**Confidentiality Agreement**

**THE BENJAMIN FOUNDATION and**

**February 2019**

**THIS AGREEMENT** is made on the day on which it is signed by whichever party is the last to sign it **BETWEEN**

**THE BENJAMIN FOUNDATION** whose Head Office is **23-27 St Andrews Street, Norwich, Norfolk, NR2 4TP** and

**WHEREAS** each Disclosing Party wishes to disclose to each Recipient, and wishes to ensure that each Recipient maintains the confidentiality of, each Disclosing Party's Confidential Information. In consideration of the benefits to the parties of disclosing and receiving the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

IT IS HEREBY AGREED AS FOLLOWS:

**1. Definitions**

1.1 For the purposes of this Agreement the following expressions shall have the following meanings:

(a) **“Authorised Representative”** shall mean any employee, director, officer or professional and financial advisor of the receiving party;

(b). **“Business Day”** shall mean a working day between the hours of 9:00am and 5:00pm other than a Saturday, Sunday or public holiday or hours outside of these deemed necessary for service delivery.

(c) **“Confidential Information”** shall mean any personal data within the meaning of the Data Protection Act 1998 and all other confidential information (however recorded or preserved and whether or not marked confidential) disclosed or made available, directly or indirectly, by the Disclosing Party or its employees, officers, representatives or advisers to the Recipient and its Representatives concerning:

1. the Purpose;
2. the terms of this Agreement;
3. any information that would be regarded as confidential by a reasonable business person relating to:
* the staff, business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of any contractor of the Disclosing Party, and
* the operations, intentions, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party; or
1. any information developed by the parties in the course of carrying out this Agreement;

but not including any information that:

1. is or becomes generally available to the public (other than as a result of its disclosure by the Recipient or its representatives in breach of this Agreement), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
2. was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party as evidenced by written records; or
3. the parties agree in writing is not confidential or may be disclosed; or
4. is developed by or for the Recipient independently of the information disclosed by the Disclosing Party; or

(d) **“Disclosing Party and Recipient”** shall mean throughout this agreement any of the signatories to this agreement in the singular or plural.

(e) **“Purpose”** shall mean for each Disclosing Party to pass to each Recipient details of internal governance, performance management, financial management and legal probity, and details of support services, outsourced services and external contracts for the supply of goods and services in order to establish whether there is merit in considering sharing services or entering into joint procurement arrangements, or consortia arrangements, partnership, sub-contracting or any other formal joint working arrangements for the benefit of each signatory to this agreement. Information will be used in respect of service commissioning and tendering opportunities and opportunities to make grant applications and opportunities to design, implement and develop new services or opportunities to redesign existing services delivered by Disclosing Party and Recipient, being opportunities which the Disclosing Party and Recipient agree to pursue jointly.

(f) **“Services”** shall mean all those identified in any service specifications or invitation to tender documents and which the signatories may decide to tender for as a consortium or other partnership or contractual arrangement and all those already provided by the signatories.

**2. Confidentiality Obligations**

2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall not, and shall procure that its Authorised Representatives shall not:

* + 1. use or exploit the Confidential Information in any way except for the Purpose; or
		2. disclose or make available the Confidential Information, or the purpose for which it is disclosed, in whole or in part to any third party, except as expressly permitted by this Agreement; or
		3. copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose.

2.2 The Recipient may only disclose the Disclosing Party's Confidential Information to those of its Authorised Representatives who need to know this Confidential Information for the Purpose, provided that:

* + 1. it informs these Authorised Representatives of the confidential nature of the Confidential Information before disclosure and shall obtain from its Authorised Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Authorised Representatives as the terms of this Agreement are upon the Recipient; and
		2. at all times, it is responsible for these Authorised Representatives' compliance with the obligations set out in this Agreement.

2.3 The Recipient may disclose Confidential Information only to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

3. **Intellectual Property**

3.1 Nothing in this Agreement shall be construed to grant either party any right or licence any patent, know-how, trademark, copyright or other intellectual property right of the other party.

4. **Return of Information/ Destruction and Announcements**

4.1 At the request of the Disclosing Party, the Recipient shall promptly:

* + 1. return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
		2. erase all the Disclosing Party's Confidential Information from its computer systems to the extent possible; and
		3. certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that the Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this clause shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 6.

4.2 Unless the Disclosing Party directs the Recipient to act in accordance with clause 4.1 above, the Recipient undertakes to destroy the Confidential Information on completion of the opportunity evaluation process for the Services if the Recipient does not wish to pursue the opportunity further.

4.3 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction.

5. **Reservation of Rights and Acknowledgement**

5.1 The Disclosing Party reserves all rights in its Confidential Information. No rights in respect of the Disclosing Party's Confidential Information are granted to the Recipient and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement. In particular, nothing in this Agreement shall be construed or implied as obliging the Disclosing Party to disclose any specific type of information under this Agreement, whether Confidential Information or not.

5.2 Except as expressly stated in this Agreement, the Disclosing Party does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information. The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement.

5.3 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

5.4 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this Agreement, as if they were the actions or omissions of the Recipient.

6. **Indemnity**

6.1 The Recipient shall indemnify and keep fully indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party and/or its Affiliates arising from any breach of this Agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

7. **Term and Termination**

# 7.1 If any party decides not to become involved in the Purpose with the other parties it shall notify the other parties in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of discussions between the parties in relation to the Purpose, continue until such time as the Confidential Information lawfully (and not in breach of this Agreement) becomes public knowledge.

# 7.2 Termination of this Agreement shall not affect any accrued rights or remedies to which the Disclosing Party is entitled.

8. **No Contract or Partnership**

8.1 No documents or information made available to the one party or its Authorised Representatives by the others will constitute an offer or invitation or form the basis of any contract. Any party shall be entitled at any time to decline to provide or to continue to provide any Confidential Information to the other parties or to the other’s Authorised Representatives or to decline to deal with the other without incurring any liability to the others whatsoever.

8.2 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, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

9. **Notices**

# 9.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its address specified in this Agreement or as otherwise specified by the relevant party by notice in writing to each other party.

# 9.2 Any notice or other communication shall be deemed to have been duly received:

#  if delivered personally, when left at the address and marked for the attention of the signatories to this agreement or their successors; or

#  if sent by pre-paid first class post or recorded delivery, at 9.00 am on the Business Day after posting; or

#  if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

# 9.3 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.

10. **Entire Agreement and Variation**

# 10.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

# 10.2 No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

11. **No Waiver**

# 11.1 Failure to exercise, or any delay in exercising, 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 preclude or restrict any further exercise of that or any other right or remedy.

# 11.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

# 11.3 A party that waives a right or remedy provided under this Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

12. **Non-assignment**

12.1 This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by any party without prior written consent of the other parties.

13. **Third Party Rights**

# 13.1 This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

# 13.2 The parties may terminate, rescind or vary this Agreement without the consent of any person who is not a party to this Agreement.

14. **Costs**

14.1 Each party shall bear its own legal and other costs incurred in relation to the preparation and completion of this Agreement, if any.

15. **Severability**

# 15.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court or competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

15.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

16 **Governing Law**

# 16.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or shall be governed by and construed in accordance with the law of England and Wales.

# 16.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

**AS WITNESS** the hands of the parties hereto and their duly authorised representatives the day and year first before written

**SIGNED** on behalf of **THE BENJAMIN FOUNDATION**

(Name - Print)…………………………………………………………….

(Signature)………………………………………………………………..

(Position)………………………………………………………………….

(Date)………………………………………………………………………

**SIGNED** on behalf of

(Name - Print)…………………………………………………………….

(Signature)………………………………………………………………..

(Position)………………………………………………………………….

(Date)………………………………………………………………………