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**Wakefield and District Housing Limited (1)**

**and**

[Supplier] (2)

**Standard Terms and Conditions  
for the Purchase of Services**

|  |  |
| --- | --- |
| **Contract details – contract reference no DN 723938** | |
| **Supplier** | [Add name of Supplier] and [Company Registered Number] |

|  |  |
| --- | --- |
| **Supplier's address for notices:** | [Add registered office address of Supplier] |
| **Representatives:** | WDH: Leah Wilkinson  Supplier: [ ]  or such other person as is notified by a party to the other in writing. |
| **Commencement date:** | 23 September 2024 |
| **Expiry date:** | 22 September 2027 |
| **Extension period:** | Option to extend, at the sole discretion of WDH, for one separate 12 month period until 22 September 2028. |
| **Necessary consents:**  **As per Clause 4.2.2** | n/a |
| **Schedule 1 - Optional Clauses to apply:** | The following clauses shall apply to this Agreement:   * Optional Clause 1 – Price Variation * Optional Clause 3 – Social Networking and Internet * Optional Clause 4 – No Fault Termination * Optional Clause 5 – Collaborative Procurement – Right of Other Bodies to Participate * Optional Cause 6 – Brexit Trigger, Renegotiation and Termination * Optional Clause 9 – Social Value |
| **Schedule 2 – Supply of Goods** | Schedule 2 (Supply of Goods) shall apply to this Agreement. |
| **Schedule 3 – TUPE** | Schedule 3 (TUPE) shall apply to this Agreement. |
| **Schedule4 – Charges and Payments** | Schedule 4 (Charges and Payments) shall apply |
| **Schedule 5 – Specification** | Schedule 5 (Specification) shall apply |
| **Schedule 6 – Supplier’s Tender Response / Quotation** | Schedule 6 (Supplier’s Tender Response) shall [apply] [not apply] to this Agreement. TBC  [Note: (1) Select the correct option and delete the other. Remove square brackets and highlighting. |
| **Schedule 7 – Change Control Notice** | Schedule 7 Change Control Notice shall apply to this Agreement. |
| **Schedule 8 – Data Processing, Personal Data and Data Subjects** | Schedule 8 Data Processing, Personal Data and Data Subjects shall not apply to this Agreement |
| **Special Conditions:** | n/a |
| **Liability Limit**  As per Clause 19.6 | £ [Amount]  [Note: (1) the liability limit should be a fixed amount which could be related to the level of Public Liability Insurance required or £17 million (the max level of fine which can be imposed by the ICO) if there is Personal Data of Service Users processed by the Supplier  (2) Where differing caps of liability are required to apply to different risks then you must consult with WDH's legal team prior to completing this section of the Contract Details.] |
| **Insurance:**  As per Clause 20 | Public liability insurance: £5 [five] million for each occurrence  Employer's liability insurance: £10 [ten] million for each occurrence].  Product liability insurance: £5 [five] million for each occurrence].  The Supplier shall ensure that the WDH’s interest is noted on each insurance policy, or that a generic interest clause has been included. |

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**An agreement made between**:

1. Wakefield And District Housing Limited of Merefield House, Whistler Drive, Castleford, WF10 5HX

Company No. a registered society under the Co-operative and Community Benefit Societies Act 2014 (No 7530)

(‘WDH’); and

1. The Supplier whose identity and address for service is set out in the Contract Details (‘the Supplier’)

each a **Party** and together the **Parties**.

Background

1. WDH has advertised for providers of the Services (as defined in Clause 1.1 (Definitions) below) and following a tender process has selected the Supplier to provide the Services to WDH.
2. The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Services and Goods to WDH.

**Section A: Preliminaries**

1. Definitions and Interpretation

* 1. In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement.

1. Affected Party has the meaning given to the term in Clause 21.2 (Force Majeure).
2. Agreement means the agreement concluded between WDH and the Supplier for the provision of the Services comprising of the Agreement and Schedules and other documents as listed in the Contract Details.
3. Audit Agents means:
   1. WDH's statutory and regulatory auditors and any other auditors appointed by WDH; and
   2. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.
4. CCN has the meaning given to it in Clause 31.4 (Variation).
5. Charges means the charges for the provision of the Services set out in Schedule 4 of this Agreement.
6. Commencement Date means the date the Agreement starts as set out in the Contract Details.
7. Commercially Sensitive Information means any information of a commercially sensitive nature relating to the Supplier, its Intellectual Property Rights or its business or which the Supplier has indicated to WDH that, if disclosed by WDH, would cause the Supplier significant commercial disadvantage or material financial loss.
8. Confidential Information means:
   1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
      1. the Disclosing Party; or
      2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
   2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
   3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
   4. Information derived from any of the above,

but not including any Information which:

* + 1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
    2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
    3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
    4. was independently developed without access to the Confidential Information.

1. Contract Details means the particulars of the Agreement set out at its start.
2. Contract Term means the period commencing on the Commencement Date and ending on the Expiry Date or on the expiry of any Extension Period or on earlier termination of this Agreement in accordance with Clause 23 (Termination for Breach).
3. Contract Year means a period of 12 months commencing on the Commencement Date and/or each anniversary of the Commencement Date.
4. Cybersecurity Requirements means:  all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, [industry schemes] and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
5. Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate organisational measures has the meaning given in the UK GDPR.
6. Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Data Processor under this Agreement, and/or actual or potential loss and / or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
7. Data Protection Impact Assessment means an assessment by WDH carried out in accordance with Section 3 of the UK GDPR and Sections 64 and 65 of the DPA 2018.
8. Data Protection Legislation means (i) all applicable UK law relating to the processing of Personal Data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to the processing of Personal Date and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR.
9. Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Defaults mean any failure by the Supplier to perform its material obligations under this Agreement.

1. Disclosing Party has the meaning given to it in Clause 16.1 (Confidentiality).
2. Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, issue, difference or question of interpretation relating to the Services or any matter where this Agreement directs the Parties to resolve a matter by reference to the Dispute Resolution Procedure.
3. Dispute Notice has the meaning given to it in Clause 13.2.2 (Disputes).
4. Dispute Resolution Procedure means the dispute resolution procedure set out in Clauses 13.2 to 13.8 (Disputes).
5. DPA 2018 means the Data Protection Act 2018.
6. EU GDPR as defined in Section 3 of the DPA 2018.
7. Exit Plan means the plan for the transfer of Services to WDH and / or any Replacement Supplier in the event of the expiry or termination of this Agreement for any reason, which is to be developed by the Parties pursuant to Clause 24 (Consequences of Expiry or Termination).
8. Expiry Date means the date the Agreement expires as set out in the Contract Details.
9. Extension Period means any agreed extension period as set out in the Contract Details
10. Find a Tender Service (FTS): means the Government’s publishing portal for public sector procurement opportunities

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

### acts of God, flood, drought, earthquake or other natural disaster;

### epidemic or pandemic;

### terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

### nuclear, chemical or biological contamination or sonic boom;

### any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

### collapse of buildings, fire, explosion or accident;

### any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); or

1. h) interruption or failure of utility service.

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

1. Guidance means any applicable guidance or directions with which the Supplier is bound to comply.
2. Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).
3. Intellectual Property means all intellectual property of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites.
4. Intellectual Property Rights means any and all rights relating to Intellectual Property.
5. Invitation to Tender means the invitation to quote for, or tender for the supply of the Services by the Supplier to WDH.
6. IT Systems means all computer hardware (including network and telecommunications equipment), mobile devices, data (including databases (Databases)) and software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software) owned, used, leased or licensed by or in relation to the delivery of the Services.
7. Joint Controllers has the meaning given to it in Article 20 of the UK GDPR.
8. Law means any UK law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements of any regulatory body with which the Supplier is bound to comply.
9. Losses means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term Loss shall be construed accordingly.
10. Material Breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial part of this Agreement during its term. In deciding whether any breach is material no regard shall be had as to whether it occurs by some accident, mishap, mistake or misunderstanding.
11. Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services (which shall include any listed in the Contract Details).
12. Performance Levels means the performance levels against which WDH will monitor the Services supplied by the Supplier, if any, and where applicable as set out in the Services Specification.
13. Personal Data means personal data (as defined in the Data Protection Legislation) which is Processed by the Supplier on behalf of WDH pursuant to or in connection with this Agreement.
14. Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed by the Supplier under this Agreement.
15. Process has the meaning given to that term under the Data Protection Legislation and Processed and Processing shall be construed accordingly.
16. Prohibited Act means:
    1. to directly or indirectly offer, promise or give any person working for or engaged by WDH, a financial or other advantage to:
       1. induce that person to perform improperly a relevant function or activity; or
       2. reward that person for improper performance of a relevant function or activity;
    2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
    3. an offence:
       1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
       2. under legislation or common law concerning fraudulent acts; or
       3. defrauding, attempting to defraud or conspiring to defraud WDH; or
    4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.
17. Protected Characteristics has the meaning set out in Clause 27.1 (Equal Opportunities).
18. Protective Measures means appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties arising under Data Protection Legislation and this Agreement which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it.
19. Recipient has the meaning set out in Clause 16.1 (Confidentiality).
20. Records shall have the meaning given to that term in Clause 10.2 (The Supplier's Records and Provision of Information).
21. Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom.
22. Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
23. Replacement Supplier means any third party supplier of replacement services appointed by WDH from time to time.
24. Representatives means WDH’s Representative and the Supplier Representative and Representative shall mean either one of them as the context so requires as identified in the Contract Details.
25. Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 20.1 (Insurance).
26. Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services similar to the Services to a customer like WDH, such provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws.
27. Senior Representatives has the meaning given to term in Clause 13.2.3 (Disputes).
28. Service Users means users who consume or benefit from the Services.
29. Services means the whole of the services or any of them to be provided by the Supplier as identified in the Services Specification pursuant to this Agreement from time to time.
30. Services Specification means the specification of the Services set out in the Invitation to Tender.

SME: means small or medium sized business as described in section 7(1) of the Small Business, Enterprise and Employment Act 2015, which:

* + 1. has an address in the United Kingdom;
    2. carries out commercial activities as its principal activity;
    3. has fewer than 250 employees; and

(iii) is not part of a group which as a whole has an annual turnover which is equal to or greater than £25 million.

1. Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Services.
2. Subcontractors means any third party with whom the Supplier enters into a Subcontract.
3. Sub-processor means any third party appointed to process Personal Data on behalf of the Processor under the terms of this Agreement.
4. Successor Body shall have the meaning given to that term in Clause 32.2 (Assignment and Other Dealings).
5. Supplier's Equipment means any equipment belonging to the Supplier which is used by the Supplier in the supply of the Services to WDH.
6. Supplier Personnel means all directors, officers and employees of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.
7. Supplier Representative means the person appointed by the Supplier and identified in the Contract Details, with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with this Agreement.
8. Supplier's Tender Response means the Supplier's response to WDH's Invitation to Tender for the award of this Agreement to deliver the Services.
9. Tender Clarifications means the Supplier’s clarifications in relation to WDH’s Invitation to Tender.
10. UK GDPR has the meaning defined in Regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit)  
    Regulations 2019(SI 2019/419).
11. Value Added Tax or VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.
12. VCSE means a Voluntary, Community, and Social Enterprise.
13. WDH Assets means any assets, equipment or other property which is owned by WDH and which is or may be used in connection with the provision or receipt of the Services.
14. WDH Data means:
    1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are supplied to the Supplier by or on behalf of WDH pursuant to this Agreement; and
    2. any Personal Data for which WDH is the Data Controller.
15. WDH Premises means any WDH premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Agreement.
16. WDH Representative means the person appointed by WDH and identified in the Contract Details with authority to act on behalf of WDH in relation to all matters set out in, or in connection with this Agreement.
17. Working Day any day other than a Saturday, Sunday or public holiday in England.
    1. In this Agreement, unless the context otherwise requires:
       1. words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;
       2. references to a person include an individual, Supplier, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
       3. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
       4. any phrase introduced by the terms ‘**including**’, ‘**include**’, ‘**in particular**’, ‘**for** **example**’ or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding those terms;
       5. references to ‘**writing**’ include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly unless expressly stated otherwise in this Agreement;
       6. references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs and Parts are, unless otherwise specified, references to the paragraphs and parts of the Schedule or the Part of the Schedule in which the references appear;
       7. the Schedules form part of this Agreement; and
       8. headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
    2. If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
       1. the Contract details;
       2. the Clauses;
       3. the Services Specification;
       4. any other Schedules;
       5. the Supplier's Tender Response;
       6. the Tender Clarifications; and
       7. Invitation to Tender.

2. Contract Term

2.1 Subject to Clauses 23 (Termination for Breach) and 41.1.4 where applicable, this Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.

2.2 The Agreement may be extended for a further period or periods as set out in the Contract Details by agreement in writing between the Parties.

3. Due Diligence

3.1 Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it:

3.1.1 has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked WDH all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement;

3.1.2 has received all information requested by it from WDH pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Agreement;

3.1.3 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of WDH pursuant to Clause 3.1.2;

3.1.4 has raised all relevant due diligence questions with WDH before the Commencement Date; and

* + 1. has entered into this Agreement in reliance on its own due diligence alone.

3.2 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by WDH in respect of any information which is provided to the Supplier by WDH and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4. Warranties

4.1 The Supplier represents and warrants that:

4.1.1 it has full capacity and authority to enter into and to perform its obligations under this Agreement;

4.1.2 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;

4.1.3 it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and

4.1.4 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

4.2 The Supplier represents and warrants that as at the Commencement Date:

4.2.1 (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

4.2.2 it has obtained all Necessary Consents;

4.2.3 all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to WDH prior to the Commencement Date and separately warrants to inform WDH in the event there are any changes to such information during the Contract Term; and

4.2.4 shall promptly notify WDH in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by WDH during such due diligence which materially and adversely affects its ability to perform the Services or meet any Performance Levels.

4.3 Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

4.4 Save as expressly set out in this Agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

**Section B: The Services**

5. The Services

5.1 The Supplier shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.

5.2 The Supplier shall at all times during the Contract Term perform the Services under this Agreement in accordance with:

5.2.1 all applicable Law and Guidance;

5.2.2 the Required Professional Standard;

5.2.3 the Services Specification;

5.2.4 the Performance Levels;

5.2.5 all relevant rules, codes, policies, procedures and standards of WDH which may be referred to in the Services Specification;

5.2.6 WDH’s reasonable instruction; and

5.2.7 the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.6.

5.3 The Supplier shall:

5.3.1 pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of WDH insofar as the Supplier is required to perform such statutory duties on WDH's behalf;

5.3.2 at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Agreement;

5.3.3 obtain and maintain throughout the Contract Term, all Necessary Consents;

5.3.4 as far as reasonably practicable minimise any disruption to WDH's operations when providing the Services;

5.3.5 not wilfully engage in any act or omission which is reasonably likely to bring WDH into disrepute; and

5.3.6 cooperate with WDH in all matters relating to the Services

**Supplier Personnel**

5.4 The Supplier shall at all times ensure that, in respect of the Supplier Personnel engaged in the provision of the Services:

5.4.1 each of such Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged

5.4.2 there is an adequate number of the Supplier Personnel to properly provide the Services; and

5.4.3 all of the Supplier Personnel who require access to WDH's Premises in connection with the provision of the Services comply with the relevant WDH policies relating to access and / or use of WDH's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.

5.5 WDH reserves the right to refuse to admit (acting reasonably) to WDH's Premises any person employed or engaged by the Supplier (including any Subcontractor) where admission would, in the reasonable opinion of WDH:

5.5.1 present a risk to WDH or to Service Users; or

* + 1. would be a threat to the security or operations of WDH.

5.6 Where WDH exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 5.5, WDH shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and WDH's reasons for refusing admission to such persons.

6. WDH's Premises and Assets

6.1 Where the Supplier (and its Subcontractors) are required by WDH to access parts of WDH's Premises, for the purposes only of properly providing the Services, then WDH shall provide such necessary access to WDH Premises to the Supplier for this purpose.

6.2 In the event of the expiry or termination of the Agreement, WDH shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to WDH's Premises to remove any of the Supplier's Equipment. All such equipment shall be promptly removed by the Supplier.

6.3 The Supplier shall ensure that:

6.3.1 where using WDH's Premises and any WDH Assets they are kept properly secure and it will comply and cooperate with WDH's Representative's reasonable directions regarding the security of the same;

6.3.2 only those of the Supplier's Personnel that are duly authorised to enter upon WDH's Premises for the purposes of providing the Services, do so; and

6.3.3 any WDH Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from WDH Premises unless expressly permitted under this Agreement or by WDH's Representative.

6.4 WDH shall maintain and repair WDH Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by WDH in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

6.5 The Supplier shall notify WDH immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Subcontractors to any property of WDH, to any of WDH's Premises or to any property of any other recipient of the Services in the course of providing the Services.

**Section C: Payment, Taxation and Best Value Provisions**

7. Charges and Invoicing

7.1 The Supplier shall comply with WDH’s charging, invoicing and payment requirements as set out in this Clause 7 and Schedule 4.

7.2 In consideration of the provision of the Services by the Supplier in accordance with this Agreement, WDH shall pay any undisputed Charges to the Supplier in accordance with the provisions of Schedule 4.

7.3 The Supplier shall invoice WDH for payment of the Charges at the time the Charges are expressed to be payable as set out in Schedule 4 .

7.4 The invoicing provisions set out in Clauses 7.2 to 7.3 shall be included in any Subcontract.

7.5 If WDH fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at 2% above the Bank of England Base Rate accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

7.6 WDH may at any time, without limiting any of its other rights or remedies, withhold or set off any liability of the Supplier to WDH against any liability of WDH to the Supplier, whether such liability is present or future, liquidated or unliquidated, and whether or not such liability arises under this Agreement or otherwise.

7.7 WDH shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. WDH shall notify the Supplier of its discretion in writing and any adjustments shall apply to this Agreement with effect from the following anniversary of the Commencement Date. Both Parties agree to act reasonably and in good faith with respect to the operation of this Clause.

8. Value Added Tax and Promoting Tax Compliance

8.1 Charges are stated exclusive of VAT. Where VAT is chargeable in respect of any of the Services, the Supplier shall calculate the amount of VAT to be paid by WDH at the applicable prevailing rate, which shall be added to the Charges and paid by WDH following the submission of a VAT invoice by the Supplier in respect of the same.

8.2 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Law).

8.3 The Supplier shall indemnify WDH against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on WDH at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement

8.4 Where applicable, the Supplier shall:

8.4.1 not engage in any activity, practice or conduct which would constitute either:

a) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

b) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

8.4.2 have and shall maintain in place throughout the term of this Agreement such policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;

8.4.3 promptly report to WDH any request or demand received by the Supplier or from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this Agreement;

8.4.4 ensure that all persons associated with the Supplier or other persons who are performing services in connection with this Agreement comply with this Clause 8.4; and

8.4.5 within one (1) month of the date of this Agreement, and annually thereafter, certify to WDH in writing signed by an officer of the Supplier compliance with this Clause 8.4 by the Supplier and all persons associated with it, including the individual, and all other persons for whom the Supplier is responsible under Clause 8.4.4. The Supplier shall provide such supporting evidence of compliance as WDH may reasonably request.

8.4.6 Failure to comply with this clause 8.4 may result in the immediate termination of this Agreement.

**Section D: Contract Governance**

9. GOVERNANCE

9.1 The Supplier shall comply with the provisions of the Services Specification in relation to the reporting requirements, provision of management information and governance of the Services under this Agreement.

10. The Supplier's Records and Provision of Information

10.1 During the Contract Term the Supplier shall retain and maintain at its own expense all Records within the United Kingdom in accordance with Required Professional Standard in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least six (6) years from the end of the Contract Term or for such longer period as may be required by any applicable Law.

10.2 The records that shall be retained and maintained by the Supplier pursuant to Clause 10.1 are:

10.2.1 this Agreement, its Schedules and all amendments to such documents;

10.2.2 invoices (including any VAT invoices) prepared by the Supplier and submitted to the WDH in respect of claims for the Charges under this Agreement;

10.2.3 records required to be retained by the Supplier by Law, including records of incidents relating to health and safety;

10.2.4 personnel records on the Supplier Personnel engaged in the provision of the Services; and

10.2.5 all documents relating to the Required Insurances and any claims in respect of them, together the ‘**Records**’.

10.3 The Supplier shall at reasonable times and within normal business hours:

10.3.1 make the relevant Records available for inspection by the WDH Representative and the Audit Agents; and

10.32 provide or procure access to such facilities to enable the WDH Representative and the Audit Agents to visit any place where the Records are held for the purposes of such inspection,

10.3.3 provided always that WDH shall give the Supplier reasonable notice of such inspection and afford the Supplier a reasonable period of time to collate any relevant information and/or Records where this is required for the purposes of the inspection.

10.4 All information and Records referred to in this Clause 10 are subject to the provisions of Clauses 15 (Data Protection) and 16 (Confidentiality).

11 Audit

11.1 Subject always to Clauses 15 (Data Protection) and 16 (Confidentiality) of this Agreement, the Supplier shall at all reasonable times during the Contract Term and during normal business hours, afford to or procure for any WDH Representative or Audit Agent access to and permission to copy and remove any copies of any books records information and data in the possession or control of the Supplier which relate to or have been used in connection with the performance of the Services.

11.2 WDH shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services by the Supplier or adversely affect the performance by the Supplier of its obligations under this Agreement.

11.3 Subject to the Supplier's obligations of confidentiality, the Supplier shall provide WDH (and its Audit Agents) with all reasonable co-operation, access and assistance in relation to each audit.

11.4 WDH shall provide at least ten (10) Working Days' notice of any audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

11.5 The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 11.

12 Scrutiny / Cabinet Attendance

12.1 Where the value of the Services to be supplied under the Agreement exceeds fifty thousand pounds (£50,000) in value during the Contract Term and for a period of six (6) years after termination of expiry of the Agreement WDH reserves the right to require the Supplier to:

12.1.1 provide all reasonable assistance for the purposes of answering WDH's questions pertaining to the operation of the Agreement (including but not limited to the Supplier's performance of the Agreement); and,

12.1.2 attend WDH's Performance Scrutiny and Challenge Committee and/or Board as and when reasonably required by WDH,

and the Supplier shall comply with any such requirements. Wherever possible, WDH will aim to give the Supplier reasonable advanced notice if the Supplier's attendance is required at WDH's Performance Scrutiny and Challenge Committee and / or Board.

12.2 If, pursuant to Clause 12.1 WDH requires the Supplier to attend WDH's Performance Scrutiny and Challenge Committee and / or Board following termination or expiry of the Agreement, WDH shall reimburse the Supplier for reasonable travel costs incurred.

13 Disputes

13.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the procedure set out in Clauses 13.2 to 13.8 below.

13.2 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

13.2.1 the Dispute shall be referred, by either Party, to the Representatives for resolution;

13.2.2 if the Dispute cannot be resolved by the Representatives within fourteen (14) days (or such other time as the Representatives may agree in writing) after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a **Dispute Notice**) that a Dispute has arisen; and

13.2.3 within seven (7) days of the date of the Dispute Notice, each Party shall refer the Dispute to the relevant director of the Parties (the **Senior Representatives**) for resolution.

13.3 If the Senior Representatives are unable, or fail, to resolve the Dispute within fourteen (14) days of the reference to the Senior Representatives pursuant to Clause 13.2.3, the Parties may attempt to resolve the Dispute by mediation in accordance with Clause 13.4.

13.4 If, within twenty-one (21) days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this Clause 13.4:

13.4.1 the reference shall be a reference under the Model Mediation Procedure (**MMP**) of the Centre of Dispute Resolution (**CEDR**) for the time being in force;

13.4.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as the CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR’s Model Mediation Contract for the time being in force; and

13.4.3 to the extent not provided for by such contract of the MMP:

* + - 1. the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator;
      2. unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and
      3. the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.

13.5 If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

13.6 Nothing in this Clause shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

13.7 Without prejudice to WDH’s right to seek redress in court, the Supplier shall continue to provide the Services and to perform its obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause.

13.8 Where a Dispute has been referred to mediation under this Agreement and the Supplier is in a related dispute with a Subcontractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such Subcontractor as a party to the mediation (subject to such Subcontractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by Clauses 13.2 to 13.7) and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions.

13.9 The Parties shall continue to perform their obligations under this Agreement in accordance with its terms until any Dispute has been resolved.

**Section E: Intellectual Property, Data and Confidentiality**

14. Intellectual Property Rights

14.1 All Intellectual Property Rights in any materials provided by WDH to the Supplier for the purposes of this Agreement shall remain the property of WDH. In so far as it is able WDH shall grant (or procure from any third party licensor the grant) to the Supplier of a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

14.2 In the absence of prior written agreement by WDH to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

14.2.1 in the course of performing the Services; and

14.2.2 exclusively for the purpose of performing the Services, shall vest in WDH on creation.

14.3 The Supplier shall indemnify WDH against all claims, actions, proceedings and any Losses, costs, fees and expenses incurred by WDH arising from or incurred by reason of any alleged infringement of any third party’s Intellectual Property Rights by the Intellectual Property created by the Supplier during the course of the provision of the Services, except to the extent that they have been caused by or contributed to by WDH's acts or omissions.

15 Data Protection

15.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 15 is in addition to, and does not relieve, remove or replace, a Party’s obligations or rights under the Data Protection Legislation.

15.2 This clause 15.2 is not used.

**Where WDH is Controller and the Supplier is Processor**

15.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, WDH is the Controller and the Supplier is the Processor. The term ‘processing’ and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

15.4 The Processor shall notify WDH immediately if it considers that any of WDH’s instructions infringe the Data Protection Legislation.

15.5 The Processor shall provide all reasonable assistance to WDH in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of WDH, include:

15.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;

15.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

15.5.3 an assessment of the risks to the rights and freedoms of the Data Subjects; and

15.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

15.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement;

15.6.1 process that Personal Data, unless the Processor is required to do otherwise by Law . If it is so required, the Processor shall promptly notify WDH before processing the Personal Data unless prohibited by Law.

15.6.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which WDH may reasonably reject. In the event of WDH reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of WDH. Failure to reject shall not amount to approval by WDH of the adequacy of the Protective Measures. Protective Measures must take account of the:

(a) nature of the data to be protected;

(b) harm that might result from a Data Loss Event;

(c) state of technological development; and

(d) cost of implementing any measures;

15.6.3 ensure that:

(a) the Processor Personnel do not process Personal Data except in accordance with this Agreement;

(b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(i) are aware of and comply with the Processor’s duties under this clause;

(ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by WDH or as otherwise permitted by this Agreement; and

(iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

15.6.4 not transfer Personal Data outside of the UK unless the prior written consent of WDH has been obtained and the following conditions are fulfilled:

(a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or Section 74 of the DPA 2018;

(b) WDH or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 and or Sections 75 of the DPA 2018) as determined by WDH;

(c) the Data Subject has enforceable rights and effective legal remedies;

(d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist WDH in meeting its obligations); and;

(e) the Processor complies with any reasonable instructions notified to it in advance by WDH with respect to the processing of the Personal Data;

15.6.5 at the written direction of WDH, delete or return Personal Data (and any copies of it) to WDH on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

15.7 Subject to clause 15.8, the Processor shall notify WDH immediately if it:

15.5.1 receives a Data Subject Request (or purported Data Subject Request);

15.5.2 receives a request to rectify, block or erase any Personal Data;

15.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

15.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

15.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

15.5.6 becomes aware of a Data Loss Event.

15.8 The Processor’s obligation to notify under clause 15.7 shall include the provision of further information to WDH in phases, as details become available.

15.9 Taking into account the nature of the processing, the Processor shall provide WDH with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 15.7 (and insofar as possible within the timescales reasonably required by WDH) including by promptly providing:

15.7.1 WDH with full details and copies of the complaint, communication or request;

15.7.2 such assistance as is reasonably requested by WDH to enable WDH to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

15.7.3 WDH, at its request, with any Personal Data it holds in relation to a Data Subject;

15.7.4 assistance as requested by WDH following any Data Loss Event;

15.7.5 assistance as requested by WDH with respect to any request from the Information Commissioner’s Office, or any consultation by WDH with the Information Commissioner's Office.

15.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 employees, unless:

15.8.1 WDH determines that the processing is not occasional;

15.8.2 WDH determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

15.8.3 WDH determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

15.9 The Processor shall allow for audits of its Data Processing activity by WDH or the WDH’s designated auditor.

15.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

15.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

15.11.1 notify WDH in writing of the intended Sub-processor and processing;

15.11.2 obtain the written consent of WDH;

15.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 15 such that they apply to the Sub‑processor; and

15.11.4 provide WDH with such information regarding the Sub-processor as WDH may reasonably require.

15.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub‑processors.

15.13 WDH may, at any time on not less than thirty (30) Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

15.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. WDH may on not less than thirty (30) Working Days’ notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Where the Parties are Joint Controllers of Personal Data**

15.15 In the event that the Parties are Joint Controllers in respect of Personal Data under the Agreement, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26

**Where the Parties are Independent Controllers of Personal Data**

15.16 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

15.17 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

15.18. Where a Party has provided Personal Data to the other Party in accordance with Clause 15.16 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

15.19. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Agreement.

15.20. The Parties shall only provide Personal Data to each other:

15.20.1 to the extent necessary to perform their respective obligations under the Agreement;

15.20.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR).

15.21. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

15.22 A Party Processing Personal Data for the purposes of the Agreement shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

15.23 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Agreement (‘Request Recipient’):

15.23.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

15.23.2 where the request or correspondence is directed to the other Party  
and / or relates to that other Party's Processing of the Personal Data, the Request Recipient will:

* + - * 1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
        2. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

15.24 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Agreement and shall:

15.24.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

15.24.2 implement any measures necessary to restore the security of any compromised Personal Data;

15.24.3 work with the other Party to make any required notifications to the Information Commissioner’s Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

15.24.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

15.25. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Agreement

15.26 Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s respective obligations under the Agreement

16. Confidentiality

16.1 For the purposes of this Clause 16, the term ‘**Disclosing Party**’ shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and ‘**Recipient**’ shall mean the Party which receives or obtains directly or indirectly Confidential Information.

16.2 Except to the extent set out in this Clause 16 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

16.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

16.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

16.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and

16.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.

16.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

16.3.1 the Recipient is required to disclose the Confidential Information by Law; or

16.3.2 the need for such disclosure arises out of or in connection with:

(a) any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or

(b) the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which WDH is making use of any Services provided under this Agreement.

16.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and / or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.

16.5 Subject to this Clause 16, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:

16.5.1 its personnel who are directly involved in the provision or receipt of the Services (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement; and

16.5.2 its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where a Party discloses the Confidential Information of the other Party pursuant to this Clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

16.6 WDH may disclose the Confidential Information of the Supplier:

16.6.1 strictly on a confidential basis for the purpose of Clause 11 (Audit); or

16.6.2 to a Successor Body which substantial performs any of the duties previously performed by WDH.

16.7 Nothing in this Clause 16 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

17. Not used

18. Press Statements and Publication of the Agreement

18.1 The Supplier, including but not limited to all Supplier Personnel and Subcontractors, shall not:

18.1.1 communicate with representatives of the press, television or radio or other media;

18.1.2 issue any press release or public statement;

18.1.3 grant permission to film or photograph in WDH Premises;

18.1.4 engage in any marketing activity; or

18.1.5 make any other announcements or publications, including via social media or otherwise, relating to, in connection with, or arising out of the delivery of the Services without obtaining WDH's prior written approval as to the contents thereof and the manner of its presentation and publication.

18.2 The Parties acknowledge that the content of this Agreement is not Confidential Information.

18.3 WDH may consult with the Supplier to inform its decision regarding any redactions but WDH shall have the final decision in its absolute discretion.

18.4 The Supplier shall assist and cooperate with WDH to enable WDH to publish this Agreement.

**Section F: Liabilities and Insurance**

1. Liability

19.1 Subject to Clause 19.2, the Supplier shall indemnify and keep indemnified WDH against all liabilities, costs, expenses, damages and losses incurred by WDH arising out of or in connection with:

19.1.1 the Supplier’s breach or negligent performance or non-performance of this Agreement;

19.1.2 any claim made against WDH arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or Supplier Personnel; and

19.1.3 the enforcement of this Agreement.

19.2 The indemnity under Clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by WDH are directly caused (or directly arise) from the negligence or breach of this Agreement by WDH.

19.3 Nothing in this Agreement shall limit or exclude the Supplier's or WDH’s liability for:

19.3.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

19.3.2 fraud or fraudulent misrepresentation;

19.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

19.3.4 any other liability which cannot be limited or excluded by applicable Law.

19.4 Nothing in this Agreement shall limit or exclude the Supplier’s liability under Clause 8.3 (VAT indemnity), Clause 14.3 (IPR indemnity), Clause 23.2 (Termination for Breach indemnity), Clause 28 (Human Rights Act indemnity) [and Clause 2.5 of Schedule 3 (TUPE indemnity)] and no amounts awarded or agreed to be paid under those clauses or schedule shall count towards the cap on the Supplier’s liability.

19.5 Subject to Clause 19.3, 19.4 and 19.7, neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Agreement.

19.6 Subject to Clause 19.1 and Clause 19.2, the Supplier's total aggregate liability to WDH, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall in no event exceed the amount in each Contract Year set out in the Contract Details.

19.7 Notwithstanding the provisions of Clause 19.5 but subject always to Clause 19.6, the Supplier assumes responsibility for the following losses which may be recoverable by WDH:

19.7.1 WDH’s additional operational and administrative costs and expenses arising from a Default.

19.7.2 WDH’s wasted expenditure or charges reasonably incurred by WDH arising from a Default.

19.7.3 any compensation or interest paid to a third party by WDH arising from a Default.

19.7.4 any loss or corruption to or alteration of any WDH Data.

19.7.5 Any fines, expenses or other losses suffered or incurred by WDH arising from a breach by the Supplier of any Law.

19.8 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

1. Insurance

20.1 Without prejudice to Clause 19 (Liability), the Supplier shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out in the Contract Details (the **Required Insurances**).

20.2 The Supplier shall not, during the term of this Agreement do anything to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.

20.3 Following a written request of WDH (acting reasonably) for the same, the Supplier shall provide WDH with:

20.3.1 copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and WDH shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and

20.3.2 evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.

* 1. Without prejudice to WDH’s other rights under this Agreement, if, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, WDH may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.
  2. WDH shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

**Section G: Remedies and Relief**

21. Force Majeure

21.1 Subject to the remaining provisions of this Clause 21, neither Party shall in any

circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event.

21.2 In the event that either Party (the **Affected Party**) is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:

21.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;

21.2.1 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and

21.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

21.3 The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

21.4 As soon as practicable following the Affected Party's notification pursuant to Clause 21.2, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.

21.5 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.

21.6 In the event that the Supplier is prevented from carrying out its obligations under the Agreement by any Force Majeure Event which continues for a period of twenty-five (25) days, the other Party may terminate the Agreement by notice in writing giving fourteen (14) days' notice. Where this Agreement is terminated pursuant to this Clause 21.6 WDH shall not be liable to the Supplier for any Losses arising out of the termination.

22. Continued Performance

* 1. Save as may be required to give effect to the granting of relief from obligations under Clause 21 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

**Section H: Termination and Exit Management**

23. Termination for Breach

23.1 This Agreement shall terminate automatically on the Expiry Date unless it is terminated earlier in accordance with this Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, WDH may terminate the Agreement with immediate effect by giving written notice to the Supplier if:

23.1.1 the Supplier commits a Material Breach of the Agreement which is not capable of remedy;

23.1.2 the Supplier commits a Default provided that if the Default is capable of remedy, WDH may only terminate this Agreement under this Clause 23 if the Supplier has failed to remedy such Default within twenty-eight (28) days of receipt of notice from WDH;

23.1.3 subject to Clause 29 (Prevention of Fraud and Bribery) the Supplier commits a Prohibited Act;

23.1.4 a representation and warranty given by the Supplier pursuant to Clause 4 (Warranties) being materially untrue or misleading;

23.1.5 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

23.1.6 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a Supplier) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

23.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a Supplier) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

23.1.8 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;

23.1.9 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a Supplier);

23.1.10 a floating charge holder over the assets of the Supplier (being a Supplier) has become entitled to appoint or has appointed an administrative receiver;

23.1.11 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

23.1.12 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;

23.1.13 makes an assignment of this Agreement in breach of Clause 32 (Assignment and other dealings);

23.1.14 breaches any of its obligations under Clause 20 (Insurance);

23.1.15 fails to provide the Services during a continuous period of four days or for a total period of ten days in any three (3) month period during the Agreement Period other than as a result of a Force Majeure Event; or

23.1.16 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; or,

23.1.17 any legal proceedings are commenced against WDH alleging that the procurement of the Services or the award of this Agreement has breached any of the provisions of the Public Contracts Regulations 2015.

23.2 If this Agreement is terminated by WDH for cause such termination shall be at no loss or cost to WDH and the Supplier hereby indemnifies WDH against any such loss or costs which WDH may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement services.

24. Consequences of Expiry or Termination

* 1. The termination or expiry of this Agreement shall not affect:

24.1.1 the continuing rights and obligations of the Parties pursuant to Clauses 10 (The Supplier's Records and Provision of Information), 11 (Audit), 15 (Data Protection), 16 (Confidentiality), 19 (Liability), 20 (Insurance), 23 (Termination for Breach) and this Clause 24 and any other provision of this Agreement that expressly or by implication is intended to come into or continue in force after the termination or expiry of this Agreement; and

24.1.2 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Agreement.

24.2 The Supplier shall, within three (3) months after the Commencement Date, produce an Exit Plan for the orderly transition of the Services from the Supplier to WDH or the Replacement Supplier in the event of the termination or expiry of this Agreement. Within ten (10) Working Days after the submission of that Exit Plan, the Parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

24.3 The Exit Plan shall:

24.3.1 facilitate the transition of the Services from the Supplier to the Replacement Supplier and / or WDH and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services; and

24.3.2 detail how the Services will transfer to the Replacement Supplier and/or WDH including details of the processes, documentation, data transfer, systems migration, security and the segregation of WDH's technology components from any technology components run by the Supplier or any of its Subcontractors (where applicable).

24.4 The Supplier shall keep the Exit Plan under review. Following any update, the Supplier shall submit the revised Exit Plan to WDH for review and approval.

24.5 In the event of the termination or expiry of this Agreement for any reason, the provisions of the Exit Plan shall come into effect and the Supplier shall co-operate with WDH and / or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the Services from the Supplier to WDH or the Replacement Supplier.

24.6 On reasonable notice, the Supplier shall provide to WDH and/or to its Replacement Supplier (subject to the Replacement Supplier entering into reasonable written confidentiality undertakings with the Supplier), such material and information as WDH shall reasonably require in order to facilitate the preparation by WDH of any invitation to tender.

24.7 On termination of this Agreement and on satisfactory completion of the Exit Plan (or where reasonably so required by WDH prior to such completion) the Supplier shall submit to WDH all relevant data held by the Supplier in respect of the contract which WDH may reasonably need for future reference or to maintain performance of the contract internally or through another Supplier. Such data shall be supplied electronically in the relevant Microsoft product (which is WDH's standard software currently) or in such other electronic product as may be WDH's standard at the time, and in e-gif compliant format (if applicable).

**Section I: Compliance with Laws**

1. Health and Safety
   1. The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
      1. all applicable Law regarding health and safety; and
      2. the WDH's health and safety policy.
   2. The Supplier shall notify WDH as soon as practicable of any health and safety incidents or material health and safety hazards on any premises where the Services are being provided of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures to manage any such material health and safety hazards.
2. Environmental
   1. The Supplier shall:
      1. when working on premises where the Services are being provided, perform this Agreement in accordance with WDH's sustainability policy, which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of WDH's business;
      2. follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, and delivered in ways that are appropriate from an environmental protection perspective; and
      3. comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Agreement.
3. Equal Opportunities
   1. The Supplier shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
   2. The Supplier shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the Agreement.
   3. The Supplier shall take all reasonable steps to secure the observance of Clauses 27.1 and 27.2 by all servants, employees or agents of the Supplier and all suppliers and Subcontractors employed in the execution of the Agreement.
   4. The Supplier shall demonstrate to WDH that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 27.1 and 27.2.
   5. If there should be any findings of unlawful discrimination made against the Supplier by any court or employment tribunal, or an adverse finding in a formal investigation by a Commission, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination.
   6. WDH reserve the right to test the Supplier's equality performance through the life of the Agreement. The Supplier shall cooperate with WDH regarding the provision of a date and/or access for site visits as reasonably required by WDH.
4. Human Rights Act 1998
   1. The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify WDH against all actions, costs, expenses, claims, proceedings and demands which may be brought against WDH for a breach of statutory duty under the Act attributable to the Supplier.
5. Prevention of Fraud and Bribery
   1. The Supplier represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of the Supplier Personnel have at any time prior to the Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;  
         and / or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
   2. The Supplier shall not during the Contract Term of this Agreement:
      1. commit a Prohibited Act; and / or
      2. do or suffer anything to be done which would cause WDH to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Supplier shall during the Contract Term of this Agreement:
      1. establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
      2. keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to WDH on request.
   4. The Supplier shall as soon as reasonably practicable notify WDH in writing if it becomes aware of any breach of Clause 29.2.1 and / or 29.2.2, or has reason to believe that it has:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Supplier makes a notification to WDH pursuant to Clause 29.4, the Supplier shall respond promptly to WDH's reasonable enquiries and cooperate with any investigation carried out by WDH (acting reasonably) in respect of such notification.
   6. If the Supplier is in breach of Clauses 29.1 and / or 29.2 WDH may by notice require the Supplier to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach.
   7. Any notice served by WDH under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the person who WDH reasonably believes has committed the Prohibited Act and the action that WDH requires the Supplier to take as a result.

**Section J: Miscellaneous and Governing Law**

1. Complaints / Housing Ombudsman
   1. The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by WDH's Representative at all reasonable times during normal working hours.
   2. The Supplier shall provide WDH with all reasonable cooperation and assistance in relation to any investigation by the Housing Ombudsman in connection with the performance by the Supplier of the Services under this Agreement.
2. Variation
   1. No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (acting through their Representatives) and is expressed to be for the purpose of such amendment or variation.

31.2 WDH may at any time notify the Supplier (and such notification shall be confirmed in writing) to modify or change its requirements as detailed in the Specification. The Supplier shall not unreasonably withhold its consent to any variations that WDH may require.

31.3 Where WDH initiates a change(s) to this Agreement, the WDH Representative will discuss with the Supplier any change proposed. If the Parties agree the changes and any financial implications of such change then WDH shall issue a change control notice **(‘CCN’)** to the Supplier for signature in the form set out in Schedule 7 (Change Control Notice) and the change shall be recorded as detailed in Clause 31.7 below.

31.4 Where WDH and the Supplier are unable to agree the proposed change in accordance with Clause 31.3 above the WDH Representative shall, if WDH wish to proceed with a change, issue a CCN to the Supplier in the form set out in Schedule 7 (Change Control Notice).

31.5 The Supplier shall give proper consideration to the CCN and if agreed shall sign the same. If the Supplier does not accept the CCN it shall within five (5) Working Days of its receipt respond in writing to WDH to that effect setting out the reasons.

31.6 If the CCN is not agreed then the Parties shall use all reasonable endeavours to meet within five (5) Working Days of receipt of the Supplier response under Clause 31.5 to discuss the proposed change and the reasons for non-acceptance. If agreement is not reached at the meeting then WDH may at its sole discretion at any time thereafter refer the matter for consideration in accordance with the provisions of Clause 13 (Dispute Resolution Procedure). The decision of the mediator shall be binding upon the Parties except that WDH do not have to proceed with the change in any event.

31.7 When any change is agreed with the Supplier, WDH shall agree the date from which the change will become effective and shall be incorporated into this Agreement.

1. Assignment and Other Dealings
   1. The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of WDH (such consent not to be unreasonably withheld or delayed).
   2. WDH may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than WDH which performs any of the functions that previously had been performed by WDH (a **Successor Body**).
   3. The Supplier may not subcontract any part of this Agreement without the prior written consent of WDH. In the event that WDH consents to the Supplier entering into a Subcontract, the Subcontract must include terms:
      1. requiring the Supplier to pay any undisputed sums due to the Subcontractor within thirty (30) days of receipt of a valid invoice;
      2. requiring the counterparty to that Subcontract to include in any subcontract it awards a provision having the same effect as Clause 32.3.1; and
      3. refrain from acting, or act, in any way which would cause the Supplier to be in breach of this Agreement.
   4. The Supplier shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 32 shall be fully supplied with all relevant information about the Supplier's obligations under this Agreement. The Supplier shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, staff and agents and Subcontractors' employees, staff and agents also do, or refrain from doing, such act or thing.
   5. The Supplier shall notify WDH of any change to the details of a Subcontractor as soon as reasonably practicable, in accordance with Regulation 71(4)(a) of the Public Contracts Regulations 2015.
   6. Notwithstanding any subcontracting permitted under this Clause 32, the Supplier shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.
2. Entire Agreement
   1. This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

33.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.

33.3 Nothing in this Clause 33 shall exclude any liability in respect of misrepresentations made fraudulently.

1. Waiver and Cumulative Remedies
   1. A waiver of any right or remedy under this Agreement or by Law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
   2. A failure or delay by a Party in ascertaining or 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 prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
   3. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
2. Severance
   1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and / or enforceability of the remaining provisions of this Agreement shall not be affected.
   2. In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.
   3. If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 39 (Notices) the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
3. Further Assurances
   1. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
4. Relationship of the Parties
   1. Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
5. Third Party Rights
   1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
   2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
6. Notices
   1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand or by pre-paid first-class post or other next Working Day delivery service [or by email] at its registered office (if a company) or its principal place of business (in any other case).
   2. Any notice or communication shall be deemed to have been received:

39.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

* + 1. if sent by pre-paid first-class post or other next working day delivery service, at 9 am on the second Working Day after posting or at the time recorded by the delivery service; or

39.2.3 if sent by email at the time the transmission is received, provided that any email sent after 5 pm on any Working Day shall be deemed to have been received at 9 am on the following Working Day ]

* 1. This Clause 39 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

1. Governing Law and Jurisdiction
   1. This Agreement and any issues, disputes or claims (whether contractual or non‑contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
   2. Subject to Clause 13 (Disputes), the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
2. Optional Clauses and Schedules
   1. The following Clauses, set out in Schedule 1 (Optional Clauses), relating to:

41.1.1 Price Variation;

41.1.2 Safeguarding and Improper Conduct;

41.1.3 Social Networking / Internet;

41.1.4 No Fault Termination;

41.1.5 Collaborative Procurement – Right of Other Bodies to Participate;

41.1.6 Brexit Trigger, Renegotiation and Termination; and

41.1.7 Cyber Security

41.1.8 Liquidated Damages

41.1.9 Social Value

shall only apply **if specifically stated in the Contract Details**.

* 1. If specifically stated in the Contract Details, where the Services supplied include the supply of Goods, then the provisions of Schedule 2 (Goods) shall apply to the supply of the Goods in addition to the terms and conditions of this Agreement.
  2. If specifically stated in the Contract Details, then the provisions of Schedule 3 (TUPE) shall apply to this Agreement.
  3. If specifically stated in the Contract Details, then the provisions of Schedule 4 (Charges and Payments) shall apply to this Agreement.
  4. If specifically stated in the Contract Details, then the provisions of Schedule 5 (Specification) shall apply to this Agreement.
  5. If specifically stated in the Contract Details, then the provisions of Schedule 6 (Tender Submission) shall apply to this Agreement.
  6. If specifically stated in the Contract Details, then the provisions of Schedule 7 shall apply to this Agreement.
  7. If specifically stated in the Contract Details, then the provisions of Schedule 8 shall apply to this Agreement.

42 Modern Slavery

42.1 To the extent that the Modern Slavery Act 2015 may apply to the Supplier, the Supplier:

### a) Represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees, subcontractors, agents or other persons associated with it:

#### i) have been convicted of any offence involving slavery and human trafficking anywhere in the world; or

#### ii) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.

### b) Shall implement and maintain throughout the term of this Agreement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

c) Shall report to WDH any breach or alleged breach of the Supplier’s anti‑slavery and human trafficking policies and procedures or those of its suppliers, Subcontractors and other participants in its supply chain and shall provide reasonable assistance to WDH to allow to carry out any audit of the Suppliers anti-slavery and human trafficking policies and procedures or those of any suppliers, subcontractors and other participants in its supply chains.

43. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

44 Whistle blowing

44.1 WDH is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, employees of WDH, its partners or Suppliers with concerns about wrongdoing within WDH have a duty to come forward and voice those concerns. WDH’s Whistleblowing Code of Practice exists to assist and guide how to come forward and speak out.

44.2 The Supplier shall comply with WDH’s Whistleblowing Code of Practice which ensures that employees of the Supplier are able to bring to the attention of WDH, malpractice, fraud and breach of Laws on the part of the Supplier, any Subcontractor or supplier without fear of disciplinary and other retribution or discriminatory action.

44.3 Suppliers and their employees may wish to acquaint themselves with the implications of the Whistleblowing Code of Practice for them. Supplier’s employees may wish, for example, to report any breaches in the way in which the Agreement is being performed or any unacceptable behaviour by either a fellow employee or a WDH employee.

## 44.4 Any concerns should be raised with a line manager or client officer, or if inappropriate communicated to WDH’s Director of Organisational Development in confidence:

Executed by the Parties (or on their behalf by their respective authorised representatives) on the respective date or dates indicated below.

**Signed on behalf of Wakefield and District Housing Limited by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of signatory (print):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title or role of signatory (print):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

**Signed on behalf of [the Supplier] by:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of signatory (print):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title or role of signatory (print):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Schedule 1 – Optional Clauses

1. Only those Optional Clauses listed in the Contract Details shall apply to this Agreement.
   * + 1. **1 Price variation**
          1. 1.1 Charges may only be adjusted in accordance with:

1.1.1 the price variation formula set out in the Schedule 4 (Charges and Payments); and

1.1.2 following written evidence from the Supplier that the relevant change in cost has taken place.

* + - * 1. 1.2 WDH shall, in its absolute discretion but at all times acting reasonably, consider whether and to what extent the Charges will be adjusted. WDH shall notify the Supplier of its decision in writing and any adjustments shall apply to this Agreement with effect from the next anniversary of the Commencement Date.
        2. 1.3 Both Parties agree to act reasonably and in good faith in the operation of this Clause.
      1. **2 Safeguarding and Improper Conduct**
         1. 2.1 The Supplier acknowledges that WDH is a regulated activity provider with ultimate responsibility for the management and control of the regulated activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
         2. 2.2 The Supplier shall

2.2.1 Ensure that all individuals engaged in regulated activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service.

2.2.2 Monitor the level and validity of the checks under this Clause 2.2 for each member of Supplier Personnel.

2.2.3 Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out regulated activity or who may otherwise present a risk to Service Users.

2.2.4 At the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Supplier Personnel comply with its policy.

2.2.5 Ensure adequate training is annually provided to Supplier Personal on the prevention of improper conduct, identifying incidents, and reporting processes.

2.2.6 Comply with all WDH's Safeguarding Procedures.

* + - 1. **3 Social Networking and Internet**
         1. 3.1 The Supplier is only permitted to use social media platforms to market or deliver the Services when WDH has given prior written approval to do so.
         2. 3.2 If, subject to Clause 3.1, the Supplier uses social media platforms to market or deliver the Services, all Supplier Personnel who administer them must ensure they are used in a professional context and have undertaken eSafety training.
         3. 3.3 If the Supplier uses social media platforms to market or deliver the Services, a risk assessment must be undertaken and can be requested by WDH at any time.
         4. 3.4 The Supplier must have a social networking and/or social media policy and guidance for all Supplier Personnel.
      2. **4 No Fault Termination**
         1. 4.1 Without limiting its other rights or remedies, WDH may terminate this Agreement by giving the other party a minimum of three (3) months written notice.
      3. **5 Collaborative Procurement – Right of Other Bodies to Participate**
         1. 5.1 For the purposes of this Clause ‘Partner Organisation’ mean such other contracting authorities as are permitted, in accordance with the relevant Official Journal of the European Union contract notice, to access this Agreement.
         2. 5.2 The Parties agree and acknowledge that WDH enters into this Agreement for itself and for the benefit of Partner Organisations.
         3. 5.3 In addition to the specific Services expressly required to be provided to WDH pursuant to this Agreement, any Partner Organisation, with the prior written consent of WDH (which consent WDH may in its absolute discretion refuse), may require the provision by the Supplier of any of the Services under this Agreement subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in Clause 5.4.
         4. 5.4 If and to the extent that any such additional Services under this Agreement are required to be provided by the Supplier to any Partner Organisation:

5.4.1 each and every such Partner Organisation shall enter into a specific contract with the Supplier for such additional Services incorporating by reference or otherwise the same or substantially the same terms and conditions contained in this Agreement (but not the provisions of this Clause 5);

5.4.2 any non-substantial amendments to the terms and conditions in this Agreement agreed between the Supplier and the Partner Organisation shall be clearly set out in such specific contract; and

5.4.3 to enter into a specific contract with the Supplier the Partner Organisation may, in accordance with relevant public procurement regulations, consult the Supplier in writing requesting the Supplier to supplement the Supplier’s Tender Response as may be necessary.

* + - * 1. 5.5 WDH does not guarantee that any Partner Organisation will require the Supplier to provide any additional Services under this Agreement or otherwise and nothing in this Agreement shall give the Supplier a right to receive such requirement for additional Services.
        2. 5.6 WDH shall not in any circumstances be liable to the Supplier or any Partner Organisation for payment or otherwise in respect of any such additional Services required to be provided by the Supplier to any Partner Organisation.
        3. 5.7 It shall be the responsibility of any Partner Organisation to satisfy itself that entering into any contract with the Supplier under Clause 5.4.1 of this Agreement does not breach any relevant public procurement regulations, the general European Community procurement principles or its own contracting rules and procedures.

**6. Brexit Trigger, Renegotiation and Termination**

6.1 Right to renegotiate or terminate. If at any time after Brexit a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact on WDH, WDH may:

6.1.1 require the Supplier to negotiate an amendment to this Agreement to alleviate the Adverse Impact, in accordance with [Clause 6.5](#co_anchor_a918118_1); and

6.1.2 if renegotiation fails, terminate this Agreement in accordance with [Clause 6.6](#co_anchor_a478892_1).

6.2 Brexit means the UK ceasing to be a member state of the European Union, regardless of which countries comprise the UK at such date.

6.3 **Brexit Trigger Events**. A Brexit Trigger Event means any of the following events if directly or solely caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

6.3.1 **Change in Law:** a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, **Law** means any legal provision a party must comply with including any law, stature, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere.

6.3.2 **Trade tariff:** in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of any raw materials or components used by the Supplier to manufacture the Goods or any products which are to be incorporated or in conjunction with which the Goods are to be commercially exploited provided that such a change or imposition is not applied equally in respect of the whole of the EU for so long as the UK remains a member of the EU;

6.3.3 **Licence or consent:** in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement or to commercially exploit the Goods.

6.3.4 **Currency Fluctuation:** a change of more than 15% to the rate of exchange of sterling against Euro, since the price for the Goods or Services was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;

6.3.5 **Other change:** change to the business or economic environment in which a party operates which is not caused by [Clause 6.3.1](#co_anchor_a898671_1) to [Clause 6.3.3](#co_anchor_a892284_1) above or by any fluctuation in currency exchange rates.

6.4 **Adverse Impact.** An Adverse Impact means any one of the following:

6.4.1 an adverse impact on the Supplier’s ability to substantially perform the Agreement in accordance with its terms and the Law;

6.4.2 an increase in the costs incurred by the Supplier in performing the Agreement of at least 15% since the price for the Goods or Services was last agreed;

6.4.3 the price of the Goods or Services under this Agreement is at least 15% lower than the market value for similar products or services; or

6.4.4 the price of the Goods or Services under this Agreement exceeds the market value for similar products or services before the Brexit Trigger Event by at least 15%;

6.5 **Renegotiation.** WDH may initiate a negotiation under [Clause 6.1.1](#co_anchor_a125836_1) by a notice (**Brexit Notice**) giving reasonable details of the relevant Brexit Trigger Event and Adverse Impact. WDH may, at any time, serve a new Brexit Notice, but WDH cannot serve more than one Brexit Notice for the same impact. On delivery of a Brexit Notice:

6.5.1 the Parties shall meet within seven (7) days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to this Agreement;

6.5.2 the Supplier shall promptly comply with all reasonable requests made by WDH for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be a Party’s Confidential Information for the purposes of Clause 16 (Confidentiality); and

6.5.3 any amendments to this Agreement shall be recorded in accordance with Clause 31 (Variation).

6.6 **Termination.** If the Parties fail to agree a variation in accordance with [Clause 6.5](#co_anchor_a918118_1) within twenty-eight (28) days of the date of the Brexit Notice, WDH serving the Brexit Notice may, without affecting any other right or remedy available to it, terminate this Agreement by giving the Supplier not less than seven (7) days and not more than twenty-one (21) days written notice. WDH may not give notice to terminate under this Clause more than twenty-eight (28) days from the date of the relevant Brexit Notice. On termination under this Clause, Clause 24 (Consequences of Expiry or Termination) shall apply.

6.7 **Performance after a Brexit Notice.** After delivery of a Brexit Notice, until this Agreement is varied under [Clause 6.5](#co_anchor_a918118_1) or terminated, the Parties shall, unless prohibited by Law, continue to comply with the terms of this Agreement, save that WDH needs only use reasonable endeavours to comply with its obligations insofar as they are affected by the relevant Adverse Impact.

6.8 **Overlap with other rights and obligations.** Save as expressly provided in this Clause 6, neither a Brexit Trigger Event nor an Adverse Impact shall terminate or alter (or give any party a right to terminate or alter) this Agreement, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this Clause and any other provision of this Agreement, the provisions of this Clause shall prevail.

7. Cyber-Security

7.1 The purpose of Clauses 7.1, 7.2 and 7.3 is to set out the Supplier's obligations in respect of WDH Data:

(a) in respect of which the Supplier has custody or control for purposes connected with this Agreement; or

(b) which are accessed, transmitted or stored using or on the Supplier’s IT Systems or equipment under this Agreement

7.2 The Supplier has identified and taken:

### 7.2.1 Appropriate and proportionate technical and organisational measures, including all measures referred to in international security standards ISO/IEC 27001:2013 (Information security management systems: Requirements) and ISO/IEC 27002:2013 (Code of practice for information security controls), (Measures) to manage the risks posed to the security of the IT Systems and confidentiality and integrity of the data processed by them and, having regard to the state of the art, the Measures ensure a level of security of the IT Systems and such data appropriate to the risk posed.

### 7.2.2 Appropriate and proportionate Measures to prevent and minimise the impact of security incidents affecting the security of the IT Systems, with a view to ensuring the continuity of the Services.

7.3 The Supplier must:

(a) Do all things that a reasonable and prudent entity would do to ensure that all WDH Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.

(b) Provide protective measures for WDH Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, WDH Data.

(c) All appropriate data security breach, business continuity and disaster recovery plans in accordance with all applicable Cybersecurity Requirements and best industry practice are in place with regard to use of the IT Systems for the purposes of the Services.

(d) Without limiting Clauses 7.3(a) or 7.3(b), comply with all applicable security law regulations procedures or directions as are specified in the Agreement or given by WDH from time to time regarding any aspect of security of, or access to, WDH’s IT Systems, WDH Data or WDH Premises.

(e) Unless the Agreement or WDH in writing expressly states that it is not required, develop for acceptance by WDH a Data Protection Impact Assessment (DPIA) that sets out how the Supplier and WDH will deal with and discharge their obligations in respect of WDH Data (including personal data or information) during the provision of the Services. The DPIA must:

(i) be consistent with the requirements of the Agreement (including Clauses 7.3(a) and 7.3(b));

(ii) be consistent with the requirements of Data Protection Legislation, the Cybersecurity Requirements and any other applicable laws relating to the security of the IT Systems as amended and updated from time to time;

(iii) specifically deal with cybercrime risks, including unauthorised access; and

(iv) set out the steps and processes that the Supplier and WDH will follow to protect WDH Data from unauthorised access, use, misuse, destruction or loss, and once accepted, the DPIA will form part of the Agreement and the Supplier must comply with it unless WDH otherwise agrees in writing.

7.4 During the seven-year period up to and including the date of this Agreement, the Supplier has not been in breach of any data security breach or breach notification requirement under the Cybersecurity Requirements or has not been the subject of any security incident which has a significant impact on the continuity of the Services and the Supplier and its subcontractors have passed all regulatory inspections to which they have been subject.

7.5 All IT Systems comply with all applicable Cybersecurity Requirements on the date of this Agreement and were developed in accordance with them.

7.6 The processing of any data, whether personal or not, by any IT Systems on or after completion for the purposes of the Services will not result in breach of any applicable Cybersecurity Requirements.

7.7 If the Supplier becomes aware of any actual or suspected:

#### action taken through the use of IT Systems that result in an actual or potentially adverse effect on the Supplier’s IT System and/or WDH Data residing on that system (**Cyber Incident**); or

#### any other unauthorised access or use by a third party or misuse, damage or destruction by any person (**Other Incident**),

the Supplier must:

(c) notify WDH in writing immediately (and no longer than six (6) hours after becoming aware of the Cyber Incident or Other Incident); and

(d) comply with any directions issued by WDH in connection with the Cyber Incident or Other Incident, including in relation to:

(A) notifying the National Cyber Security Centre, or any other relevant body, as required by WDH;

(B) obtaining evidence about how, when and by whom the Supplier’s IT Systems and / or the WDH Data has or may have been compromised, providing it to WDH on request, and preserving and protecting that evidence for a period of up to twelve (12) months;

(C) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and

(D) preserving and protecting WDH Data (including as necessary reverting to any backup or alternative site or taking other action to recover WDH Data).

7.8 The Supplier must, if specified in the Agreement, take out and maintain insurance to protect against the risks of a Cyber Incident.

7.9 The Supplier must ensure that:

(a) all Subcontracts and other supply chain arrangements, which may allow or cause access to WDH Data, contain no provisions that are inconsistent with this Clause 7; and

(b) all Supplier’s Personnel and any Subcontractors who have access to WDH Data comply with Clauses 7.2 and 7.3.

**8 Liquidated Damages**

8.1 If the Supplier fails to deliver the Services (and / or Goods) by the date agreed, or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the ‘Agreed Delivery Date’):

8.1.1 The Supplier shall pay WDH a sum by way of liquidated damages for each day between the Agreed Delivery Date and thedate on which the Services (and / or Goods) are delivered equal to [VALUE TO BE DETERMINED] or [% of the Charges for the relevant Services (and/or Goods)], up to a maximum amount of [VALUE TO BE DETERMINED] or [% of the Charges for the relevant Services (and/or Goods)] (‘**Liquidated Damages**’). Subject to Clause 8.3, during the period in which liquidated damages are payable under this Clause 8.1 (‘**Liquidated Damages Period**’) the liquidated damages payable in accordance with this Clause shall be WDH’s only remedy for any loss or damage suffered or incurred by WDH in relation to the failure by the Supplier to deliver the Services (and / or Goods) by the Agreed Delivery Date.

8.1.2 If the sums payable by the Supplier pursuant to Clause 8.1 do not meet the actual losses or damages incurred by WDH resulting from the failure of the Supplier, WDH shall be entitled to:

* + - 1. claim any remedy available to it (whether under the Agreement or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages; and
      2. without prejudice to Clause 8.1 WDH shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Supplier.
  1. The Supplier shall not be obliged to pay any sums pursuant to Clause 8.1 if and to the extent the failure by the Supplier to deliver the Services (and / or Goods) by the Agreed Delivery Date directly results from the WDH Default provided that the Supplier notifies WDH immediately of such circumstances in sufficient detail to enable WDH to remedy the situation. Except as set out in this Clause 8.2, no payment or concession to the Supplier by WDH or other act or omission of WDH shall in any way affect its rights to liquidated damages pursuant to Clause 8.1 or be deemed to be a waiver of the right of WDH to recover any damages unless such waiver has been expressly made in writing by WDH.
  2. Notwithstanding Clause 8.1 the Supplier does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for WDH, whether or not such performance or re-performance gives rise to additional costs for the Supplier and the cost of re-performance shall be borne solely by the Supplier and shall not be re-charged to WDH whether by way of costs, reimbursement or otherwise.
  3. Having given careful consideration to this matter, all monies payable by the Supplier under Clause 8.1 are considered by the Parties:
     1. to be a genuine pre-estimate of the losses which WDH will incur in relation to the Supplier's failure to deliver the Services (or Goods) by the Agreed Delivery Date, it being impossible to quantify the actual aggregate losses sustainable by WDH in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by WDH might be more or less than the agreed liquidated damages calculation);
     2. to be arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties;
     3. to be fair, given the nature and circumstances of the Agreement;
     4. to be neither excessive, extravagant, unconscionable or oppressive in all the circumstances;
     5. and as such these monies are payable as liquidated damages such that the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 8.
     6. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in Law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.
  4. Each Party confirms that:

8.5.1 it has taken specific legal advice on the effect of this Clause; and

8.5.2 based on such advice, it does not enter into the Agreement in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

**9. Social Value**

9.1 The Supplier acknowledges that, under the Public Services (Social Value) Act 2012, WDH is required to consider how goods, services and works, that it procures, improve the economic, social and environmental well-being of WDH, and furthermore, that as a matter of procurement policy and practice, WDH requires any supplier, provider, consultant or contractor providing goods, services and works to WDH to use all reasonable endeavours to assist WDH to improve the economic, social and environmental well-being of the area.

9.2 WDH has appointed external assessors to:

a) review and assess any tender submitted by the Supplier to ensure that the social value elements set out in such tender meet the social value assessment criteria set out in WDH’s invitation to tender;

b) monitor compliance with any contract awarded to the Supplier to ensure that the provision of those social value elements set out in its tender are provided in accordance with any performance measures or milestones set out in its tender and WDH’s invitation to tender;

c) review and assess any data, management information or records required to be provided to WDH or its external assessors by the Supplier in relation to the provision of the social value elements of its tender; and

d) ensure that any fees or charges payable to WDH or its external assessors by the Supplier in respect of compliance with matters a) to c) above are paid by the due dates.

9.3 WDH shall as part of its invitation to tender set out the details of its requirements in respect of social value element of the goods, services, or works, the assessment criteria, the procedure for submission of the information to its external assessors and the fees or charges payable.

9.4 The Supplier will be required to enter into a separate contract with WDH’s external assessors in respect of the provision of information relating to the social value element of its tender, the provision of data, management information and records to the external assessors and the payment of any fees or charges to the external assessors.

9.5 In the event that the Supplier fails:

1. to enter into a contract with WDH’s external assessors,
2. to meet the performance measures or milestones in respect of the social value elements set out in its tender;
3. to provide to WDH or its external assessors any data, management information or records in respect of the social value element of its tender as reasonably required by WDH or its external assessors; or
4. fails to pay to WDH or its external assessor any fees or charges by the due date

WDH may serve upon the Supplier a notice (Default Notice) setting out the nature of the default and the date by which the Supplier is required to cure the default.

9.6 If the Supplier fails to cure the default by the date set out in the Default Notice, WDH may:

1. suspend the contract for such period as WDH notifies to the Supplier in writing; or
2. terminate the contract for the provision of the goods, services or works with immediate effect.

Schedule 2 – Supply of Goods

* + - 1. **Definitions**

In this Schedule, unless the context requires otherwise, capitalised terms shall have the meaning given to that term as set out below or the meaning given to such term where it is defined elsewhere in this Agreement:

Delivery Date the date which the Goods are delivered to WDH by the Supplier in accordance with the terms and conditions of this Agreement.

Delivery Location the address which the Goods are delivered to WDH by the Supplier in accordance with the terms and conditions of this Agreement.

**Goods** means the whole of the Goods or any of them to be provided by the Supplier as identified in the Goods Specification pursuant to this Agreement from time to time.

**Goods Specification** means the specification of the Goods set out in the Invitation to Tender. Replacement Goods means any Goods which are the same as or substantially similar to any of the Goods and which WDH receives in substitution for any of the Goods following the expiry or termination of this Agreement, whether those Goods are provided by WDH internally and/or by any third party.

* + - 1. **The Goods**
         1. The Supplier shall ensure that the Goods:

correspond with their description and the Goods Specification;

be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by WDH expressly or by implication, and in this respect WDH relies on the Supplier's skill and judgement;

where they are manufactured products, be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery; and

comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

* + - * 1. The Supplier shall commence the supply of the Goods on the Commencement Date and shall thereafter continue to provide the Goods throughout the Contract Term in accordance with the terms of this Agreement.
        2. The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
      1. **Delivery and Inspection**
         1. WDH may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement.
         2. If following such inspection or testing WDH considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Paragraph 2.1, WDH shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
         3. WDH may conduct further inspections and tests after the Supplier has carried out its remedial actions.
         4. The Supplier shall ensure that:

the Goods are properly packed and secured in such manner as to enable them to reach their Delivery Location in good condition;

each delivery of the Goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

if the Supplier requires WDH to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

* + - * 1. The Supplier shall deliver the Goods:

on the Delivery Date;

at the Delivery Location; and

during WDH's normal business hours or as instructed by WDH.

* + - * 1. Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
        2. The Supplier shall not deliver the Goods in instalments without WDH's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle WDH to the remedies set out in Paragraph 4.
      1. **Remedies**
         1. If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in Paragraph 2.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, WDH may exercise any one or more of the following remedies:

to terminate this Agreement in accordance with Clause 23 (Termination for Breach);

to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

to recover from the Supplier any costs incurred by WDH in obtaining substitute goods from a third party; and

to claim damages for any other costs, loss or expenses incurred by WDH which are in any way attributable to the Supplier's failure to carry out its obligations under the Agreement.

* + - * 1. This Paragraph shall also apply to any repaired or Replacement Goods supplied by the Supplier.
        2. WDH's rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.
      1. **Title and Risk**
         1. Title and risk in the Goods shall pass to WDH upon Delivery.

Schedule 3 – TUPE / Employment

**Part 2 – Relevant Transfers**

* + - 1. **Definitions**
         1. In this Schedule, the following terms have the following meanings:

1. Direct Losses means all damages, losses, liabilities, claims, actions, costs, reasonable expenses (including legal or professional services, legal costs being on an agent / employer paying basis) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding Indirect Losses.
2. Employee Liability Information has the meaning given to it in Regulation 11 of TUPE.
3. Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under the Agreement.
4. Relevant Employees means the employees who are the subject of a Relevant Transfer.
5. Relevant Transfer means a relevant transfer for the purposes of TUPE.
6. Relevant Transfer Date means the date on which a Relevant Employee transfers to the Supplier and/or one or more Subcontractors by virtue of a Relevant Transfer.
7. Retendering Information has the meaning set out in paragraph 2.7.1(a) of Part 1 of this Schedule.
8. Return Date has the meaning set out in paragraph 2.8.2 of Part 1 of this Schedule.
9. Returning Employees has the meaning set out in paragraph 2.8.2 of Part 1 of this Schedule.
10. Third Party Contractor means any contractor (other than the Supplier) engaged by or on behalf of WDH to perform any service equivalent to a Service or any part of the Services.
11. Transferring Employee means an employee of the Third Party Contractor whose contract of employment becomes, by virtue of the application of TUPE in relation to the provision of works and services pursuant to the Agreement between WDH and the Supplier, a contract of employment with someone other than the Third Party Contractor.
12. TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246).
    * + 1. **TUPE**
           1. Relevant Transfers

WDH and the Supplier agree that the following events:

The Relevant Transfer Date.

Where the identity of a third party contractor or WDH of any works or services which constitutes or which will constitute part of the service is changed, whether in anticipation of changes pursuant to the Agreement or not, constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the Supplier and /or its Subcontractor except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors’ benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the Agreement) the Supplier will procure that the former and the new Subcontractor will both comply with their obligations under TUPE.

WDH will procure if it has the contractual or legal power to do so and shall otherwise use all reasonable endeavours to procure that the Third Party Contractor of a Relevant Employee will comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to the Agreement and the Supplier will comply and will procure that each Subcontractor will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the Agreement.

Emoluments and outgoings

In so far as it is able to do so, WDH will procure that the Third Party Contractor of a Transferring Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.

The Supplier will be responsible or will procure that any relevant Subcontractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

* + - * 1. Emoluments and outgoings

In so far as it is able to do so, WDH will procure that the Third Party Contractor of a Transferring Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.

The Supplier will be responsible or will procure that any relevant Subcontractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Supplier or any Subcontractor in connection with the provision of the service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

* + - * 1. Employment costs

In so far as it is able to do so, WDH has supplied to the Supplier certain information, prior to the time for return of tenders, (the First Employee List) in relation to each of those employees of the Third Party Contractor who it is expected, if they remain in the employment of the Third Party Contractor until immediately before the Relevant Transfer Date, would be Transferring Employees. WDH gives no warranty as to the accuracy or completeness of the information.

The Third Party Contractor shall provide all Employee Liability Information twenty (20) Working Days before the Relevant Transfer Date. This list is known as the First Employee List. The Third Party Contractor shall also supply to the Supplier within five (5) Working Days after the Relevant Transfer Date information, which was correct as at the Relevant Transfer Date, in respect of the Transferring Employees on all the same matters as should be provided in the First Employee List. This list is the ‘Final Employee List’ and where there is more than one Relevant Transfer Date the ‘Final Employee List’ means each list so prepared in respect of each part of the service and at each Relevant Transfer Date. WDH shall give no warranty as to the accuracy or completeness of any information in respect of those employees of the Third Party Contractor contained in any update of the First Employee List or in the Final Employee List.

Without prejudice to paragraph 2.3.2 above, WDH will procure, if it has the contractual or legal power to do so, and shall otherwise use all reasonable endeavours to procure that each Third Party Contractor or subcontractor will:

provide the Employee Liability Information to the Supplier at such time or times as are required by TUPE and

update the Employee Liability Information to take account of any changes as required by TUPE.

The Supplier has provided to WDH, and WDH has agreed, certain information (Workforce Information) which show, in respect of each of the parts of the service, the following information:

The workforce which the Supplier proposes to establish to provide the service (the ‘**Proposed Workforce**’) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;

The monthly costs of employing the Relevant Employees who are expected to be engaged in the Provision of the Service. These costs (the ‘**Remuneration Costs’**) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

The costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment)]. These costs (the ‘**Reorganisation Costs**’) have been calculated by the Supplier on the basis of (amongst other things) the information contained in the First Employee List

WDH and the Supplier will, (and the Supplier will procure that each and every Subcontractor will) take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the Agreement takes place smoothly with the least possible disruption to the service being provided to WDH under the Agreement and to the employees who transfer.

In addition to the Employee Liability Information covered under TUPE Regulation 11(2), where applicable, any training records are provided to the Supplier showing what training and qualifications are held by each Transferring Employee and the expiry dates of that training and qualification. This information is provided at least forty-five (45) days prior to the Relevant Transfer Date. Also, copies of full employee files for all Transferring Employees are provided to the Supplier within two weeks of the Relevant Transfer Date.

* + - * 1. Union Recognition

The Third Party Contractor will supply to the Supplier no later than three (3) months prior to the Relevant Transfer Date true copies of any union recognition agreement(s) and the Supplier will and will procure that each and every Subcontractor will in accordance with TUPE recognise the trade unions representing Transferring Employees (as relevant to each Subcontractor) after the transfer to the same extent as they were recognised before the Relevant Transfer Date.

The Supplier will procure that, on each occasion on which the identity of a Subcontractor changes pursuant to this Agreement, in the event that there is a Relevant Transfer, the new Subcontractor will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of any works or services in connection with this Agreement.

* + - * 1. Indemnities

The Supplier will indemnify and keep indemnified in full WDH and each and every new employer (New Employer) against:

All Direct Losses incurred by WDH or any New Employer in connection with or as a result of any claim or demand against WDH or any New Employer by (i) any person who is or has been employed or engaged by the Supplier or any Subcontractor in connection with the provision of any works or services under the Agreement or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Supplier and/or any Subcontractor after the Relevant Transfer Date.

All Direct Losses incurred by WDH or any New Employer in connection with or as a result of a breach by the Supplier of its obligations in Part 1 of this Schedule.

All Direct Losses incurred by WDH or any New Employer in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Supplier and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Supplier and / or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.

The Supplier will indemnify and keep indemnified in full WDH, against all Direct Losses incurred by WDH in connection with or as a result of:

Any proposed or actual change by the Supplier or any Subcontractor to the Relevant Employees working conditions, terms or conditions or any proposed measures of the Supplier or the relevant Subcontractor which are to any of the Relevant Employees material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Transfer Date.

Any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Supplier or Subcontractor to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

* + - * 1. Provision of details and indemnity

The Supplier will immediately upon request by WDH provide to WDH details of any measures (as referred to in Regulation 13 of TUPE) which the Supplier or any Subcontractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and will indemnify WDH against all Direct Losses resulting from any failure by the Supplier to comply with this obligation.

* + - * 1. Retendering

The Supplier will (and will procure that any Subcontractor will) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under Clause 23 (Termination for Breach), or Schedule 1 paragraph 4 (No Fault Termination) or as a consequence of WDH notifying the Supplier of its intention to re-tender this Agreement:

On receiving a request from WDH provide in respect of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the Services (the ‘**Assigned Employees**’) full and accurate details regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier or of any Subcontractor as the case may be until immediately before the termination date, would be Returning Employees (the ‘**Retendering Information**’).

Provide the Retendering Information promptly and at no cost to WDH.

Notify WDH forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise.

Be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with WDH’s prior written consent (not to be unreasonably withheld or delayed).

Be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with WDH’s prior written consent, which should not be unreasonably withheld.

Be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing any part of the service to provide any such works and services save with WDH’s prior written consent (not to be unreasonably withheld or delayed).

Without prejudice to paragraphs 2.7.1 and 2.7.3 of Part 1 of this Schedule, the Supplier will provide and will procure that any Subcontractor will provide the Employee Liability Information to WDH at such time or times as are required by TUPE and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

The Supplier will and will keep indemnified in full WDH and any New Employer against all Direct Losses arising from any claim by any Party as a result of the Supplier or Subcontractor failing to provide or promptly to provide WDH and / or any New Employer where requested by WDH with any Retendering Information and / or Employee Liability Information or to provide full Retendering Information and / or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and / or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the Supplier by WDH and was materially inaccurate or incomplete when originally provided.

* + - * 1. Termination of Agreement

On the expiry or earlier termination of this Agreement, WDH and the Supplier agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the Services but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.

For the purposes of paragraph 2.8.1 and this paragraph 2.8.2, ‘**Returning Employees**’ will mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Agreement whose employment transfers to WDH or a New Employer pursuant to TUPE. Upon expiry or termination of the Agreement for whatever reason (such date being termed the ‘**Return Date**’), the provisions of this paragraph will apply:

The Supplier will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier or the Subcontractor (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or Subcontractors up to the Return Date are satisfied,

Without prejudice to paragraph 2.8.2(a) of Part 1 of this Schedule, the Supplier will:

Remain (and procure that Subcontractors will remain) (as relevant) responsible for all the Supplier’s or Subcontractor’s employees (other than the Returning Employees) on or after the time of expiry or termination of the Agreement and will indemnify WDH and any New Employer against all Direct Losses incurred by WDH or any New Employer resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier’s or Subcontractor’s employees who do not constitute the Returning Employees.

In respect of those employees who constitute Returning Employees the Supplier will indemnify WDH and any New Employer against all Direct Losses incurred by WDH or any New Employer resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of WDH or any New Employer.

WDH will be entitled to assign the benefit of this indemnity to any New Employer.

* + - * 1. Subcontractors

In the event that the Supplier enters into any subcontract in connection with this Agreement, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this Schedule and will procure that the Subcontractor complies with such terms. The Supplier will indemnify and keep WDH indemnified in full against all Direct Losses, incurred by WDH or any New Employer as a result of or in connection with any failure on the part of the Supplier to comply with this paragraph and/or the Subcontractor’s failure to comply with such terms.

* + - * 1. Data Protection

Where WDH holds information in respect of any of the Supplier’s employees, WDH will comply with (and ensure that all its employees comply with) any notification requirements under the Data Protection Legislation and will observe its obligations under the Data Protection Legislation which arise in connection with the Agreement.

**Part 2 - Pensions**

* 1. Supplier Scheme

1.1.1 The Supplier will or will procure that any relevant Subcontractor will not later than the Relevant Transfer Date nominate to WDH in writing the occupational pension scheme or schemes which it proposes will be ‘**the Supplier Scheme’**. Such pension scheme or schemes must be:

(a) established within three (3) months after to the Relevant Transfer Date, and

(b) registered within the meaning of the Finance Act 2004.

1.1.2 The Supplier agrees that it will and will procure that any relevant Subcontractor will procure that:

the Eligible Employees will by three (3) months after the Relevant Transfer Date or as soon as reasonably practicable be offered membership of the Supplier Scheme with effect from and including the Relevant Transfer Date),

1.1.3 If the Supplier Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the Supplier or relevant Subcontractor

* 1. Undertaking from the Supplier

1.2.1 The Supplier undertakes to WDH (for the benefit of WDH itself and for WDH as agent and trustee for the benefit of the Eligible Employees) that:

(a) All information which WDH or the administrating authority (Administering Authority) of the Local Government Pension Scheme (LGPS) or their respective professional advisers may reasonably request from the Supplier or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 2.7 of Part 1 of this Schedule or Part 2 of this Schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible

(b) It will not and will procure that any relevant Subcontractor will not, without the consent in writing of WDH (which will not be unreasonably withheld but will be subject to the payment by the Supplier or the relevant Subcontractor of such reasonable costs as WDH or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on WDH a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given

(c) until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 2.1 to 2.6 of Part 1 of this Schedule inclusive without the consent in writing of WDH and the Administering Authority (not to be unreasonably withheld or delayed).

(d) It will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the Supplier Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the service without the prior written agreement of WDH (not to be unreasonably withheld or delayed) provided that the Supplier and / or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre‑existing contractual obligations to any Eligible Employees.

* 1. Pension issues on expiry or termination of the Agreement

The Supplier shall (and shall procure that each relevant Subcontractor shall):

1.3.1 Maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees).

1.3.2 Promptly provide to WDH such documents and information which WDH or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement.

1.3.3 Fully co-operate (and use best endeavours to procure that the trustees of the Supplier’s Scheme will fully co-operate) with the reasonable requests of WDH or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of any service which is part of the Services.

Schedule 4 – Charges and Payments

**Insert Charges and Payment provisions from Suppliers Tender response here**

The Supplier must ensure that it has received a valid Order form or Purchase Order Number prior to commencing any manufacture or supply of the Goods or delivery of Services. WDH shall have no obligation to make any payment unless the Purchase Order Number is stated on the Supplier’s invoice.

1. In consideration for the supply of Services and / or Goods by the Supplier, WDH shall, subject to paragraph 3 below, pay the Supplier the price set out in the tender or quotation or the Order, which shall be the full and exclusive remuneration of the Supplier in respect of the Services and / or Goods. Unless otherwise agreed in writing by WDH, the price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and/or the delivery of the Goods.
2. In respect of Goods, the Supplier shall invoice WDH on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice WDH on completion of the Services. Each invoice shall include such supporting information required by WDH to verify the accuracy of the invoice, including but not limited to the relevant Order number.
3. WDH’s standard payment terms are thirty (30) days from the receipt of a valid undisputed VAT invoice.
4. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow WDH to inspect such records at all reasonable times on request

5) Where the Supplier enters into a Sub-Contract:

#### a) the Supplier will consider and verify a submitted invoice in a timely fashion;

#### b) the Supplier shall pay the Subcontractor any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Supplier has determined that the invoice is valid and undisputed; and

c) the Supplier shall include in that Subcontract a provision requiring the counterparty to that Sub contract to include in any Subcontract which it awards provisions having the same effect as paragraph b) above.

**Price Variation**

6) a) The Prices will be fixed and firm throughout the initial twelve (12) month period of the contract.

b) There will be an opportunity for a pricing review upon each anniversary of the contract (ie: every twelve (12) months) with any revised prices agreed between the parties becoming effective for the forthcoming twelve month period, including any periods of extension agreed between the parties.

c) The Supplier must furnish WDH with evidence to justify and support any requested price increases. WDH will not accept any price increase unless such evidence is provided and deemed, at WDH’s sole discretion to justify and support the price increase requested by the Supplier. In any event any price increases will be capped at the prevailing rate of inflation at the time, as measured by the Consumer Price Index (CPI).

**Schedule 5 – Specification**

**Insert Specification Here**

Schedule 6 – Supplier’s Tender Response

**Insert relevant excepts/tender submission here**

Schedule 7 – Change Control Notice

|  |  |
| --- | --- |
| Contract number: |  |
| Service: |  |
| Supplier: |  |
| Details of Change Required: |  |
| Reasons for change: |  |
| Impact of change: |  |
| Implementation date required: |  |
| Financial implications: |  |

|  |  |
| --- | --- |
| Signed: |  |
| Name of WDH’s Representative: |  |
| Post holder of WDH’s Representative |  |

|  |  |
| --- | --- |
| Date Issued: |  |

**Supplier:**

|  |  |
| --- | --- |
| Response: | Accept |
|  | Reject |
| Reason for Rejection: |  |

|  |  |
| --- | --- |
| Signed: |  |
| Name of Supplier’s Personnel: |  |
| Post holder of Supplier’s Personnel |  |

|  |  |
| --- | --- |
| Date Issued: |  |

Schedule 8 – Data Processing, Personal Data, Data Subjects and Security

**Part A – Schedule of Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Data Controller(s), who may take account of the views of the Processor, however the final decision as to the content of this Schedule shall be with WDH at its absolute discretion.

1. The contact details of the WDH’s Data Protection Officer/Lead are:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

2. The contact details of the Supplier’s Data Protection Officer/Lead are:

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

3. The Processor shall comply with any further written instructions with respect to processing by WDH.

4. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of WDH and Processor | **[The Controller is WDH, and the Supplier is its Processor**  The Parties acknowledge that for the purposes of Data Protection Legislation, WDH is WDH, and the Supplier is the Processor in accordance with Clause 1.1. in respect of: **provide details]**  **[The Parties are Joint Controllers**  The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of: **provide details]**  **[The Parties are Independent Controllers of Personal Data**  The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of: **provide details]**  [**Guidance:** You may need to vary this section where WDH and the Supplier have different or multiple relationships. For example, where the Parties are Joint Controllers. You should take advice before doing so.] |
| Subject matter of the processing | [This should be a high level, short description of what the processing is about i.e., its subject matter of the contract.  Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service].] |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  The purpose might include: employment processing, statutory obligation, recruitment assessment etc] |
| Type of Personal Data being Processed | [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc] |
| Categories of Data Subject | [Examples include: employees (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc] |
| International transfers and legal gateway | [Note **any transfer outside the UK** is an International Transfer. Explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g., adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract] |
| Plan for return and destruction of the data once the processing is complete | [Describe how long the data will be retained for, how it be returned or destroyed] |

**Part B - Security**

**Guidance.** The technical security requirements set out below provide an indication of the types of security measures that might be considered, in order to protect Personal Data and confidential information. More, or less, measures may be appropriate depending on the subject matter of the contract, but the overall approach must be proportionate. The technical requirements must also be compliant with legislative and regulatory obligations for content and data, such as UK GDPR.]

The example technical security requirements set out here are intended to supplement, not replace, security schedules that will detail the total contractual security obligations and requirements that the Processor (such as., a supplier) will be held to account to deliver under contract. Processors are also required to ensure sufficient ‘flow-down’ of legislative and regulatory obligations to any third-party Sub-processors.

|  |  |
| --- | --- |
| **Description** | **Details or state not applicable** |
| **External Certifications** – for example,., ISO 27001, PCI-DSS, Cyber Essentials. Confirm that the service /processing is within the scope of any certification and what happens if certifications lapse during the contract. |  |
| **Security Classification of Information for example**, Refer to categories of personal data and data subjects**.**  If the provision of the Services requires the Supplier to Process WDH Data which is classified, the Supplier shall implement such additional measures as agreed with WDH from time to time to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations. |  |
| **End User Devices, for example, t**he Supplier shall ensure that any WDH Data which resides on a mobile, removable, or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with WDH except where WDH has given its prior written consent to an alternative arrangement.  The Supplier shall ensure that any device which is used to Process WDH Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>. |  |
| **Testing, for example,** the Supplier shall at their own cost and expense, procure a CHECK or CREST Certified Supplier to perform an ITHC or Penetration Test prior to any live WDH data being transferred into their systems. The ITHC scope must be agreed with WDH to ensure it covers all the relevant parts of the system that processes, stores or hosts WDH data. Frequency / maintenance of testing throughout the contract must be defined. |  |
| **Networking, for example,** the Supplier shall ensure that any WDH Data which it causes to be transmitted over any public network (including the Internet, mobile networks, or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted and at rest. |  |
| **Personnel Security, for example,** all Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include verification of the individual's identity; verification of the individual's nationality and immigration status; and verification of the individual's employment history; verification of the individual's criminal record.  Refreshing of checks for key personnel must be defined. |  |
| **Identity, Authentication and Access Control, for example,** the supplier must operate an appropriate access control regime, based on least privileges, or an agreed alternative, to ensure that users and administrators of the service are uniquely identified. The supplier must retain records of access to the physical sites and to the service. |  |
| **Data Destruction / Deletion, for example,** the Supplier must be able to demonstrate they can supply a copy of all data on request or at termination of the service and must be able to securely erase or destroy all data and media that WDH data has been stored and processed on. |  |
| **Audit and Protective Monitoring, for example,** the Supplier shall collect audit records which relate to security events in delivery of the service or that would support the analysis of potential and actual compromises. To facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and / or accounts accessing higher than average amounts of WDH Data. The retention periods for audit records and event logs must be agreed with WDH and documented. |  |
| **Location of WDH Data, for example,** refer to Annex A, international transfer / legal gateway requirements.  The Supplier shall not and shall procure that none of its Sub‑Contractors, process WDH Data outside the UK without the prior written consent of WDH and the Supplier shall not change where it or any of its Sub‑Contractors process WDH Data without WDH's prior written consent which may be subject to conditions. |  |
| **Vulnerabilities and Corrective Action for example,** supplier shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5. It is expected that critical and high priority patches are implemented within 14 days at the latest.  Supplier must ensure that all COTS Software and Third-Party COTS Software be kept up to date such that all Supplier COTS Software and Third Party COTS Software are always in mainstream support. |  |
| **Secure Architecture, for example,** supplier should design the service in accordance with:   * NCSC ‘Security Design Principles for Digital Service’ * NCSC ‘Bulk Data Principles’ * NSCS ‘Cloud Security Principles’ |  |
| **Physical Security, for example,** describe how all locations are protected and access is controlled. Controls must adequately prevent unauthorised access. |  |
| **Business Continuity and Disaster Recovery arrangements, for example,** describe SLAs, MTTR and so on. Arrangements and plans to protect the WDH service must be described. |  |

**Part C Joint Controller Terms**

Contact Information Governance for wording to be inserted.