

## PROVISION OF SERVICES

Contract Reference Number: to be completed

Date: to be completed

Contract for Services

between

**to be completed**

and

**Highland Neuromuscular Movement Services  
(HNMS)**

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THIS CONTRACT is made the **to be completed** day of **20XX**

BETWEEN:

- (1) **Highland Neuromuscular Movement Services (HNMS)**, operated by Gary Murison, office is at 58 Burdshaugh, Forres, Morayshire, IV36 1NQ (“the Service Provider”); and
- (2) **Purchaser** (“the Authority”), **address details to be completed**

RECITALS:

- A. The Authority wishes the Service Provider to provide Moving & Handling Training, consisting of either Two Day Induction Courses, One Day Refresher Courses and/or advice on specific situations.
- B. The Service Provider is willing to provide the Services to the Authority on the terms and conditions set out in the Contract.
- C. The Authority should be aware that the Service Provider does not offer any guarantee or minimum volume of the Services that may be delivered under this Contract and does not offer any exclusivity to the Authority.

THE PARTIES AGREE THAT:

## 1. Definitions and Interpretation

In the Contract (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

“Business Day”	any day excluding Saturdays, Sundays or public or bank holidays in Scotland or the UK;
“Charges”	the charges payable by the Authority, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Schedule 4 as the same may be varied from time to time in accordance with Clause 26.5 and/or Clause 30.1;
“Confidential Information”	all information (whether written or verbal) that by its nature may reasonably be regarded as

	confidential to the Service Provider (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Service Provider;
“Contract”	this contract, including the Schedules and all other documents referred to in this contract;
“Contract Manager”	the person named as such in Schedule 1 or such other person as notified to the Authority by the Service Provider;
“Contract Commencement Date”	the date for commencement of the Contract specified in Schedule 1;
“Contract Reference Number”	the reference number for the Contract as set out in Schedule 1 and referred to in Clause 7;
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, unforeseen illness, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“Affected Party”) to perform its obligations in accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact
“Holding Company”	any company which from time to time directly or indirectly controls or regulates the Service Provider
“Insolvency Event”	any of the following: <ul style="list-style-type: none"> <li>a) the Service Provider and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;</li> <li>b) a receiver, administrative receiver,</li> </ul>

- manager, or administrator being appointed over all or part of the business of the Service Provider and/or the Holding Company;
- c) the Service Provider and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- d) the Service Provider and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- e) being an individual or firm, the Service Provider becoming bankrupt or dying;
- f) any similar event to those in (a) to (e) above occurring in relation to the Service Provider and/or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel”

the Service Provider’s key personnel named in Schedule 1;

“Losses”

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

“Milestone”	an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;
“Parties”	the Service Provider and the Authority (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Procurement Manager”	the person named as such in Schedule 1 and referred to in Clause 7 or such other person as notified to the Service Provider by the Authority;
“Project Plan”	the plan (if any) for implementation and/or project delivery set out in Schedule 5, developed and agreed by the Parties in relation to the performance and timing of the Services under the Contract which may include Milestones;
“Service Commencement Date”	the date for commencement of the Services set out in Schedule 1;
“Service Provider Equipment”	the equipment and materials of whatsoever nature used by the Service Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the Authority under the Contract;
“Authority Equipment”	the equipment and materials of whatsoever nature provided by the Authority for use by the Service Provider in providing the Services
“Services”	<ul style="list-style-type: none"> <li>a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider under the Contract as detailed in the Specification including any variations to such services and/or activities; and</li> <li>b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Contract;</li> </ul>

- “Specification” the specification and other requirements set out in Schedule 3;
- “Term” the period during which the Contract continues in force as provided in Clause 2 and Schedule 1;
- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract;
- 1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;
- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
- 1.7.1 the conflicting part of the Schedule is explicitly expressed to take precedence; or
- 1.7.2 the conflict is with a provision in Schedule 2 (Special Conditions of Contract), in which case the provisions in Schedule 2 shall prevail;
- 1.8 the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.



## **2. Commencement and Duration**

The Contract commences on the Contract Commencement Date and continues in force for the duration stated in Schedule 1 unless terminated earlier in accordance with Clause 26.

## **3. The Services**

3.1 The Service Provider:

3.1.1 shall provide the Services to the Authority from the Service Commencement Date in accordance with the Contract;

The Authority:

3.1.2 acknowledges that it has sufficient information about the Service Provider and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;

3.1.3 shall neither be entitled to retain any payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding of any fact relating to the Specification or otherwise to the Contract; and

3.1.4 shall comply with all lawful and reasonable directions of the Service Provider relating to the performance of the Services.

3.2 Notwithstanding anything to the contrary in the Contract, the Service Provider's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;

3.3 The Service Provider shall provide the Services:

3.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;

3.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification; and

3.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

## **4. Charges**

4.1 The Service Provider shall invoice the Authority in accordance with the

procedures set out in Clause 5 and in consideration of, and subject to the due and proper performance of the Services by the Service Provider in accordance with the Contract, the Authority shall pay the Service Provider the Charges in accordance with those procedures and with the other terms and conditions of the Contract.

4.2 The Service Provider is entitled to reimbursement for expenses unless such as specified in Schedule 4 or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

4.3 All Charges exclude any VAT which will not be chargeable to the Authority.

## **5. Payment Procedures and Approvals**

5.1 The Service Provider shall invoice the Authority in respect of the Charges:

5.1.1 where no Milestones are specified in Schedule 4, at such dates or at the end of such periods as may be specified in Schedule 1; or

5.1.2 if specified in Schedule 4, on completion of each Milestone provided that any preceding Milestones have been completed in accordance with the Contract, and shall not make any separate charge for submitting any invoice.

5.2 The Service Provider shall submit invoices to the address set out in Schedule 1, each such invoice shall contain all information required by the Authority including the Invoice Number, the Service Provider's name and address, and a brief description of the Services provided.

5.3 In the event of a variation to the Services in accordance with the Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoices.

5.4 If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

5.4.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by cheque or such other method as the Authority may choose from time to time within 28 days of receipt of such invoice;

5.4.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider as soon as the error has been noticed and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

5.5 Payment by the Authority on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash, cheque or direct bank transfer in

respect of the full amount outstanding.

5.5.1 If the Authority fails to make any payment in full on the due date the Service Provider may charge the Authority interest (both before and after judgment/decreed) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Service Provider's bank whichever is higher.

5.5.2 The Authority shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

## **6. Warranties and Obligations**

6.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Authority warrants, represents and undertakes to the Service Provider that:

6.1.1 the Authority:

6.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company as defined in section 736 of the Companies Act 1985) to enter into and to perform the Contract; and

6.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and

6.1.1.3 is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;

6.1.2 the Contract is executed by a duly authorised representative of the Service Provider;

6.1.3 all materials, equipment and goods provided or supplied by the Authority for use by the Service Provider in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification and relevant Laws & Regulations; and

6.1.4 all documents, drawings, computer software and any other work prepared or developed by the Service Provider or supplied to the Authority under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

6.2 Each warranty and obligation in this Clause 6 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other

such warranty or obligation or any other term of the Contract.

## **7. Operational Management**

7.1 The Authority authorises the Contract Manager to act as the Authority's representative for the Contract and the Service Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under the Contract, unless otherwise notified by the Authority save in respect of issues relating to variations to the Contract, any matter concerning the terms of the Contract and any financial matter which shall be referred to the Procurement Manager.

## **8. Sub-Contracting and Change of Ownership**

8.1 The Authority shall not assign any part of the Services to be shared or co-hosted by an employee from the Authority without the prior consent of the Service Provider which may be refused or granted subject to such conditions as the Service Provider sees fit.

8.2 Where the Authority wishes any part of the Services to be assisted or co-hosted by a person from the Authority, the Authority shall:

8.2.1 ensure that such person has appropriate qualification, experience, knowledge and standard to assist the Service Provider and provision of Services;

8.2.2 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under the Contract insofar as they relate to the Services or part of them (as the case may be) which that person is required to provide;

8.2.3 be responsible for payments to that person; and

8.2.4 remain solely responsible and liable to the Service Provider for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by such person to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

## **9. Conflict of Interest**

9.1 The Authority warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services, save to the extent fully disclosed to and approved by the Service Provider.

9.2 The Authority shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every two months and shall notify the Service Provider in writing immediately upon

becoming aware of any actual or potential conflict of interest with the Services and shall work with the Service Provider to do whatever is necessary to manage such conflict to the Service Provider's satisfaction, provided that, where the Service Provider is not so satisfied, it may terminate the Contract in accordance with Clause 26.1.4.

## **10. Access to Premises**

- 10.1 Any access to any Authorities Premises made available to the Service Provider in connection with the proper performance of the Contract shall be free of charge. The Service Provider shall:
  - 10.1.1 have the use of such Authority Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Authority Premises;
  - 10.1.2 vacate such Authority Premises upon the termination or expiry of the Contract or at such earlier date as the Service Provider may determine;
  - 10.1.3 not exercise or purport to exercise any rights in respect of any Authority Premises;
  - 10.1.4 carry any identity passes issued to them by the Authority at all relevant times and comply with the Authority's security procedures as may be notified by the Authority from time to time; and
  - 10.1.5 not damage the Authority's Premises or any assets on the Authority's Premises.
- 10.2 Nothing in this Clause 10 shall create or be deemed to create the relationship of landlord and tenant in respect of any Authority's Premises between the Service Provider and any member of the Authority.
- 10.3 The Service Provider shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Authority.

## **11. Compliance with Policies and Law**

- 11.1 The Authority, at no additional cost to the Service Provider:
  - 11.1.1 undertakes to procure that all the Authority's Personnel comply with all of the Authority's policies and standards that are relevant to the performance of the Services, including the provisions set out in Schedule 7 and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at Authority's Premises or accessing the Authority's computer systems. The Authority shall provide the Service Provider with copies of such policies and standards on request;
  - 11.1.2 shall act in compliance with all requirements of all Acts of Parliament,

statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Authority's business and/or the Service Provider's business, from time to time in force which are or may become applicable to the Services. The Authority shall promptly notify the Service Provider if the Authority is required to make any change to the Services for the purposes of complying with its obligations under this Clause 11.1.2;

- 11.1.3 without limiting the generality of Clause 11.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 11.1.4 acknowledges that the Authority is under a duty under section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the Service Provider shall assist and cooperate with Authority where possible in satisfying this duty;
- 11.1.5 shall promptly notify the Service Provider of any health and safety hazards that exist or may arise in connection with the performance of the Services.
- 11.2 In requesting the Services, the Authority shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or disturbance) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:
  - 11.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
  - 11.2.2 enhance the environment and have regard to the necessity of achieving a safe environment.

## **12. Equipment**

Risk in;

all Authority Equipment shall be with the Authority at all times. The Authority shall ensure that all Authority's Equipment and all Materials meet all minimum safety standards required by law.

The Service Provider shall ensure that all Service Provider's Equipment and all Materials meet all minimum safety standards required by law.

## **13. Quality and Best Value**

The Authority acknowledges that Gary Murison (Highland Neuromuscular

Movement Services – HNMS) is a best value Service Provider for the purposes of the Local Government Act 1999 .

#### **14. Records, Audit and Inspection**

14.1 The Authority shall:

14.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under the Contract and all transactions entered into by the Service Provider for the purposes of the Contract ("Records");

14.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of the Contract ("Retention Period").

#### **15. Set-Off**

The Service Provider will be entitled but not obliged at any time or times to set off any liability of the Authority to the Service Provider against any liability of the Service Provider to the Authority.

#### **16. Indemnity**

16.1 Subject to Clause 16.2, the Authority is responsible for and shall indemnify, keep indemnified and hold harmless the Service Provider ("the Indemnified Party") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of the Contract by the Authority (or any of its employees) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Authority (or any of its employees or sub-contractors).

16.2 The Service Provider shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of the Authority and/or any employees of the Authority.

#### **17. Insurance & Liability**

17.1 The Service Provider will at its sole cost maintain liability insurance cover with a reputable insurer in the sum of 5 million per claim (in terms approved by the Authority).

17.2 If the Service Provider is found to be liable in respect of any loss or damage to the Authority's property the extent of the Service Provider's liability will be limited to the retail cost of replacement of the damaged property.

17.3 The Service Provider shall have no liability to the Authority if, without just cause, any monies due in respect of the Training and/or the Services have not been paid in full by the due date for payment.

- 17.2 The Authority shall give the Service Provider a reasonable opportunity to remedy any matter for which the Service Provider is liable before the Authority incurs any costs and/or expenses in remedying the matter itself. If the Authority does not do so the Service Provider shall have no Liability to the Authority.
- 17.3 The Service Provider shall have no Liability to the Authority to the extent that the Authority is covered by any policy of insurance arranged as a result of the Contract and the Authority shall ensure that the Service Provider's insurers waive any and all rights of subrogation they may have against the Authority.
- 17.4 The Authority warrants that nothing has or will be done or be omitted to be done which may result in any of their insurance policies being or becoming void, voidable or unenforceable.
- 17.5 The Service Provider shall have no Liability to the Authority for any:-
- 17.5.1 consequential losses (including loss of profits and/or damage to goodwill);
- 17.5.2 economic and/or other similar losses;
- 17.5.3 special damages and indirect losses; and/or
- 17.5.4 business interruption, loss of business, contracts and/or opportunity.
- 17.6 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 17.6.1 Liability for breach of contract;
- 17.6.2 Liability in tort/delict (including negligence); and
- 17.6.3 Liability for breach of statutory and/or common law duty.
- 17.7 Nothing in this Contract shall purport to Liability of the Service Provider for death or personal injury due to the Authority's negligence.

**18. Service Provider's Data**

- 18.1 The Authority acknowledges the Service Provider's ownership of Intellectual Property Rights which may subsist in the Service Provider's data. The Authority shall not delete or remove any copyright notices contained within or relating to the Service Provider's data.
- 18.2 The Service Provider and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Service Provider's data and to prevent any corruption or loss of the Service Provider's data.



## **19. Intellectual Property Rights**

- 19.1 Ownership of any information (verbal and written) provided by the Service Provider remains at all times with the Service Provider. The Authority has no right, title or interest in the information except that it is used by the Authority for its intended purpose.
- 19.2 The Authority must not deal with the ownership of the information. This includes but is not limited to selling, assigning, copying, plagiarising, and/or lending without the prior written consent of the Service Provider.
- 19.3 The Authority shall have no right (save where expressly permitted under the Contract or with the Service Provider's prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the Service Provider.

## **20. Protection of Personal Data**

- 20.1 The Authority shall comply with all of its obligations under the Data Protection Act 1998 and, if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of the Service Provider, shall only carry out such Processing for the purposes of providing the Services in accordance with the Contract and shall act in accordance with instructions from the Service Provider.

## **21. Confidentiality and Announcements**

- 21.1 Subject to Clause 22, each Party will keep confidential:
  - 21.1.1 the terms of this contract; and
  - 21.1.2 any and all Confidential Information that it may acquire in relation to the other party.
- 21.2 Neither Party will use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement. Each Party will ensure that its officers and employees comply with the provisions of Clause 21.1.
- 21.3 The obligations on a Party set out in Clause 21.1 will not apply to any Confidential Information which:
  - 21.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 21); or
  - 22.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 22.4 The provisions of this Clause 22 will survive any termination of this Agreement for a period of 5 years from termination.

## **22. Freedom of Information**

22.1 For the purposes of this Clause 22:

22.1.1 “FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re- enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

22.1.2 “Information” means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; and

22.1.3 “Information Request” means a request for any Information under the FOI Legislation.

22.2 The Authority acknowledges that the Service Provider:

22.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Service Provider to enable the Service Provider to comply with its obligations under the FOI Legislation; and

22.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Authority.

22.3 The Service Provider shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Authority shall not itself respond to any person making an Information Request from the Service Provider, save to acknowledge receipt, unless expressly authorised to do so by the Service Provider.

## **23. Dispute Resolution**

23.1 The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract (“Dispute”) before resorting to litigation.

23.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“Senior Personnel”) of each of the Parties for resolution.

23.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party (“Notice”) that a structured mediation or negotiation be entered into with the

assistance of a mediator.

- 23.4 Where a dispute is referred to mediation under Clause 23.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model of mediation the mediator may recommend.
- 23.5 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 23.6 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 35.
- 23.7 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 23.
- 23.8 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 23 and Clause 23 shall not apply in respect of any circumstances where such remedies are sought.

#### **24. Breach and Termination of Contract**

- 24.1 Without prejudice to the Service Provider's right to terminate at common law, the Service Provider may terminate the Contract immediately upon giving notice to the Authority if:
  - 24.1.1 except as provided in and without prejudice to Clauses 24, the Authority has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Service Provider) from the date of written notice to the Authority giving details of the breach and requiring it to be remedied; or
  - 24.1.2 the Authority or Service Provider is subject to an Insolvency Event; or
  - 24.1.3 the Service Provider is not satisfied on the issue of any conflict of interest in accordance with Clause 10; or
  - 24.1.4 the Authority commits any of the money laundering related offences listed in the Public Contract Regulations 2006; or
  - 24.1.5 the Authority fails to make any payment to the Supplier when due without just cause; or
  - 24.1.6 the Authority breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

- 24.1.7 the Authority provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 24.2 Without prejudice to any of the Service Provider's other rights, powers or remedies (whether under the Contract or otherwise) if the Authority is in breach of any of its warranties and/or obligations under Clause 6 and/or any of its other obligations in respect of the Services under the Contract, the Authority shall, if required to do so by the Service Provider, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 24.2 shall prevent the Service Provider from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where the Service Provider so procures any Services or any remedial action, the Service Provider shall be entitled to recover from the Authority all additional cost, loss and expense incurred by the Service Provider and attributable to the Service Provider procuring such Services or remedial action from such alternative contractor.
- 24.3 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("the Affected Party"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("Innocent Party") may terminate the Contract immediately upon giving notice to the Affected Party.
- 24.4 Without prejudice to the Service Provider's right to terminate the Contract under Clause 24.1 or to terminate at common law, the Service Provider may terminate the Contract at any time without cause subject to giving the Authority written notice of the period specified in Schedule 1, provided that this Clause 24.4 may be disapplied by notice to that effect in Schedule 1.
- 24.5 To the extent that the Service Provider has a right to terminate the Contract under this Clause 25 then, as an alternative to termination, the Service Provider may by giving notice to the Authority require the Authority to provide part only of the Services with effect from the date specified in the Service Provider's notice ("Change Date") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the Service Provider's opinion a proportionate adjustment would not be reasonable in such manner as the Service Provider may determine.

## **25. Consequences of Termination or Expiry**

- 25.1 all monies owed by the Authority to the Service Provider shall immediately

become due and payable

- 25.2 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 25.3 Upon expiry or termination of the Contract (howsoever caused):
  - 25.3.1 the Authority shall, at no further cost to the Service Provider:
  - 25.3.2 on receipt of the Service Provider's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
  - 25.3.2 the Authority shall pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 4 or otherwise reasonably determined by the Service Provider.
- 25.4 On termination of the Contract under Clause 24.1 or a cessation of any Services under Clause 24.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the Service Provider to terminate under Clause 24.1), the Service Provider may enter into any agreement with any third party or parties as the Service Provider thinks fit to provide any or all of the Services and the Authority shall be liable for all additional expenditure reasonably incurred by the Service Provider in having such services carried out and all other costs and damages reasonably incurred by the Service Provider in consequence of such termination.

## **26. Survival**

- 26.1 The provisions of Clauses 1, 3.1.3, 4, 5, 6.1.5, 8.2.3, 13, 14-18 (inclusive), 19.2, 20-23 (inclusive), 25-28 (inclusive), 29-35 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

## **27. Rights of Third Parties**

- 27.1 Save that any member of the Service Provider has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.
- 27.2 Notwithstanding Clause 27.1, the Parties are entitled to vary or rescind the Contract without the consent of any or all members of the Service Provider.

## **28. Contract Variation**

28.1 Save where the Service Provider may require an amendment to the Services, the Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as the Service Provider may dictate and shall not be binding upon the Parties unless completed in accordance with such form of variation.

## **29. Non-Waiver of Rights**

No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 31. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

## **30. Illegality and Severability**

If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Service Provider's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

## **31. Notices**

31.1 Subject to Clause 31.2, any notice, demand or communication in connection with this Agreement may be delivered by hand, post or electronic mail addressed to the recipient at its registered office, the address stated in Schedule 1.

31.2 The notice, demand or communication will be deemed to have been duly served:

31.2.1 if delivered by hand, at the time of delivery;

31.2.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays) after being posted; or

31.2.3 if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

## **32. Entire Agreement**

- 32.1 Subject to Clause 32.2:
- 32.1.1 the Contract and all documents referred to in the Contract, contain all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which it does not contain;
- 32.1.2 and without prejudice to the Authority's obligations under the Contract, the Authority is responsible for and shall make no claim against the Service Provider in respect of any misunderstanding affecting the basis of the Service Provider's Contract or any incorrect or incomplete information howsoever obtained.
- 32.2 Nothing in this Clause 32 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

### **33. Relationship of the Parties**

Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

### **34. Further Assurance**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

### **35. Governing Law**

The Contract shall be governed by and construed in accordance with the law of Scotland and the UK. Without prejudice to Clause 23, the courts of Scotland will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Service Provider has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Authority is incorporated or in which any assets of the Authority may be situated. The Parties agree irrevocably to submit to that jurisdiction.

## **CONTRACT AGREEMENT**

THE CONTRACT has been signed for and on behalf of the Parties the day and year written on Page 2.

### **Signed for by and on behalf of the Service Provider**

Signature:

Print name and position:

Date:

### **Signed by for and on behalf of the Authority**

Signature:

Print name and position:

Date:

### **Witnessed By (if applicable)**

Signature:

Print name and position:

Date:



## SCHEDULE 1 - KEY CONTRACT INFORMATION

### 1. Details of Service Provider

- a) **Name**  
Gary Murison (Highland Neuromuscular Movement Services - HNMS)
- b) **Address**  
58 Burdshaugh  
Forres  
Morayshire  
IV36 1NQ
- c) **Phone**  
01309 676335
- d) **Mobile**  
07864 394170
- e) **Email**  
gary@highland-nms.co.uk

### 2. Details of Authority

- a) **Name**  
To be completed
- b) **Address**  
To be completed
- c) **Phone**  
To be completed
- d) **Email Contact**  
To be completed
- e) **Name of Procurement Manager**  
To be completed
- f) **Name of Contract Manager**  
To be completed

### 3. Contract Commencement Date

To be completed

4. **Contract Duration**

a) **Service Commencement Date**

To be completed

b) **Duration/Expiry Date**

To be completed

5. **Payment Period** (see Clause 5.1)

To be with Service Provider within 28 Days of receipt of invoice.  
Receipt of invoice is termed as the *business day* when emailed invoice is received by the Authority.

6. **Address where payment shall be sent**

Gary Murison  
58 Burdshaugh  
Forres  
IV36 1NQ

7. **Notice Period in accordance with Clause 24.4 (termination without cause)**

30 Days

8. **Address for service of notices and other documents in accordance with Clause 31**

Gary Murison  
58 Burdshaugh  
Forres  
Morayshire  
IV36 1NQ

## SCHEDULE 2 - SPECIAL CONDITIONS OF CONTRACT

- 1) The **Authority** is responsible for ensuring that:
  - a) all persons attending a course:
    - are attending the relevant course
    - have an appropriate level of physical fitness to enable the person to undertake the course with minimal risk to their health and well-being
    - have been informed of appropriate clothing to wear
    - have been informed of course times and duration
    - have made provision for any special needs or requirements met (i.e. diet)
  - b) all equipment supplied for use by the Service Provider is of suitable condition and within all legal requirements and do not pose any risk to Service User or course attendee through inadequate condition.
  - c) any person the Authority wishes to assist in the provision of Services by the Service Provider has:
    - a relevant qualification or recognition
    - is a member of MANAS (MovES Ltd Academy of Neuromuscular Approach Studies)
    - sufficient physical and mental fitness to undertake their role
  - d) the venue (including access) has been assessed for suitability and safety for the requested Service
- 2) The **Service Provider** has the right to:
  - a) terminate a person's place on the course should:
    - the person attend the wrong course (i.e. arriving on a 1 Day Refresher Course without having previously undertaken a 2 Day Induction Course)
    - the person arrives at a time where a significant and /or part of the course has been missed
    - the person is not able to stay for the duration of the course
    - the person behaves in a manner that is putting themselves or others at risk

- the person is disrupting others' learning or displaying any behaviour that could be seen as inducing prejudice: i.e. bullying, racist, etc
  - there is evidence or strong suspicion that the person is under the influence of alcohol or non prescribed drugs
  - the person's physical fitness is placing them at high risk of injury
- b)** limit the numbers of people on the course should there be more than the prescribed Number, as detailed in point 2 of SCHEDULE 3 - SPECIFICATION
- c)** refuse to use any equipment that is felt to be of a condition that may cause injury to the Service Provider or course attendee, and /or has not been serviced in compliance with relevant Laws
- d)** refuse to work with any person /employee that the Authority has sub-contracted to assist in the Service delivery, should the Service Provider feel that the person does not hold the relevant qualification, recognition, permission or knowledge to undertake the role being requested, or should the person operate in a manner that could be seen as inducing risk to the themselves, the Service Provider or any person receiving the Service.
- e)** refuse to begin or continue a training course should the Environment pose a risk to the safety of any person involved.

## SCHEDULE 3 - SPECIFICATION

The Service Provider will provide Moving & Handling Courses, and related services, which have recognised origins in and are compliant with the Neuromuscular Approach to Human Movement®.

The Service Provider has a recognised and up-to-date qualification in the Neuromuscular Approach to Human Movement® and is a member of MANAS (Moves Ltd Academy of Neuromuscular Approach Studies).

The Service Provider has all relevant permissions from MovES Ltd to pass on information pertaining to the intellectual copyright of MovES Ltd and to offer the Services required by the Authority as outlined in this contract.

### **1) Services**

Moving & Handling Courses

- Two Day Induction Courses
- One Day Refresher Courses

Assessment of complex Moving & Handling issues in employee's workplaces and client's homes or places of residence

### **2) Course Numbers**

For Service Provider without assistance from Authority employee

Maximum of 8 (eight) course attendees

For Service Provider with assistance from Authority employee

Maximum of 12 (twelve) course attendees

## SCHEDULE 3 – CHARGES

The Service Provider will notify the Authority at no less than 30 days should there be any changes to charges.

No V.A.T will be charged to the Authority

### Charges Overview

Provision of Moving & Handling Training.....	<b>To be completed</b>
Travel (inclusive of fuel, travelling time).....	<b>50p per mile (from Forres)*</b>
Accommodation and meals.....	<b>Provided by Authority unless prior agreement with Service Provider</b>
Incidental travel (i.e. Ferries, road tolls).....	<b>Will be agreed by Authority prior to service, and included in invoice</b>
Unforeseen expenses (i.e. Car Parking).....	<b>Included in invoice and receipt provided</b>
Client Assessment*.....	<b>£75 per hour*, plus travel. Accommodation and meals (if necessary) as above</b>

\*Client Assessment charges are calculated on the actual time spent with the client. Charges for Report writing time, etc are included in this charge.

\* Travel costs depend on distance. For longer distances alternative costs the Authority will be informed before any agreement to provide services made.

Invoices will be emailed to the Authority on or near to the last day of each month unless alternative agreements have been made.

Late Payment charges are detailed in **Clause 5. Payment Procedures and Approvals**