

# Conditions of Contract for the Purchase of CP1341-16 Social Care Assessment Reviews

<b>Parties:</b>	Devon County Council of County Hall, Topsham Road, Exeter, Devon, EX2 4QD ( " <b>DCC</b> " ); and	
	[Insert full company name, registered address and registered number (or full name and address of individual supplier)] (the " <b>Supplier</b> ")	
<b>Date:</b>		
<b>Contract number:</b>	<b>Reference</b> CP1341-16 Social Care Assessment Reviews	
<b>Supplier Address for Notices:</b>		
<b>Designated Representatives:</b>	DCC: [       ] Supplier:       [       ] or such other person as is notified by a party to the other in writing.	
<b>Standard Terms:</b>	The following parts of this Contract shall apply to the provision of Services by the Supplier to DCC:	
	<b>Description</b>	<b>Does it apply?</b>
	Standard Services Terms*	YES
	Special Terms*	YES
	Specification*	YES
*These terms have been listed in order of precedence		
<b>Insurance:</b>	Public liability insurance: £5 million. Professional indemnity insurance: £5million. Employer's liability insurance: £2million.  The Supplier shall ensure that DCC's interest is noted on each insurance policy, or that a generic interest clause has been included.	

**THIS AGREEMENT** has been executed by or on behalf of the parties on the date first written above.

**Signed by a duly authorised  
signatory for and on behalf of  
Devon County Council:**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

*Date*

\_\_\_\_\_

*Name*

Status: \_\_\_\_\_

**Signed by a duly authorised  
signatory of the Supplier:**

\_\_\_\_\_

**Signature**

\_\_\_\_\_

*Date*

\_\_\_\_\_

*Name*

Status: \_\_\_\_\_

## **COMMERCIAL TERMS RELATING TO SERVICES**

**Commencement Date:**

27/02/2017

<b>Services Term:</b>	<p><b>Fixed Term</b></p> <p>The Services shall start on the Commencement Date specified in these Commercial Terms and shall terminate automatically without notice on [[26/02/2019].</p> <p>There is a further option to extend the contract on agreement for a further two periods of 12 months which if applied shall mean that the contract terminates on the 26/02/2019</p>
<b>Premises:</b>	Not Applicable
<b>Other Documents incorporated in the Contract:</b>	The invitation to tender document including specification (section B), Special Terms (section D), the contractor's response to the invitation to tender and any clarifications
<b>Specification:</b>	Section B ' Specification' of the ITT document
<b>Materials to be delivered:</b>	[Specify materials to be delivered] if not applicable / state not applicable
<b>Service Levels (if applicable):</b>	Refer to Section B Specification of the ITT: Performance management information including targets and reports to be submitted weekly
<b>Permitted Sub-Contractors:</b>	[Specify if any] if not applicable / state not applicable
<b>Price / Fees:</b>	<p>[Insert fees / prices or details of where these can be found]</p> <p>Refer to Section F Pricing Schedule of the Contractors response to the Invitation to Tender</p>
<b>Expenses:</b>	The Fees are inclusive of expenses except for mileage. Mileage to and from the Care Reviews will be paid at Devon County Council's standard mileage rate of £0.45 a mile.

# Terms and Conditions for Purchase of Services

## 1 DEFINITIONS

### 1.1 In this Contract:

"**Bribery Act**" means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

"**Business Days**" means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

"**Conditions**" means the terms and conditions set out in this document as amended from time to time in accordance with Condition 26.12;

"**Contract**" means the contract between the Purchaser and the Supplier for the Services comprising the Order, these Conditions, and any other documents specified by the Purchaser as being part of the Contract in the Order and/or these Conditions;

"**Data Protection Legislation**" the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"**Directive**" means the Public Contracts Directive (Directive 2014/24/EU) of the European Parliament and of the Council;

"**Environmental Information Regulations**" means the Environmental Information Regulation 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"**Fee**" means the fee set out in the Order, or, if no fee is quoted, the fee set out in the Supplier's published fee list as at the date the Contract came into existence;

"**FOIA**" means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"**Information**" has the meaning given under section 84 of the FOIA or the meaning given in Regulation 5 of the Environmental Information Regulations as the context requires;

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and similar or equivalent rights or forms of protection in any part of the world;

"**Order**" means the Purchaser's purchase order form;

"**Personnel**" means any employee, agent, adviser or permitted Sub-Contractor of the Supplier;

**"Purchaser"** means Devon County Council whose address is County Hall, Topsham Road, Exeter, Devon, EX2 4QD;

**"Premises"** means the location where the Services are to be performed, as specified in the Order;

**"Prohibited Act"** means the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Purchaser a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- b) 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 Contract;
- c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Purchaser; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Purchaser;

**"Project Materials"** means any and all works of authorship, artistic, literary and other works, inventions and materials designed, created, developed, written or prepared by the Supplier (or the Supplier's Personnel) in the course of providing the Services, whether individually, collectively or jointly with the Purchaser and on whatever media;

**"Regulation"** means a regulation of the Public Contracts Regulations 2015 (SI 2015/102);

**"Request for Information"** has the meaning given in the FOIA or the Environmental Information Regulations, as relevant;

**"Services"** means the Services specified in the Order;

**"Sub-Contract"** any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;

**"Sub-Contractor"** the third parties that enter into a Sub-Contract with the Supplier;

**"Supplier"** means the person, firm or company set out on the Order;

**"Supplier Party"** the Supplier's agents and contractors, including each Sub-Contractor; and

**"Supplier Personnel"** all employees, agents, consultants and contractors of the Supplier or of any Sub-Contractor;

**"Treaties"** means the Treaty on European Union and the Treaty on the Functioning of the European Union ("**TFEU**").

## 2 BASIS OF CONTRACT

- 2.1 The terms and conditions of the Contract are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern all orders for and supplies of Services to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or confirmation of order, specification or similar document will form part of this Contract and the Supplier hereby waives irrevocably any right which it otherwise might have to rely on such terms and conditions.
- 2.2 The Order constitutes an offer by the Purchaser to purchase the Services from the Supplier in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing written acceptance of the Order; or
  - 2.3.2 the Supplier carrying out any act consistent with fulfilling the Order,
- at which point and on which date ("**Commencement Date**") the Contract shall come into existence.

## 3 PROVISION AND VARIATION OF THE SERVICES

The Supplier shall from the Commencement Date and for the duration of the Term provide the Services to the Purchaser in accordance with the terms of the Contract. The Purchaser reserves the right to modify: the Services; the Fee; or the date of completion of provision of the Services, upon giving the Supplier two (2) weeks' written notice. Any such modification shall be agreed in writing by the parties. Failing agreement the matter shall be determined by the dispute resolution procedure set out in Condition 25.

## 4 PURCHASER'S OBLIGATIONS

- 4.1 The Purchaser shall:
- 4.1.1 provide the Supplier with reasonable access at reasonable times to the Premises for the purpose of providing the Services; and
  - 4.1.2 provide such information to the Supplier as the Supplier may reasonably request and the Purchaser considers reasonably necessary for the purpose of providing the Services.

## 5 SUPPLIER'S OBLIGATIONS

- 5.1 In providing the Services the Supplier shall:
- 5.1.1 co-operate with the Purchaser in all matters relating to the Services, and comply with all instructions of the Purchaser;
  - 5.1.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; and in accordance with all laws and regulations that relate to the Services including obtaining all relevant permits and licences;
  - 5.1.3 use Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - 5.1.4 ensure that the Services conform with the description in the Order;
  - 5.1.5 use the best quality, tools, vehicles, goods, materials, standards and techniques and ensure that all the goods and materials supplied and used in the Services or transferred

to the Purchaser, will be free from defects in workmanship, installation and design; and

5.1.6 comply with the Purchaser's internal environmental policies, and all existing and future environmental regulations and legislation.

5.2 The Supplier agrees that time is of the essence for the Supplier's performance of the Contract.

## **6 SUPPLIER'S PERSONNEL**

6.1 The Supplier shall use all reasonable endeavours to prevent unauthorised persons from entering the Premises. The Purchaser may give notice to the Supplier that a person is not to be admitted, or is to be removed from the Premises. The Supplier shall use reasonable endeavours to comply with any such notice. The Supplier shall replace any person removed under this Condition with another suitably-qualified person and ensure that any access pass to the Premises issued to the person is surrendered.

6.2 The Supplier shall at the request of the Purchaser provide a list of names and addresses of all persons who may provide or be concerned with the provision of the Services. The Supplier shall specify the capacities and give such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require. Any such information will be provided in accordance with the provisions set out in Condition 6.1.

6.3 Any decision of the Purchaser to admit or remove Personnel from the Premises is final.

## **7 MANNER OF CARRYING OUT THE SERVICES**

7.1 The Supplier shall not deliver any materials, plant or other items nor commence any work at the Premises without obtaining the Purchaser's prior written consent.

7.2 The Supplier's access to the Premises shall be non-exclusive and shall be for the purpose of allowing the Supplier to carry out the Services. The Supplier shall cooperate with any third party as the Purchaser may reasonably require.

7.3 The Purchaser may at any time during the provision of the Services request that:

7.3.1 any materials which in the opinion of the Purchaser are hazardous, noxious or not necessary for the provision of the Services are removed from the Premises;

7.3.2 any inadequate materials are removed and substituted for proper and suitable materials; and/or

7.3.3 any work which in respect of material or workmanship is not in the opinion of the Purchaser to be of the standard required (as set out in the Contract) is replaced/repeated so that it meets the specified standard.

7.4 On completion of the Services the Supplier shall remove its plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

## **8 FEE**

8.1 In consideration for the proper provision of the Services in accordance with this Contract, the Purchaser shall pay to the Supplier the Fee for the Services. No increase in the Fee will be accepted by the Purchaser unless agreed in writing.

8.2 No expenses shall be payable to the Supplier by the Purchaser except as expressly set out in the Contract.

- 8.3 The Purchaser shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier to any other customer.

## **9 PAYMENT TERMS**

- 9.1 The Supplier shall invoice the Purchaser on completion of the Services to the satisfaction of the Purchaser.
- 9.2 The invoice shall quote the order number set on the Order and shall be valid for VAT purposes. All invoices shall be submitted to the address of the Purchaser as set out in Condition 1.1.
- 9.3 Where the Supplier submits an invoice to the Purchaser in accordance with clauses 9.1 and 9.2, the Purchaser shall consider and verify that invoice within a timely fashion and payment shall be made by the Purchaser within thirty (30) days from the date on which the Purchaser has determined that the invoice is valid and undisputed.
- 9.4 Where the Purchaser fails to consider and verify an invoice in accordance with clause 9.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 9.3 after a reasonable time has passed.
- 9.5 If the Purchaser fails to pay any amount properly due and payable by it under the Contract by the due date, the Supplier shall be entitled but not obliged to charge interest on the overdue amount, from the due date up to the date of actual payment, at the rate of **2%** (two per cent) per annum above the base rate of the time being of the Bank of England. This Condition 9.5 shall not apply to payments that the Purchaser disputes in good faith.
- 9.6 Payment will be made monthly in arrears for the care reviews that have been completed in that month upon the receipt of an invoice. For the avoidance of doubt the point in time of when a review will be classed as 'completed' will be once the new / changed package has been identified and agreed by the service provision provider, and the person.
- 9.7 The cost of each individual care review will be calculated using the following formula.
- 9.8 'Total Price Submitted' divided by '400 care reviews' = 'Price per care review'
- 9.9 The monthly invoices must be submitted to the identified Devon County Council finance lead (the contact details for this finance lead will be provided upon the award of the contract), and the invoices must include the number of completed care reviews that month. This can be within the invoice or on a separate sheet attached to the invoice.

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## **11 FREE-ISSUE MATERIALS**

- 11.1 The Purchaser may for the purpose of the Contract issue materials (free of charge) to the Supplier. The Purchaser shall retain ownership of such materials. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Purchaser of any surplus materials remaining after completion of the Services and shall dispose of them as the Purchaser may direct.
- 11.2 If the Supplier or their Personnel waste (by bad workmanship or negligence) such materials the Supplier shall be responsible for the cost and expense of replacing these materials. Without prejudice to any other rights of the Purchaser, the Supplier shall deliver up such materials, whether processed or not, to the Purchaser on demand.



## **12 AUDIT**

The Supplier shall keep and maintain until six years after the Contract has been completed, or covering a period as may be agreed between the parties, full and accurate records of the agreement including:

- 12.1.1 the Services provided under it;
- 12.1.2 all expenditure reimbursed by the Purchaser;
- 12.1.3 all payments made by the Purchaser;

the Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required in connection with the Contract.

## **13 DEVON PROCUREMENT PARTNERSHIP CONTRACTS**

- 13.1 Obligations placed upon the Supplier as regards the Purchaser shall apply equally as regards the requirements of statutory undertakings or such other bodies or establishments as may during the Term of the Contract be included in the Contract by virtue of The Local Authorities (Goods and Services) Act 1970.
- 13.2 Further to clause 13.1 above, if any Services are ordered by a body other than the Purchaser then the order shall constitute a contract between the Supplier and that body subject to the terms and conditions in this Contract. The Purchaser shall not be responsible for any act or omission of that body.
- 13.3 Where the Supplier uses a third party for the distribution or delivery of any Service provided as part of this Contract then the third party shall be deemed to be the agent of the Supplier.

## **14 SOCIAL NETWORKING AND INTERNET SAFETY**

- 14.1 The Supplier must have a social networking and/or social media policy and guidance for all Supplier Personnel.
- 14.2 The Supplier is only permitted to use social media platforms to market or deliver the Services when the Purchaser has given prior written approval to do so.
- 14.3 If, subject to clause 14.2, 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.
- 14.4 If the Supplier uses social media platforms to market or deliver the Services, a risk assessment must be undertaken by the Supplier at the onset; a copy must be provided to the Purchaser and the Purchaser may request a further assessment at any time.

## **15 DISCLOSURE AND BARRING SERVICE CHECKS (PREVIOUSLY KNOWN AS CRB) AND OTHER VETTING CHECKS**

- 15.1 The Supplier shall ensure that appropriate checks are undertaken on all Supplier Personnel and volunteers engaged to provide or supervise the provision of the Services at those Premises where they will come into contact with children or vulnerable adults as more particularly set out in sub-clauses 15.2 to 15.11 inclusive below.
- 15.2 The Supplier acknowledges and accepts that the Services being delivered under this Contract may bring it and its Supplier Personnel into contact with children and vulnerable adults. Accordingly, any Supplier Personnel employed or engaged by the Supplier in delivering the Services at those Premises where they will come into contact with children or vulnerable adults must be satisfactorily

cleared through the Disclosure & Barring Service.

- 15.3 The Supplier shall ensure that, save as provided in sub-clause 14.5, before any member of the Supplier Personnel performs the Services and on every third anniversary thereafter:
- 15.3.1 that member of the Supplier Personnel is questioned as to whether they have any convictions, cautions, reprimand, bind-overs or warnings or are subject to any pending criminal proceedings for which they have been formally charged which may be relevant to their employment with the Supplier; and
  - 15.3.2 the results are obtained of an Standard level DBS check made with the Disclosure & Barring Service in accordance with Part V of the Police Act 1997; and
  - 15.3.3 the Purchaser is informed that the aforementioned check has been undertaken and the Supplier shall obtain the consent of the Supplier Personnel to the examination by the Purchaser of the records obtained through the aforementioned DBS checks.
- 15.4 Where the aforementioned checks disclose a conviction, caution or other information the Supplier shall immediately notify the Purchaser and provide it with the relevant information. Where the outcome of the check suggests that the member of Supplier Personnel should not be engaged to provide or supervise the provision of the Services, the Purchaser shall, acting reasonably, be entitled to require the Supplier to remove from the Services the member of Supplier Personnel. Upon being advised of this requirement the Supplier shall immediately remove the member of Supplier Personnel and shall not re-instate that person without the prior written consent of the Purchaser.
- 15.5 Until the DBS clearance of the Supplier Personnel is confirmed then the Supplier Personnel must either only attend a site or premises covered by this Contract when it is unoccupied, or if occupied be partnered at all times by a member of the Supplier Personnel who has DBS clearance. A suitable written risk assessment approved by the Purchaser shall be undertaken by the Supplier before any member of Supplier Personnel engaged to provide or supervise the provision of the Services attends a site or premises where DBS clearance is required.
- 15.6 The Supplier shall ensure an appropriate "Safeguarding Policy" is in place at all times throughout the Contract, such policy to be in line with the DBS Code of Practice. At the Purchaser's request, the Supplier shall provide a copy of its Safeguarding Policy to the Purchaser.
- 15.7 The Purchaser shall be entitled to check against its records the names of any Supplier Personnel engaged by the Supplier to provide or supervise the provision of the Service and shall be entitled to exercise the same rights as set out in clause 15.4. In checking such records the Purchaser shall be entitled to request from the Supplier, and the Supplier shall be obliged to provide, such information as the Purchaser shall reasonably require enabling it to undertake the aforementioned check.
- 15.8 The Purchaser shall in no circumstances be liable either to the Supplier and or any member of its Supplier Personnel in respect of any liability, loss or damage occasioned by any action whatsoever taken in accordance with clauses 15.4, 15.7 or 15.10 and the Supplier shall fully and promptly indemnify and keep the Purchaser indemnified against any claim made against the Purchaser by such member of Supplier Personnel.
- 15.9 The Supplier shall pay any charges which may be levied against the Purchaser by the Disclosure & Barring Service and any costs of the Purchaser where the Purchaser is processing any DBS applications on behalf of the Supplier.
- 15.10 The Supplier shall ensure that it has internal systems and processes in place such that the Purchaser is notified immediately of any member of Supplier Personnel who, subsequent to the carrying out of the checks described in clause 15.3 is subject to any convictions, cautions, pending criminal proceedings or any other information which may be relevant to their employment with the

Supplier. In such circumstance the Purchaser may request the Supplier to remove the member of Supplier Personnel from the provision of the Services and upon such request the Supplier shall immediately remove the member of Supplier Personnel and shall not reinstate them without the prior written consent of the Purchaser.

- 15.11 The Supplier shall comply with any additional requirements of the Purchaser which, without limitation, arise from the introduction of further legislation, codes of practice, safeguarding policies relating to the protection of children and/or vulnerable adults.

## **16 INTELLECTUAL PROPERTY RIGHTS**

- 16.1 Save as otherwise expressly provided in this Contract, neither the Supplier nor the Purchaser shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.

- 16.2 Subject to Condition 16.5 all Intellectual Property Rights in the Project Materials shall be vested in the Purchaser.

- 16.3 The Supplier hereby irrevocably assigns to the Purchaser (including by way of present assignment of present and future rights) with full title guarantee, absolutely and free from all encumbrances, all the Supplier's right, title and interest in and to any and all present and future Intellectual Property Rights throughout the world for the full unexpired period of such rights and all renewals, reversions and extensions of such period as may be provided under any applicable law throughout the world in or relating to all Project Materials together with all accrued rights of action in respect of any infringement of such rights for the full term of such rights.

- 16.4 The Supplier agrees to waive any claim to moral rights conferred on the Supplier by the Copyright, Designs and Patents Act 1988 or any rights of a similar nature under laws now or in the future in force in any jurisdiction which the Supplier may have in and to any and all Project Materials.

- 16.5 To the extent that any of the Project Materials contain any materials owned or controlled by a third party, the Supplier shall:

16.5.1 disclose the existence of such materials to the Purchaser; and

16.5.2 in consultation with the Purchaser obtain such licences, assignments or other consents as are required to permit the use of such third party materials by the Purchaser.

- 16.6 The Supplier shall on request by the Purchaser and at its expense, promptly deliver to the Purchaser all copies of the Project Materials in its control or possession.

## **17 LIABILITY**

- 17.1 Neither party limits its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors for fraud; or breach of any obligation as to title implied by statute; or any indemnity given under this Contract.

- 17.2 Subject to Condition 17.1 the aggregate liability of the Purchaser in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Contract, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the Fee paid by the Purchaser to the Supplier pursuant to this Contract.

- 17.3 Subject to Condition 17.1 neither party shall be liable, in contract, tort (including negligence) or for breach of statutory duty in any other way for:

17.3.1 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings;

17.3.2 any loss of goodwill or reputation; or

17.3.3 any indirect or consequential losses

suffered or incurred by either party arising out of or in connection with any matter under this Contract.

17.4 The Supplier acknowledges and agrees that the limitations contained in this Condition 17 are reasonable in all the circumstances and confirms that it has taken independent legal advice.

## 18 INDEMNITY AND INSURANCE

18.1 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability under or in connection with the Contract (and whether a claim is made in respect of such liability during or after termination of the Contract), and shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

18.2 The Supplier shall keep the Purchaser indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Purchaser as a result or in connection with:

18.2.1 any claim made against the Purchaser by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents, or Sub-Contractors; and

18.2.2 any claim brought against the Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.

## 19 CONFIDENTIALITY AND FREEDOM OF INFORMATION

19.1 Subject to Conditions 19.2, 19.4 and 19.5 both parties shall procure that all information disclosed by one to the other in accordance with the terms of this Contract ("**Confidential Information**") shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by this Contract and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Contract.

19.2 Either party shall promptly notify the other if any Confidential Information is required by law (including but without limitation pursuant to the FOIA and/or the Environmental Information Regulations) to be disclosed by it or any other person receiving it under or pursuant to this Contract and shall co-operate with the other party regarding the manner of such disclosure (but without prejudice to any obligation to comply with any law). Any request received by either party under the FOIA or the Environmental Information Regulations will be complied with promptly and in a timely manner.

19.3 The obligations of confidentiality shall not apply to any information which:

19.3.1 is or becomes publicly known through no act or omission of the receiving party;

19.3.2 was in the other party's lawful possession prior to the disclosure;

19.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

- 19.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; and/or
- 19.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body (including but without limitation pursuant to the FOIA and/or the Environmental Information Regulations) provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement, to the extent it is permitted to do so by law.

19.4 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Purchaser shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

19.5 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Purchaser to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

19.6 The Supplier shall not refer to the Purchaser or the Order in any advertisement without the Purchaser's prior written agreement.

## 20 RETURN OF INFORMATION

20.1 At the request of the Disclosing Party, the Recipient shall:

- 20.1.1 destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
- 20.1.2 erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
- 20.1.3 certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this agreement. The provisions of this agreement shall continue to apply to any documents and materials retained by the Recipient.

20.2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

20.3 For the purposes of this clause the **Disclosing Party** shall mean the party which discloses or makes available directly or indirectly Confidential Information and the **Recipient** shall mean the party which receives or obtains directly or indirectly Confidential Information.

## 21 DATA PROTECTION

21.1 The Supplier shall (and shall procure that any of its Supplier Personnel involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.

- 21.2 Notwithstanding the general obligation in clause 21.1, where the Supplier is processing Personal Data as a Data Processor for the Purchaser, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and
- 21.2.1 provide the Purchaser with such information as the Purchaser may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;
  - 21.2.2 promptly notify the Purchaser of any breach of the security measures required to be put in place pursuant to clause 21.2;
  - 21.2.3 permit the Purchaser or the Purchaser's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 12, the Purchaser's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Purchaser to enable the Purchaser to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract; and
  - 21.2.4 ensure it does not knowingly or negligently do or omit to do anything which places the Purchaser in breach of the Purchaser's obligations under the Data Protection Legislation.
- 21.3 The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.
- 21.4 The Supplier shall comply with the Purchaser's Information Security Incident Reporting Policy, as amended from time to time and notified to the Supplier in writing.
- 21.5 In this Condition 20 "**personal data**", "**data controller**" and "**data processor**" have the meanings respectively given in the Data Protection Act 1998 (to be construed in accordance with Directive of the European Parliament of the Council 95/46/EC).

## 22 **PROVISION OF INFORMATION**

- 22.1 The Supplier shall conform in all respects to the instructions of the Purchaser with respect to any lists, invoices, statements, accounts or other documents which the Purchaser may consider necessary or desirable in connection with the performance of the Contract.
- 22.2 The Supplier shall maintain an accurate record of Services supplied and work carried out under the Contract and shall provide such information when requested by the Purchaser or other duly authorised officer of the Purchaser.

## 23 **PREVENTION OF BRIBERY**

- 23.1 The Supplier:
- 23.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act;
  - 23.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Purchaser, or that an Contract has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Purchaser before execution of this Contract.

23.2 The Supplier shall:

23.2.1 if requested, provide the Purchaser with any reasonable assistance, at the Purchaser's reasonable cost, to enable the Purchaser to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

23.2.2 within 5 Business Days of the Commencement Date, certify to the Purchaser in writing (such certification to be signed by an officer of the Supplier) compliance with this Condition 23.2.2 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

23.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Purchaser) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.

23.4 If any breach of Condition 23.1 is suspected or known, the Supplier must notify the Purchaser immediately.

23.5 If the Supplier notifies the Purchaser that it suspects or knows that there may be a breach of Condition 23.1, the Supplier must respond promptly to the Purchaser's enquiries, co-operate with any investigation, and allow the Purchaser to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Contract.

23.6 The Purchaser may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Condition 23.1.

23.7 Any notice of termination under Condition 23.6 must specify:

23.7.1 the nature of the Prohibited Act;

23.7.2 the identity of the party whom the Purchaser believes has committed the Prohibited Act; and

23.7.3 the date on which this Contract will terminate.

23.8 Any dispute relating to:

23.8.1 the interpretation of Condition 23 or

23.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Purchaser; its decision shall be final and conclusive; and Condition 25 (Dispute Resolution) shall not apply.

23.9 Any termination under Condition 23.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Purchaser.

## 24 TERMINATION

24.1 The Contract shall commence on the Commencement Date and terminate on the date of termination set out on the Order (if any) or until terminated in accordance with the provisions of this Condition 24 ("**Term**").

- 24.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, the Purchaser may terminate this agreement on giving not less than 30 days' written notice to the Supplier.
- 24.3 Either party may terminate the Contract and/or require payment of any amounts due under this Contract at the date of termination (without prejudice to its other rights and remedies) with immediate effect by written notice to the other party if the other:
- 24.3.1 commits a material breach or persistently breaches of any of its obligations under this Contract and in the case of a remediable breach, fails to remedy it within 14 days of the date of receipt of notice from the other specifying the breach and requiring it to be remedied;
  - 24.3.2 becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986) proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, if any petition shall be presented, order shall be made or resolution passed for its winding up (except for the purposes of a bona fide amalgamation or reconstruction), bankruptcy or dissolution; if it shall otherwise propose or enter into any composition or arrangement with its creditors or any class of them, if it ceases to carry on business or if it claims the benefit of any statutory moratorium.
- 24.4 Each party shall immediately give notice in writing to the other party of any event within Condition 24.3.2 which occurs during the Term and which would entitle the other party to terminate this Contract.
- 24.5 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the events specified in this Condition 24.
- 24.6 Termination of the Contract, however arising, shall not affect either of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 24.7 The Purchaser shall be entitled to terminate the Contract immediately by notice in writing to the Supplier if:
- 24.7.1 the Contract has been subject to a substantial modification within the meaning given in Regulation 72(8) which would have required a new procurement procedure in accordance with Regulation 72(9);
  - 24.7.2 the Supplier was, at the time of the decision by the Purchaser to award the Contract, in one of the situations referred to in Regulation 57(1) (mandatory exclusion grounds), including as a result of Regulation 57(2) (member of the administrative, management or supervisory body of Supplier), and should therefore have been excluded from the procurement procedure; or
  - 24.7.3 the Contract should not have been awarded to the Supplier in consequence of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 24.8 If after 50 reviews Devon County Council identifies that the reviews are not delivering sufficient savings, Devon County Council reserves the right to terminate the contract with 1 week notice.
- 24.9 If after 50, 100, 200, or 300 reviews Devon County Council identifies that the reviews are not delivering sufficient savings, Devon County Council reserves the right to
- cease the commencement of any further reviews being undertaken,



- to provide 1 week notice that Devon County Council will be terminating the contract upon the completion of all the required work to ensure quality assurance and sign off is fully completed for any 'reviews in progress'

For the purpose of this 'Reviews in Progress' means Care Reviews where all contact with the service user has been completed; the review has been submitted; but the quality assurance and sign off has not been completed.

## 25 DISPUTE RESOLUTION

- 25.1 If any dispute arises out of or in connection with this Contract (or its validity, construction, performance or enforceability) ("**Dispute**"), the senior representatives of the parties with authority to settle the Dispute shall, within five (5) Business Days of a written request from one party to the other ("**Dispute Notice**"), meet in good faith with a view to resolving the Dispute.
- 25.2 If the Dispute is not resolved at that meeting, the Head of the Procurement Category (in the case of the Purchaser) and the Chief Executive Officer or Managing Director (in the case of the Supplier) shall, within twenty (20) Business Days of the meeting of the senior representatives of the parties pursuant to Condition 25.1 meet in good faith with a view to resolving the Dispute.
- 25.3 If the parties are unable to resolve a Dispute within thirty (30) Business Days of it first arising, the provisions of Condition 26.18 shall apply.
- 25.4 Unless otherwise expressly agreed, all negotiations between the parties will be deemed to be undertaken without prejudice to the rights of the parties in future proceedings.

## 26 GENERAL

- 26.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement with the Purchaser or with any department, agency or authority of the Crown.
- 26.2 The Supplier shall, and shall procure that Supplier Personnel shall, comply with any applicable anti-discrimination legislation and with Purchaser's equality and diversity policy, as may be amended from time to time, which will be provided by the Purchaser to the Supplier on the Supplier's written request.
- 26.3 The Supplier shall (and use its reasonable endeavours to procure that Supplier Personnel shall) at all times comply with the provision of the Human Rights Act 1998 in the performance of this Contract.
- 26.4 The Supplier shall undertake, or refrain from undertaking, such acts as the Purchaser requests so as to enable the Purchaser to comply with its obligations under the Human Rights Act 1998.
- 26.5 The Supplier shall not assign or Sub-Contract the whole or any part of the Contract without the prior written consent of the Purchaser. Sub-Contracting shall not relieve the Supplier of any obligation or duty attributable to it under the Contract or these Conditions.
- 26.6 Where the Purchaser has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall be sent by the Supplier to the Purchaser immediately it is issued.
- 26.7 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing obligations under the Contract, it shall ensure that a provision is included in each such Sub-Contract which:

- 26.7.1 requires the Supplier to verify all invoices submitted by the Sub-Contractor in a timely fashion;
  - 26.7.2 requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a period not exceeding 30 days from the date of receipt of the valid and undisputed invoice; and
  - 26.7.3 requires, where the Supplier fails to comply with the provision set out in clause 25.7.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of the provision set out in clause 25.7.2 after a reasonable time has passed.
- 26.8 The Supplier shall retain records for two years after the Contract has been completed. The records shall show, to the satisfaction of the Purchaser, all expenditures which are reimbursable by the Purchaser; and all hours worked and fees paid to any employees of the Supplier. The Supplier shall on request allow the Purchaser or his representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 26.9 The Supplier shall not offer or give or agree to give to the Purchaser or any of their Personnel any gift or consideration of any kind as an inducement or reward for doing, having done or refrained from doing any act in relation to the Contract or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any other agreement with the Purchaser.
- 26.10 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or by prepaid first class post; registered post; recorded delivery; or commercial courier; or by facsimile transmission and sent to the address of the party shown on the Order, or to any other address as the party may have specified by notice.
- 26.11 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or bind, the other party in any way.
- 26.12 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Purchaser.
- 26.13 If any court or competent authority finds that any provision of this Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Contract shall not be affected.
- 26.14 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 26.15 Any failure or delay by the Purchaser in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any rights under this Contract.
- 26.16 This Contract constitutes the entire agreement and understanding of the parties relating to the subject matter of this Contract and supersedes any previous agreement or understanding between the parties in relation to such subject matter. In entering into the Contract, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this Condition it might otherwise have had in relation to any of the foregoing.

26.17 The headings to Conditions shall not affect their interpretation.

26.18 The formation, existence, construction, performance, validity and all aspect of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

## **27 HUMAN RIGHTS**

The Supplier shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Purchaser against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Purchaser for breach of statutory duty under that Act attributable to the Supplier.

## **28 EQUAL OPPORTUNITIES**

28.1 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.

28.2 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 S.149 of the Equality Act 2010 in the execution of the Contract.

28.3 The Supplier shall take all reasonable steps to secure the observance of clauses 23.2 and 23.3 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Contract.

28.4 The Supplier shall demonstrate to the Purchaser that it has a policy to comply with its statutory obligations under the legislation referred to above in clauses 23.2 and 23.3.?

28.5 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.

28.6 The Purchaser reserve the right to test the Supplier's equality performance through the term of the Contract. The Supplier shall cooperate with the Purchaser regarding the provision of data and/or access for site visits as reasonably required by the Purchaser.

## **29 END OF CONTRACT INFORMATION TRANSFER**

28.1 Four weeks prior to the end of the contract period, irrespective if whether the contract is re-tendered or not, the Supplier shall submit to the Purchaser all relevant data held by the Supplier in respect of the contract which the Purchaser 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 the Purchaser's standard software currently) or in such other electronic product as may be Purchaser's standard at the time, and in e-gif compliant format (if applicable).