Agreement'.

## **19. ENTIRE 'AGREEMENT'**

19.1 This 'Agreement' constitutes the whole agreement between the 'Provider' and the 'Subscriber' and supersedes any prior written or oral agreement, arrangement or understanding between them in relation to the matters that are the subject of this 'Agreement'.

19.2 The 'Provider' and the 'Subscriber' acknowledge and agree that they have not entered into this 'Agreement' on the basis of any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this 'Agreement' or not) relating to the subject matter of this 'Agreement' that is not expressly incorporated into this 'Agreement'.

## **20. TRANSFERS / ASSIGNMENT**



20.1 The 'Subscriber' and any 'Authorised users' shall not, without the prior written consent of the 'Provider', assign, transfer, charge, sub-contract or deal in any other manner with all or any of their rights or obligations under this 'Agreement'.

20.2 The 'Provider' may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this 'Agreement'.

## **21. NO PARTNERSHIP OR AGENCY**

21.1 Nothing in this 'Agreement' is intended to or shall operate to create a partnership or joint venture between the 'Provider' and the 'Subscriber' or the 'Authorised users' or authorise either party to act as an agent for the other, and neither party shall have the authority to act in the name of, or on behalf of, or otherwise bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **22. THIRD PARTY RIGHTS**

22.1 This 'Agreement' does not confer any rights on any person or party other than the 'Provider' the 'Subscriber' and the 'Authorised users' and, where applicable, their successors and permitted assigns pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **23. JOINT PARTIES**

23.1 The duties, obligations and liabilities of any party that is comprised of more than one entity or person under this 'Agreement' shall be joint and several.

## **24. NOTICES**

24.1 Any notice required to be given under this 'Agreement' shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, provided that proof of postage can be evidenced, to the other party at its address set out in the 'Notice address' in clause 3.1.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if a delivery is not in 'Normal business hours', at 9 am on the first 'Business day' following delivery). A correctly addressed notice sent by pre-paid first class post or other next working day delivery service shall, provided that proof of postage can be evidenced, be deemed to have been received at 9.00 am on the second 'Business Day' after posting.

## **25. DISPUTE RESOLUTION**

25.1 Except as otherwise provided, in the event of any dispute arising out of or in relation to this 'Agreement', the 'Provider' and the 'Subscriber' must first use their respective reasonable endeavours to consult and negotiate with each other in good faith and, recognising their mutual interests, attempt to reach a settlement of the dispute satisfactory to both parties. To such an end the parties must within 10 'Business days' of a written request from one party to the other convene a meeting between their authorised representatives (together, the Appointed Persons) to attempt to resolve the dispute.

25.2 If the Appointed Persons agree upon a settlement of the dispute, they will sign a settlement setting out its terms and the parties will ensure that it is fully and promptly carried out. If the Appointed Persons do not reach a full settlement within 15 'Business days' of the meeting convened in accordance with clause 25.1, the parties will enter into mediation in good faith to settle the dispute, or any unresolved part of the dispute, and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR, 70 Fleet Street, London, EC4Y 1EU. To initiate the mediation a party must give notice in writing (ADR Notice) to the other party to the dispute, referring the dispute to mediation with the object of securing the appointment of the adjudicator, and referral of the dispute to that person, within 10 'Business days' of giving the notice. A copy of the referral should be sent to CEDR. If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 10 'Business days' from the date of the ADR Notice then, where appropriate and in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them. Unless otherwise agreed, the mediation will start not later than 28 'Business days' after the date of the ADR Notice.

25.3 If the dispute has not been resolved within 30 'Business days' of the start of the mediation, or such longer period of up to 15 further 'Business days' as the party submitting the ADR Notice may agree, or if either party will not participate in that procedure, the dispute shall be decided by the courts of England and Wales in accordance with clause 26.

## **26. GOVERNING LAW AND JURISDICTION**

26.1 This 'Agreement' and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England and Wales.

26.2 The 'Provider' and the 'Subscriber' irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle a dispute or claim that arises out of or in connection with this 'Agreement' or its subject matter or formation (including non-contractual disputes of claims).

## **27. PROTECTION OF 'PERSONAL DATA' / PRIVACY POLICY**

27.1 The 'Provider' shall, in providing the 'Services', comply with all applicable requirements of the 'Data Protection legislation' and with its Privacy Policy relating to the privacy, security and archiving of the 'Personal data' provided to it by the by the 'Subscriber' and 'Authorised users'. The Privacy Policy can be viewed on the 'Provider's' website at [www.pentag.co.uk](http://www.pentag.co.uk) or any other site from which the 'Services' are made available from time to time. The Privacy Policy may be amended from time to time by the 'Provider' at its sole discretion.

27.2 The 'Subscriber' shall comply with all applicable requirements of the 'Data Protection legislation'.

27.3 The parties acknowledge that where the 'Provider' processes any 'Personal data' on the 'Subscriber's' behalf when performing its obligations under this 'Agreement', the 'Subscriber' is the data controller and the 'Provider' is the data processor for the purposes of the 'Data Protection legislation'.

27.4 Without prejudice to the generality of this clause 27, the 'Subscriber' will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the 'Personal data' to the 'Provider' for the duration and purposes of this 'Agreement' so that the 'Provider' may lawfully use, process and transfer the 'Personal data' in accordance with this 'Agreement' on the 'Subscriber's' behalf.

27.5 Without prejudice to the generality of this clause 27, the 'Provider' shall, in relation to any 'Personal data' processed in connection with the performance by the 'Provider' of its obligations under this 'Agreement':

- (a) process that 'Personal data' only on the documented written instructions of the 'Subscriber' (unless the 'Provider' is required by the 'Data Protection legislation' to process 'Personal data');
- (b) not transfer any 'Personal data' outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
  - (i) the 'Provider' has obtained the prior written consent of the 'Subscriber';
  - (ii) the 'Provider' has provided appropriate safeguards in relation to the transfer;

- (iii) the data subject (within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679)) has enforceable rights and effective legal remedies when transferred;
  - (iv) the 'Provider' complies with its obligations under the 'Data Protection legislation' by providing an adequate level of protection to any 'Personal data' that is transferred; and
  - (v) the 'Provider' complies with reasonable instructions notified to it in advance by the 'Subscriber' with respect to the processing of the 'Personal data';
- (c) assist the 'Subscriber', at the 'Subscriber's' cost, in responding to any request from a data subject (within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679)) and in ensuring compliance with its obligations under the 'Data Protection legislation' with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the 'Subscriber' without undue delay on becoming aware of a 'Personal data' breach (within the meaning of the General Data Protection Regulation (Regulation (EU) 2016/679)); and
- (e) at the written direction of the 'Subscriber' delete or return 'Personal data' and copies thereof to the 'Subscriber' on termination of the 'Agreement' unless required by the 'Data Protection legislation' to store the 'Personal data' (and for these purposes the term "delete" shall mean to put such data beyond use).

27.6 The 'Provider' or the 'Subscriber' may, at any time on not less than 30 days' notice, revise the relevant provisions of this clause 27 set out above by:

- (a) replacing them with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme under article 42 of the General Data Protection Regulation (Regulation (EU) 2016/679) (which shall apply when replaced by attachment to this 'Agreement'), and
- (b) ensuring they comply with guidance issued by the Information Commissioner's Office.

27.7 This clause 27 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the 'Data Protection legislation'.

## Annex 1

### THE SERVICES

The 'Services' that are to be provided by the 'Provider' to the 'Subscriber' and to the 'Authorised users' under this 'Agreement' via the website at [www.pentag.co.uk](http://www.pentag.co.uk) or via any other site from which the 'Services' are made available from time to time are:

- **PENGuide** – this is an online commentary on the provisions of the various Acts and Statutory Instruments that govern the Local Government Pension Scheme in England and Wales. In addition, it covers elements of Department for Work and Pensions (DWP) and Pensions Regulator guidance that are relevant to the Scheme and, where pertinent, decisions made under the Scheme's appeal / Internal Dispute Resolution Procedure, determinations made by the Pensions Ombudsman, and judgments in the Courts (including the European Court of Justice, which has been re-named the Court of Justice for the European Union). The guide does not, to any great extent, cover HM Revenue and Customs (HMRC) guidance relating to the Finance Act 2004 as HMRC already publish their own guidance on the Act.
- **PENVault** – this is an online vault containing various current and historical documents that are considered to be of practical use to users of PENGuide including, amongst other things:
  - the various Statutory Instruments and Acts that are of specific relevance to the Local Government Pension Scheme in England and Wales together with (where applicable), for each Statutory Instrument, the original draft regulations, consultation documents, covering letters, explanatory Circulars and Memos, etc that led up to and / or accompanied the final Statutory Instrument
  - HM Treasury Public Service Pensions Revaluation Orders and a summary table
  - Pensions Increase (Review) Orders, Directions and Guidance Notes and a summary table
  - GMP Increase Orders and a summary table
  - Social Security Revaluation of Earnings Factors Orders
  - Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Orders and a summary table
  - National Insurance contribution rates (to 2015/16, after which contracting-out ceased) including summary tables for National Insurance Earnings Limits and Thresholds (weekly amounts), National Insurance contracted-out rebates, and married woman's / widow's reduced rate of National Insurance contributions
  - Retirement Benefit Schemes (Indexation of Earnings Cap) Orders and a summary table
  - tax approval certificates and PSTR numbers, contracting-out certificates and SCONS / ECONS, and automatic enrolment qualifying scheme certificates for the Local Government Pension Scheme in England and Wales,
  - public sector guidance and codes issued by the Pensions Regulator

- outsourcing / Fair Deal guidance and Directions
- ill-health guidance
- academies guidance
- public sector transfer club documentation

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## **SUBSCRIPTION FEE**

The 'Subscription fee' for the 'Initial subscription period' is £[figure to be inserted] + VAT.

Subject to the following, the 'Subscription fee' will increase at the beginning of the 'Renewal subscription period' immediately following the end of the 'Initial subscription period' and, thereafter, at the beginning of each subsequent 'Renewal subscription period' in line with the change in prices shown in the Public Service Pensions Revaluation Order coming into force on the 1st April coincident with the beginning of the relevant 'Renewal subscription period' if the relevant 'Renewal subscription period' commences on 1st April or, in any other case, immediately preceding the beginning of the relevant 'Renewal subscription period'. If the change in prices is negative, or zero, the 'Subscription' fee will remain unaltered.

PENTag Ltd reserves the right to renegotiate the 'Subscription fee' where:

- a) the number of Funds for which the 'Subscriber' administers the LGPS increases or decreases, or
- b) there is significant change in the way the LGPS is administered in England and / or Wales which results in the overall number of administrators or Funds in England and / or Wales being decreased or increased (for example, as a result of, but not limited to, regionalisation).

Signed on behalf of the 'Subscriber': \_\_\_\_\_

Name in full: \_\_\_\_\_

Position / job title: \_\_\_\_\_

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

Signed on behalf of the 'Provider': \_\_\_\_\_

Name in full: \_\_\_\_\_

Position / job title: Director

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

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