|  |  |  |
| --- | --- | --- |
|  | **DATED Day of** | **2020** |
|  |  |  |
|  | **Lincolnshire County Council** | **(1)** |
|  | And |  |
|  | **[THE SUPPLIER]** | **(2)** |

|  |  |  |
| --- | --- | --- |
|  | Contract relating to the supply of Learning Disability Involvement Contract  Contract Number CO1066 |  |

**Contents**

General Provisions

A1 Definitions and Interpretation

A2 Contract Period and Extension

A3 Supplier’s Status

A4 Customer’s Obligations

A5 Notices

A6 Mistakes in Information

A7 Conflicts of Interest

A8 Volumes

Supply of Services

B1 The Services

B1A Withholding and/or Discontinuation of Services

B1B Service Quality

B1C Service User Involvement

B2 Provision and Removal of Equipment

B3 Manner of Carrying Out the Services

B4 Key Personnel

B5 Supplier’s Staff

B6 Not Used

B7 Not Used

B8 Not Used

B9 Offers of Employment

B10 TUPE and Pensions

B11 Best Value

B12 Service Improvement

B13 Complaints

B13A Incidents Requiring Reporting

B14 Consent

B15 Not Used

B16 Business Continuity

B17 Co-Operation

Payment and Service Charges

C1 Service Charges

C2 Payment and VAT

C3 Recovery of Sums Due

C4 Price Adjustment on Extension of Initial Contract Period

C5 Performance Management

C6 Contract Management

Statutory Obligations and Regulations

D1 Prohibited Acts and Prevention of Bribery

D2 Anti-Discrimination

D3 The Contracts (Rights of Third Parties) Act 1999

D4 Environmental Requirements

D5 Health and Safety

D6 Safeguarding

Protection of Information

E1 Data Protection Act

E2 Confidential Information

E3 Transparency and Freedom of Information

E4 Publicity, Media and Official Enquiries

E5 Security

E6 Intellectual Property Rights

E7 Audit

E8 Exceptional Audits

E9 Audit Costs

E10 Malicious Software

E11 Records and Open Book Accounting

Control of the Contract

F1 Transfer and Sub-Contracting

F2 Waiver

F3 Change Control Procedure

F4 Severability

F5 Remedies in the Event of Inadequate Performance

F6 Remedies Cumulative

F7 Financial Assurance

F8 Entire Agreement

F9 Counterparts

Liabilities

G1 Liability, Indemnity and Insurance

G2 Warranties and Representations

Default, Disruption and Termination [and Suspension]

H1 Termination on Insolvency and Change of Control

H2 Termination on Default

H3 Break

H4 Consequences of Expiry or Termination

H5 Recovery upon Termination

H6 Disruption

H7 Remediation Plan Process

[H8 Suspension and Consequences of Suspension]

[H9 Force Majeure]

Disputes and Law

I1 Governing Law and Jurisdiction

I2 Dispute Resolution

SCHEDULES

Schedule 1: Specification

Schedule 2: Supplier’s Service Delivery Plan

Schedule 3: Payment Mechanism

Schedule 4: Performance Monitoring

Schedule 5: Key Personnel

Schedule 6: Disaster Recovery and Business Continuity Plan

Schedule 7: Processing, Personal Data and Data Subjects

Schedule 8: Exit Strategy

**THIS AGREEMENT** is made the day of  **2020**

**BETWEEN**

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the “Customer”)

and

(2) [INSERT NAME OF SUPPLIER] [Registered Company Number: xx] [whose registered office is situated at [xxx] (the “Supplier”)

**WHEREAS**

The Customer requires the provision of the [contract name] and the Supplier has agreed to provide the same on the terms and conditions set out below

**IT IS HEREBY AGREED** as follows:

**GENERAL PROVISIONS**

A1 **DEFINITIONS AND INTERPRETATION**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

**Affected Party** means the Party seeking to claim relief in respect of a Force Majeure Event.

**Approval** means the prior written consent of the Customer.

**Assets** means any moveable property such as furniture, IT equipment and any other tangible item provided by the Customer for use by the Supplier in providing the Services.

**Authorised Person** means the Customer and any body or person concerned with the provision of the Services or care of a Service User.

**Best Value** means arrangements to secure continuous improvement in the way the Customer’s functions are exercised having regard to a combination of economy, efficiency and effectiveness.

**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.

**Carer** means a family member or friend of the Service User who provides day-to-day support to the Service User without which the Service User could not manage.

**Change** means any variation to this Contract including to any of the Services and Service Levels.

**Change Control Procedure** means the procedure for changing this Contract as set out in Clause F3.

**Change of Control** means:

(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Supplier (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or

(b) any other arrangements that have or may have or which result in the same effect as paragraph (a).

**Commencement Date** means the 1st July 2020.

**Commercially Sensitive Information** means any Party's Information that:

(a) if disclosed, could prejudice the other Party's commercial interests and/or

(b) constitutes a trade secret.

**Competent Body** means any body that has authority to issue standards or recommendations with which either Party must comply.

**Confidential Information** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

**Consents** means:

(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or

(ii) any necessary consent or agreement from any third party needed either for the performance of the Supplier’s obligations under this Contract or for the provision by the Supplier of the Services in accordance with this Contract.

**Contract** means this written agreement between the Customer and the Supplier consisting of these clauses and the attached Schedules.

**Contracting Authority** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

**Contract Period** means the period from the Commencement Date to:

(a) the date of expiry of the Initial Contract Period, or

(b) following an extension pursuant to Clause A2.2, the date of expiry of the extended period,

or such earlier date of termination of the Contract in accordance with the Law or the provisions of this Contract.

**Contract Year** means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

**Controller** takes the meaning given in the GDPR.

**Conviction** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988.

**Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**Customer Premises** means any premises made available from time to time to the Supplier by the Customer in connection with this Contract

**Customer’s Change Control Notice** means a notice served by the Customer on the Supplier requesting a Change in accordance with Clause F3.

**Customer’s Contract Manager** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Customer pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Customer.

**Customer's Personal Data** means the Personal Data supplied by the Customer to the Supplier and/or Personal Data collected by the Supplier on behalf of the Customer for the purposes of or in connection with the Contract.

**Customer’s Representative** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Customer pursuant to Clause B4, being the person responsible for managing the overall relationship with the Supplier.

**Customer Software** means software which is owned by or licenced to the Customer including software which is or will be used by the Supplier for the purposes of providing the Services but excluding the Supplier Software.

**Data Protection Legislation** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Officer** take the meaning given in the GDPR.

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**Data Subject** takes the meaning given in the GDPR.

**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.

**DBS** means the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

**Default** means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract.

**Disaster** means an unplanned interruption of, or inaccessibility to, the Services provided by the Supplier.

**Disaster Recovery and Business Continuity Plan** means the business continuity and disaster recovery plan [prepared pursuant to OR as set out in] Schedule 6 as amended from time to time.

**DPA** means the Data Protection Act 2018.

**Employment Checks** means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks and the Supplier shall ensure that these meet the Customer's Disclosure and Barring Service Policy which is available at http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article

**Enhanced DBS & Barred List Check** means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate) and the Supplier shall ensure that these meet the Customer's Disclosure and Barring Service Policy.

**Enhanced DBS Position** means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted as set out in the Customer's Disclosure and Barring Service Policy.

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

**Equality Legislation** means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

**Equipment** means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Contract.

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under this 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.

**Force Majeure Event** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s or a Sub-Contractor’s supply chain.

**Force Majeure Notice** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**Formal Warning Notice** means a notice served in accordance with Clause H2.2.

**Fraud** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Customer.

**GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**Good Industry Practice** means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.

**Guidance** means any applicable local authority, health or social care guidance, direction or determination which the Customer and/or the Supplier have a duty to have regard to including any document published under section 73B of the NHS Act 2006.

**ICT** means information and communications technology.

**ICT Environment** means the Customer's system and the Supplier system.

**Incumbent Supplier** means any supplier providing any service that constitutes or that shall constitute part of the Services immediately before the Transfer Date and Commencement Date of this Contract.

**Information** has the meaning given under section 84 of the FOIA and includes Personal data as defined under Data Protection Legislation.

**Information Commissioner's Office** means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.

**Initial Contract Period** means the period from the Commencement Date to the date of expiry set out in Clause A2 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**Intellectual Property Rights** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**Joint Controllers** means where two or more Controllers jointly determine the purpose and means of processing.

**Key Personnel** means those persons identified in Schedule 5 for the roles attributed to such personnel.

**Law** means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

**LE**D means the Law Enforcement Directive (Directive (EU) 2016/680).

**Legal Guardian** means an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs.

**Lessons Learned** means experience derived from provision of the Services, the sharing and implementation of which would be reasonably likely to lead to an improvement in the quality of the Supplier’s provision of the Services.

**Local HealthWatch** means the local independent consumer champion for health and social care in England.

**Losses** means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

**Malicious Software** means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without the knowledge of its existence.

**Month** means calendar month.

**National Institute for Health and Clinical Excellence or NICE** means the special health authority responsible for providing national guidance on the promotion of good health and the prevention and treatment of ill health (or any successor body).

**National Standards** means those standards applicable to the Supplier under the Law and/or Guidance as amended from time to time.

**NHS Act 2006** means the National Health Service Act 2006.

**Party** means a party to this Contract and the term Parties shall be construed accordingly.

**Patient Safety Incident** means any unintended or unexpected incident that occurs in respect of a Service User that could have led or did lead to, harm to that Service User.

**Pensions Direction** means the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

**Performance Deduction** means any deduction to the Service Charges calculated in accordance with Schedule 3.

**Performance Default Points** means the points to be applied for a Service Failure as set out in the Performance Management Framework

**Performance Management Framework** means the performance monitoring system set out at Schedule 4.

**Persistent Breach** means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.

**Personal Data** takes the meaning given in the GDPR.

**Personal Data Breach** takes the meaning given in the GDPR.

**Premises** means the location where the Services are to be supplied.

**Processing** takes the meaning given in the GDPR.

**Processor** takes the meaning given in the GDPR.

**Prohibited Act** each of the following constitutes a Prohibited Act:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer 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 Customer; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Customer.

**Protective Measures** means appropriate technical and organisational measures 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 such measures adopted by it including those outlined in Part B of Schedule 7.

**Public Contracts Regulations** means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

**Quality Standards** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**Receipt** means the physical or electronic arrival of the invoice at the address of the Customer detailed in Schedule 3.

**Regulated Activity** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Regulatory Bodies** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer and “Regulatory Body” shall be construed accordingly.

**Relevant Employees** means the employees of the Supplier (including Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations.

**Relevant Transfer** means a transfer of employment to which the TUPE Regulations apply.

**Remediation Notice** means a written notice given by the Customer to the Supplier pursuant to Clause H7.1 to initiate the Remediation Plan Process.

**Remediation Plan** means the plan agreed in accordance with Clause H7 for the resolution of a Default of the Supplier.

**Remediation Plan Process** means the process for resolving certain of the Defaults of the Supplier as set out in Clause H7.

**Replacement Contractor** means any third party service provider appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.

**Request for Information** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**Schedule** means a schedule attached to, and forming part of, this Contract.

**Serious Incident** means an incident or accident or near-miss where a patient (whether or not a Service User), member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Supplier’s Premises or where the actions of the Supplier or the Customer are likely to be of significant public concern.

**Services** means the services to be supplied by the Supplier as specified and detailed in the Specification and the Service Delivery Plan.

**Service Charges** means the charges levied by the Supplier for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 3.

**Service Delivery Plan** means the details for delivery of the Services provided by the Supplier as set out at Schedule 2.

**Service Failure** means a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels.

**Service Levels** means the levels to which the Services are to be performed as set out in Schedule 4.

**Service User** means the person directly receiving the Services provided by the Supplier as specified in the Specification and includes their Carer and Legal Guardian where appropriate.

**Specification** means the description of the Services to be supplied under this Contract as set out in Schedule 1.

**Staff** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

**Staff Vetting Procedure** means the Customer’s procedures for the vetting of Staff and as advised to the Supplier by the Customer available at

<http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article>

**Sub-Contract** means 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** means the third parties that enter into a Sub-Contract with the Supplier.

**Sub-processor** means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract.

**Supplier** means the person, firm or company with whom the Customer enters into this Contract including the Supplier's Staff, agents and contractors and each Sub-Contractor.

**Supplier Change Control Notice** means a notice served by the Supplier on the Customer requesting a Change in accordance with Clause F3.

**Supplier’s Contract Manager** means the person identified as such in Part 2 of Schedule 5 or any replacement person appointed by the Supplier pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Supplier.

**Supplier’s Representative** means the person identified as such in part 2 of Schedule 5 or any replacement person appointed by the Supplier pursuant to Clause B4, as the person responsible for managing the Supplier’s overall relationship with the Customer.

**Supplier Software** means software owned or licenced to the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services.

**Tender** means the document(s) submitted by the Supplier to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply it with the Services.

**Transfer Date** means the date the Transferring Employee is transferred to the employment of the Supplier from the Incumbent Supplier.

**Transferring Employees** means employees of the Incumbent Supplier who are subject of a Relevant Transfer to the Supplier by virtue of the application of the TUPE Regulations, as amended.

**Transferring Original Employee** means a former employee of the Customer whose contract of employment, by virtue of the application of the TUPE Regulations, becomes a contract of employment with the Supplier and who meets the definition of a Transferring Original Employee under the Pensions Direction.

**TUPE Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**VAT** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to Clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;

(d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;

(e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(h) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

(i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-

(i) the clauses of this Contract;

(ii) Schedule 1;

(iii) the remaining Schedules to this Contract other than Schedule 2; and

(iv) Schedule 2 to this Contract.

**A2 CONTRACT PERIOD AND EXTENSION**

A2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on 30th June 2023, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under Clause A2.2.

A2.2 Subject to Clause C4 (Price adjustment on extension of the Initial Contract Period), the Customer may, by giving written notice to the Supplier not less than six (6) Month(s) prior to the last day of the Initial Contract Period, extend this Contract on the same terms for a further period or further periods of up to a maximum of 24 months in total. The provisions of this Contract shall apply (subject to any variation or adjustment to the Service Charges pursuant to Clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

**A3 SUPPLIER’S STATUS**

A3.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

**A4 CUSTOMER’S OBLIGATIONS**

A4.1 Save as otherwise expressly provided, the obligations of the Customer under this Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Customer to the Supplier.

**A5 NOTICES**

A5.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party in the manner referred to in Clause A5.3.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be:-

(a) For the Customer:

Lincolnshire County Council

The Commercial Team

Room 407

Orchard House

Orchard Street

Lincoln

LN1 1BA

For the attention of: Marie Kaempfe-Rice

Tel: 01522 554087

Email: marie.kaempfe-rice@lincolnshire.gov.uk

(b) For the Supplier:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

Email:

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 MISTAKES IN INFORMATION**

A6.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Customer.

**A7 CONFLICTS OF INTEREST**

A7.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier’s Staff are placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Contract. The Supplier shall disclose to the Customer full particulars of any such conflict of interest which may arise.

A7.2 The Customer reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

**A8 VOLUMES**

A8.1 The Supplier acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Customer in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Customer.

**SUPPLY OF SERVICES**

**B1 THE SERVICES**

B1.1 The Supplier shall supply the Services during the Contract Period in accordance with the Customer’s requirements as set out in the Specification, the provisions of this Contract and the Service Delivery Plan in consideration of the payment of the Service Charges.

B1.2 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Customer.

B1.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

**B1A WITHHOLDING AND/OR DISCONTINUATION OF SERVICES**

B1A.1 Except where required by the Law, the Supplier shall not be required to provide or to continue to provide Services to any Service User:-

a) who in the reasonable professional opinion of the Supplier is unsuitable to receive the Services, for as long as such unsuitability remains;

b) who displays abusive, violent or threatening behaviour unacceptable to the Supplier acting reasonably and taking into account the mental health of that Service User);

c) in that Service User’s domiciliary care setting or circumstances (as applicable) where that environment poses a level of risk to the Staff engaged in the delivery of the Services that the Supplier reasonably considers to be unacceptable; or

d) where expressly instructed not to do so by an emergency service provider who has authority to give such instruction, for so long as that instruction applies.

B1A.2 If the Supplier proposes not to provide or to stop providing the Services to any Service User under clause B1A.1:-

(a) where reasonably possible, the Supplier shall explain to the Service User, taking into account any communication or language needs, the action that it is taking, when that action takes effect, and the reasons for it (confirming that explanation in writing within two (2) Working Days);

(b) the Supplier shall inform the Service User of the right to challenge the Supplier’s decision through the Supplier’s complaints procedure and how to do so;

(c) the Supplier shall inform the Customer in writing without delay and wherever possible in advance of taking such action;

provided that nothing in this clause B1A.2 entitles the Supplier not to provide or to stop providing the Services where to do so would be contrary to the Law.

**B1B SERVICE QUALITY**

B1B.1 The Supplier shall unless otherwise agreed (subject to the Law) with the Customer in writing:-

(a) Not Used

(b) Not Used

(c) consider and respond to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;

(d) comply with the recommendations issued from time to time by a Competent Body;

(e) comply with the recommendations from time to time contained in guidance and appraisals issued by NICE;

(f) respond to any reports and recommendations made by Local HealthWatch; and

(g) comply with the Service Levels set out in Schedule 4.

**B1C SERVICE USER INVOLVEMENT**

B1C.1 The Supplier shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.

B1C.2 As soon as reasonably practicable following any reasonable request from the Customer, the Supplier shall provide evidence to the Customer of the involvement of Service Users, Carers and Staff in the development of Services.

B1C.3 The Supplier shall carry out Service User surveys (and Carer surveys) and shall carry out any other surveys reasonably required by the Customer in relation to the Services. The form (if any), frequency and method of reporting such surveys shall comply with the requirements as agreed between the Parties in writing from time to time.

B1C.4 The Supplier shall review and provide a written report to the Customer on the results of each survey carried out under clause B1C.3 and identify any actions reasonably required to be taken by the Supplier in response to the surveys. The Supplier shall implement such actions as soon as practicable. If required by the Customer, the Supplier shall publish the outcomes and actions taken in relation to such surveys.

**B2 PROVISION AND REMOVAL OF EQUIPMENT**

B2.1 The Supplier shall provide and maintain all the Equipment necessary for the supply of the Services.

B2.2 The Supplier shall not deliver any Equipment to the Customer Premises without obtaining prior Approval.

B2.3 All Equipment brought onto the Premises and any Customer Premises shall be at the Supplier’s own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer’s Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and any Customer Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises and any Customer Premises shall remain under the ownership of the Supplier.

B2.4 The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition.

B2.5 The Supplier shall, at the Customer’s written request, at its own expense and as soon as reasonably practicable:-

(a) remove from the Premises or Customer Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with this Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the Services the Supplier shall remove, and where applicable return to the Customer, the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Customer Premises (as applicable) in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

**B3 MANNER OF CARRYING OUT THE SERVICES**

B3.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and in any event, the Supplier shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

B3.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.3 The Customer shall conduct a review of performance of this Contract at least annually during the Contract Period. During this review, a performance report shall be agreed.

**B4 KEY PERSONNEL**

B4.1 Each Party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.

B4.2 The Supplier acknowledges that the Supplier’s Key Personnel are essential to the proper provision of the Services to the Customer.

B4.3 The Supplier’s Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.4 The Supplier shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Supplier's Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier becoming aware of the role becoming vacant.

B4.5 The Customer shall not unreasonably withhold its agreement under Clauses B4.3 or B4.4. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract which could be caused by a change in the Supplier’s Key Personnel.

B4.6 The Customer may require the Supplier to remove or procure the removal of any of the Supplier’s Key Personnel whom the Customer considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

B4.7 If the Supplier replaces the Key Personnel as a consequence of this Clause B4, the cost of effecting such replacement shall be borne by the Supplier.

**B5 SUPPLIER’S STAFF**

B5.1 At all times, the Supplier shall ensure that:-

(a) each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;

(b) there is an adequate number of Staff to provide the Services properly;

(c) where applicable, Staff are registered with the appropriate professional regulatory body;

(d) all of the Staff comply with all of the Customer's policies as notified to it from time to time; and

(e) all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working; and

(f) Staff are aware of and respect equality and human rights of colleagues [and Service Users].

B5.2 The Supplier shall notify its entire Staff about the Supplier’s obligations under the terms of this Contract and about any applicable Law.

B5.3 Upon receipt of a complaint against a member of Staff, the Customer may, to the extent reasonably necessary to protect the standards and reputation of the Customer, in consultation with the Supplier, request that the Supplier investigates the complaint and provides the Customer with all requested information in relation to this investigation, in accordance with the Supplier’s own internal policy and procedures and Good Industry Practice.

B5.4 In the event of industrial disputes or action by any of the Staff, it remains the Supplier’s responsibility to meet the requirements of this Contract. The Supplier shall inform the Customer immediately of impending or actual industrial disputes or action, which may affect the Supplier’s ability to deliver the Services and of the Supplier’s contingency plans for dealing with such disputes or action.

B5.5 The Supplier shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-

(a) proper and sufficient continuous professional and personal development, training and instruction; and

(b) full and detailed appraisal (in terms of performance and on-going education and training),

each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.

B5.6 Where applicable under section 1(F)(1) of the NHS Act 2006, the Supplier shall co-operate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.

B5.7 The Supplier shall carry out Staff surveys in relation to the Services at intervals and in the form as agreed in writing from time to time.

B5.8 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, any Customer Premises:

(a) any member of Staff; or

(b) any person employed or engaged by the Supplier,

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

B5.9 At the Customer’s written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to any Customer Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Customer may reasonably request.

B5.10 The Staff, engaged within the boundaries of any Customer Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside any Customer Premises.

B5.11 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.12 Subject to Clause B5.13, before the Supplier engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Supplier shall without limitation, complete:-

(a) the Employment Checks; and

(b) if appropriate such other checks as required by the Customer's Recruitment and Selection Policy and all other policies and documentation referred to therein including the Customer's Disclosure and Barring Service Policy referred to in this Contract.

B5.13 Subject to Clause B5.14, the Supplier may engage a person in an Enhanced DBS Position (as applicable) pending the receipt of the Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Customer.

B5.14 Where Clause B5.13 applies, the Supplier shall ensure that until the Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards shall be put in place:-

(a) an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

(b) wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and

(c) the new member of Staff is accompanied at all times by either the appointed supervisor or a member of Staff who has already been subjected to the Staff Vetting Procedure whilst providing the Services under this Contract; and

(d) any other reasonable requirement of the Customer.

B5.15 The Supplier shall (unless and to the extent agreed otherwise by the Customer in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

B5.16 Without prejudice to the provisions of this Clause B5, the Supplier shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.

B5.17 If the Supplier fails to comply with Clause B5 and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, then the Customer may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

B5.18 The decision of the Customer as to whether any person is to be refused access to any Customer Premises and as to whether the Supplier has failed to comply with Clause B5 shall be final and conclusive.

B5.19 The Supplier shall replace any of the Staff who the Customer reasonably determines have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services at no additional cost to the Customer.

B5.20 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Customer as the Customer reasonably requests on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.

B5.21 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

**B6 NOT USED**

**B7 NOT USED**

**B8 NOT USED**

**B9 OFFERS OF EMPLOYMENT**

B9.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

**B10 TUPE AND PENSIONS**

B10.1 The Customer and the Supplier agree that where the identity of a contractor (including the Incumbent Supplier) of any service which constitutes or will constitute part of the Services is changed as a result of entering into or pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.

B10.2 The Supplier acknowledges and accepts that under the TUPE Regulations the contracts of employment of the Transferring Employees shall have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Supplier.

B10.2A The Supplier shall prior to any formal consultation required in accordance with the TUPE Regulations provide to all Transferring Employees basic guidance on their rights under the TUPE regulations and such guidance shall conform to government department issued guidance e.g. BIS Guidance on TUPE 2006 as amended.

B10.3 In the event that the Supplier enters into any Sub-Contracts in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Clause B10 and shall ensure that each Sub-Contractor complies with such terms. The Supplier shall indemnify the Customer and keep the Customer indemnified in full from and against all direct, indirect or consequential liability or Losses awarded against or incurred or paid by the Customer as a result of or in connection with any failure on the part of a Sub-Contractor to comply with such terms.

B10.4 The Supplier shall be responsible for all emoluments and outgoings in respect of all Relevant Employees employed by the Supplier or any Sub-Contractor, including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date). The Supplier shall indemnify and keep the Customer indemnified and harmless from and against all Losses and other liabilities which the Customer may incur in respect of the same.

B10.5 The Supplier shall fully and accurately disclose to the Customer (and shall ensure that any relevant Sub-Contractor accurately discloses) any and all information in relation to all personnel engaged in the provision of the Services and all information that the Customer may reasonably request in relation to the Staff within ten (10) Working Days of the Customer's request including the following:-

(a) a list of employees employed by the Supplier, or any Sub-Contractor; and

(b) a list of agency workers, agents and independent contractors engaged by the Supplier; and

(c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and

(d) the age, gender, salary or other remuneration, date of continuous employment commenced and, if different, the commencement date, accrued holiday entitlement, pension details, location, retirement, enhancement rates, and any other factors affecting their redundancy and pension entitlements and any outstanding claims arising from employment of the Staff referred to in Clause B10.5(a); and

(e) the terms and conditions of the employment/engagement of the Staff referred to in Clause B10.5(a), their job titles and qualifications; and

(f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.6 Where the Supplier provides information in accordance with Clause B10.5 and the Supplier or Sub-Contractor makes or becomes aware of any changes or discovers new information the Supplier shall notify the Customer within five (5) Working Days of any such change or discovery.

B10.7 At the time of providing the disclosed information pursuant to Clauses B10.5 and B10.6, the Supplier shall warrant the completeness and accuracy of all such information. The Supplier authorises the Customer to use any and all information provided under Clause B10 to the Customer as it considers necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B10.8 The Customer may use the information it receives from the Supplier pursuant to Clauses B10.5 and B10.6 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Supplier shall provide the Replacement Contractor with such assistance as it shall reasonably request.

B10.9 The Supplier shall indemnify and keep indemnified and hold the Customer and the Crown (both for themselves and any Replacement Contractor) harmless from and against all Losses which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:-

(a) the provision of information pursuant to Clause B10; and

(b) any claim or demand by any Relevant Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Supplier in respect of any Relevant Employee on or before the end of the Contract Period; and

(c) any failure by the Supplier to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Relevant Employees as defined under TUPE arising from or connected with any failure by the Supplier to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Contractor whose name is not included in the list of Relevant Employees as defined under TUPE.

B10.10 The Supplier shall comply with the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

B10.11 The Supplier shall ensure that, in accordance with The Best Value Authorities Staff Transfers (Pensions) Direction 2007, a Transferring Original Employee shall be granted:

(a) Pension rights that are broadly comparable to or better than those he/she has as an employee of the Incumbent Supplier; or

(b) continued access to the Local Government Pension Scheme for those employees who at the Transfer Date are members of that pension scheme; and

(c) terms and conditions of employment which allow the Transferring Original Employee to enforce the protection afforded under The Best Value Authorities Staff Transfers (Pensions) Direction 2007.

B10.12 This Clause B10 applies during the Contract Period and indefinitely thereafter.

B10.13 The Supplier undertakes to the Customer that, during the twelve (12) Months prior to the end of the Contract Period the Supplier shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):-

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any Staff (other than where such amendment or variation has previously been agreed between the Supplier and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

(b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

(c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Supplier, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; and

(d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

B10.14 The Supplier confirms that it shall comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent supplier (including any Replacement Contractor). The Supplier warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B10.15 The Supplier shall indemnify and keep the Customer and any Replacement Contractor indemnified in full from and against direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Customer or any Replacement Contractor as a result of or in connection with:-

(a) the employment or termination of employment of any Relevant Employee or employee of any Sub-Contractor during any period prior to and including the date of expiry or termination of this Contract; and

(b) any claim brought against the Customer or any Replacement Contractor as a result of the Supplier's failure to comply with any of its obligations under the TUPE Regulations and this Contract.

B10.16 Notwithstanding any provisions of this Contract, for the purposes of Clause B10 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred to it under this Contract. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation or termination.

B10.17 The Customer shall from the commencement of the last eighteen (18) Months of the Contract be entitled to apply retention of [3 OR 5%] against each invoice which will become due for payment in accordance with the Contract. The retention monies shall be held by the Customer until a Replacement Contractor has been awarded a contract for the Services under this Contract and shall be released to the Supplier within ten (10) Working Days of the commencement date of the contract with the Replacement Contractor PROVIDED ALWAYS that the Supplier has fully complied with its obligations under Clauses B10.2A, B10.5. B10.6, B10.7 and B10.13. Any failure of the Supplier to comply with the aforesaid provisions shall constitute an automatic forfeiture of the retention monies

**B11 BEST VALUE**

B11.1 The Supplier shall provide to the Customer all such assistance, information and documentation as the Customer shall reasonably require for the purpose of compliance with its obligations of Best Value under Part 1 of the Local Government Act 1999.

**B12 SERVICE IMPROVEMENT**

B12.1 The Supplier shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services with the Customer. Without prejudice to the a foregoing, the Supplier shall, at its own cost submit a report to the Customer within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the change.

B12.2 If the Customer wishes to incorporate any improvement identified by the Supplier pursuant to Clause B12.1, the Customer shall send the Supplier a Customer Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Supplier’s costs in providing the Services to the Customer are reduced as a result of any business change implemented by the Supplier, a saving as agreed between the Parties shall be passed on to the Customer by way of a consequential and immediate reduction in the Service Charges.

**B13 COMPLAINTS**

B13.1 The Supplier shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Services which shall be available to the Customer upon request from time to time and as soon as practicable or in any event within five (5) Working Days of such request by the Customer. Such records shall contain all relevant details of the complaint including the following details:-

(a) the member of Staff or other person to whom the complaint was made and the name and job title of that person;

(b) the name and address (if known) of the person making the complaint and in what capacity the complaint was made;

(c) the nature and extent of the default of which complaint was made;

(d) the date and time of complaint; and

(e) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.

B13.2 Where a complaint is received regarding:-

(a) the standard of Services;

(b) the manner in which any Services have been supplied;

(c) the manner in which work has been performed;

(d) the materials or procedures used by the Supplier; or

(e) any other matter connected with the performance of the Supplier’s obligations under this Contract,

then the Customer shall notify the Supplier, and where considered appropriate by the Customer, investigate the complaint.

B13.3 The Customer shall have the right to investigate all complaints which fall within this Clause B13 and to take such steps, or require the taking of such steps by the Supplier, as it deems necessary (acting reasonably) in order to deal with the complaint. The Supplier shall promptly provide such documentation, information and assistance (including access to Staff) as the Customer may reasonably require in order to enable the Customer to investigate and deal with a complaint.

B13.4 Without prejudice to its other rights and remedies under the Contract, the Customer may, in its sole discretion, uphold the complaint and take further action in accordance with Clause F5.1, Clause H2 (Termination on Default) or H7 (Remediation Plan Process) of this Contract.

**B13A INCIDENTS REQUIRING REPORTING**

B13A.1 If the Supplier is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Supplier is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law.

B13A.2.If the Supplier gives a notification to the CQC or any other Regulatory Body under clause B13.A1 which directly or indirectly concerns any Service User, the Supplier shall send a copy of it to the Customer within five (5) Working Days.

B13A.3.The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-Service User safety incidents that are agreed between the Supplier and the Customer.

B13A.4. Subject to the Law, the Customer shall have complete discretion to use the information provided by the Supplier under this clause B.13.

**B14 CONSENT**

B14.1. The Supplier shall publish, maintain and operate a Service User consent policy which complies with Good Practice and the Law.

**B15. NOT USED**

**B16 BUSINESS CONTINUITY**

B16.1 The Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems and the supply chain) to the Supplier's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Customer to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 6.

B16.2 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Customer shall be entitled to participate in such tests as it may reasonably require.

B16.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test within ten (10) Working Days of the completion of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.

B16.4 In the event of any significant changes to the Disaster Recovery and Business Continuity Plan, the Supplier shall provide such updated plan to the Customer within ten (10) Working Days of the implementation of the change.

B16.5 The Supplier shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than forty eight (48) hours.

**B17 CO-OPERATION**

B17.1 The Parties shall at all times act in good faith towards each other.

B17.2. The Supplier shall co-operate fully and liaise appropriately with:-

(a) the Customer;

(b) any third party provider who the Service User may be transferred to or from the Supplier;

(c) any third party provider which may be providing care to the Service User at the same time as the Supplier’s provision of the relevant Services to the Service User; and

(d) primary, secondary and social care services,

in order to:

e) ensure that a consistently high standard of care for the Service User is at all times maintained;

f) ensure a co-ordinated approach is taken to promoting the quality of Service User care across all pathways spanning more than one provider;

g) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, Service Users, employees of the Customer or members of the public.]

**C PAYMENT AND SERVICE CHARGES**

C1 SERVICE CHARGES

C1.1 In consideration of the Supplier’s proper performance of its obligations under this Contract, the Customer shall pay the Service Charges in accordance with Clause C2 (Payment and VAT) and Schedule 3 (Payment Mechanism).

C1.2 The Customer shall, subject to Clause C1.1, in addition to the Service Charges and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.

**C2 PAYMENT AND VAT**

C2.1 Where the Supplier submits an invoice to the Customer in accordance with Schedule 3, the Customer shall consider and verify that invoice in a timely manner.

C2.3 Where the Customer fails to comply with Clause C2.1 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 Schedule 3 after a reasonable time has passed.

C2.4 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a Sub-Contract which requires:-

(a) payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the Receipt of a valid invoice; and

(b) the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of clause C2.4(a).

C2.5 All payments to be made by the Customer under this Contract are stated to be exclusive of VAT which shall be additionally paid by the Customer where relevant at the prevailing rate and from time to time in the manner prescribed by Law.

C2.6 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer 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 Contract. Any amounts due under this Clause C2.6 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

C2.7 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money.

C2.8 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

C2.9 Where payment by the Customer of all or any part of any invoice submitted or other claim for payment by the Supplier is disputed, this dispute shall be resolved as follows:-

(a) Notwithstanding Clause C3, payment by the Customer of all or any part of any Service Charges rendered or other claim for payment by the Supplier shall not signify approval. The Customer reserves the right to verify the Service Charges after the date of payment and subsequently to recover any sums which have been overpaid.

(b) If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer either before or after payment then the Customer may call for the Supplier to provide such further documentary or oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Supplier shall promptly provide such evidence in a form satisfactory to the Customer.

(c) If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer, the Customer shall not withhold payment of the remainder.

(d) If any Service Charge rendered for payment by the Supplier is paid but any part of it is disputed or subject to question by the Customer and such part is subsequently agreed or determined not to have been properly payable then the Supplier shall forthwith repay such part to the Customer.

C2.10 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Customer pursuant to this Contract and shall declare and make available for inspection to the Customer all Service Charges components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Customer twelve (12) years from the end of the Contract Year to which the records relate.

C2.11 Without prejudice to Clause C2.6, for the avoidance of doubt, it shall be the sole responsibility of the Supplier to:-

(a) assess the VAT rate and tax liability arising out of or in connection with the Contract; and

(b) account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Contract to HM Revenue and Customs ("HMRC").

C2.12 The Customer shall not be liable to the Supplier in any way whatsoever for any error or failure by the Supplier (or the Customer) in relation to VAT, including without limit:-

(a) where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;

(b) where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such relevant authority) to be incorrect or invalid; and/or

(c) where the Supplier's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;

(d) where the Supplier has specified a rate of VAT, or a VAT classification, to the Customer (including but not limited to Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Supplier subsequently regards such a rate , or such a classification, as being a mistake on its part. Further, in this scenario C2.12 (d), the Supplier shall be obliged to repay any overpayment by the Customer on demand.

C2.13 Where the Supplier does not submit a VAT invoice together with any claim for payment of the Services Charges, the Customer shall not be liable to pay any VAT for that claim of the Service Charges either when it falls due or at any later date.

**C3 RECOVERY OF SUMS DUE**

C3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Contract), the Customer may unilaterally deduct that sum 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 or contract with the Customer.

C3.2 Any overpayment by either Party, whether of the Service Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Supplier shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**C4 PRICE ADJUSTMENT ON EXTENSION OF THE INITIAL CONTRACT PERIOD**

C4.1 The Service Charges shall apply for the Initial Contract Period. In the event that the Customer agrees to extend the Initial Contract Period pursuant to Clause A2.2 the Customer may in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Supplier for a period of not more than thirty (30) Working Days to agree a variation in the Service Charges.

C4.2 If a variation in the Service Charges is agreed between the Customer and the Supplier, the revised Service Charges shall take effect from the first day of any period of extension and shall apply during such period of extension.

C4.3 Any increase in the Service Charges pursuant to Clause C4.1 shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) or the Retail Price Index (RPI), whichever is the lowest between the Commencement Date and the date (six) 6 Months before the end of the Initial Contract Period.

**C5 PERFORMANCE MANAGEMENT**

C5.1 The Supplier shall ensure that the Services meet or exceed the Service Levels at all times from the Commencement Date.

C5.2 The Supplier shall provide the Customer with a Monthly report detailing its performance in respect of each of the Service Levels. The Supplier shall provide each Monthly report to the Customer no less than four (4) Working Days prior to the date of each Monthly meeting referred to in Clause C5.4.

C5.3 If the Supplier fails to provide the Services in accordance with the Service Levels measured quarterly, the Supplier shall incur Performance Default Points as set out in Schedule 4. Such Performance Default Points shall be calculated quarterly and applied as a Performance Deduction. The Customer shall carry out a reconciliation of all Performance Deduction made during a Contract Year so as to ensure that the limitation on the Supplier’s liability as set out in Clause G1.2 is not exceeded.

C5.4 The Contract Managers of both Parties shall have regular Monthly meetings to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the Customer and copies of the minutes shall be circulated to and approved by both Parties.

C5.5 Prior to each Monthly meeting, the Customer shall notify the Supplier’s Contract Manager, and vice versa, of any problems relating to the provision of the Services for discussion at the Monthly meeting. At the meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in Clause H7 shall apply. Progress at implementing the plan shall be included in the agenda for the next Monthly meeting.

C5.6 The Customer and the Supplier shall review the Service Levels every six (6) Months throughout the Contract Period and make any changes in accordance with the Change Control procedure to reflect the changes in the Service Levels.

C5.7 The right to apply Performance Default Points shall be without prejudice to any other right or financial remedy available to the Customer arising out of the Supplier's failure to meet a Service Level.

C5.8 The Supplier shall attend all such other meetings and provide such reports as may reasonably be required by the Customer including those reports and meetings as set out in Schedule 1 and Schedule 4.

**C6 CONTRACT MANAGEMENT**

C6.1 The Supplier shall work with the Customer to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified.

C6.2 The Supplier shall work with the Customer to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Supplier's management and delivery of it.

C6.3 The Supplier shall supply information requested relevant to the delivery of the Services to the Customer, using formats and to the timescales specified by the Customer.

C6.4 The Customer intends, wherever it can, to capture and collate information through its IT system(s). However, the Customer does reserve the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.

C6.5 Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.

C6.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within the Contract.

C6.7 Review meetings as referred to in Clause C5 between the Customer and the Supplier shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.

C6.8 The Customer may undertake spot checks at any time to ensure that the Supplier is complying with its obligations under this Contract and the Supplier shall co-operate fully, at its own cost, with the Customer.

C6.9 The Supplier shall be responsible for managing and reporting on any Sub-Contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any problems. The Customer shall agree with the Supplier day-to-day relationship management, contact points, communication flows and escalation procedures.

C6.10 The Supplier shall be expected to continuously improve the quality of the provision of the Services including that delivered by Sub-Contractors.

**STATUTORY OBLIGATIONS AND REGULATIONS**

**D1 PREVENTION OF BRIBERY**

D1.1 The Supplier:-

(a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;

(b) 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 Customer, or that an agreement 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 Customer before execution of this Contract.

D1.2 The Supplier shall:-

(a) if requested, provide the Customer with any reasonable assistance, at the Customer’s reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

(b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause D1 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 Customer may reasonably request.

D1.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

D1.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of or suspects any Default of Clause D1.1 or has reason to believe that it has or any Staff has:-

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause D1.1(b);

(b) 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; or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of Clause D1.1(b).

D1.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Clause D1, the Supplier must respond promptly and in any event within ten (10) Working Days to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Contract.

D1.6 The Customer may:-

(a) terminate this Contract by written notice with immediate effect and recover from the Supplier the amount of any Loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period if the Supplier breaches Clause D1; and

(b) recover in full from the Supplier any other Losses sustained by the Customer in consequence of any Default of Clause D1.

D1.7 Any notice of termination under Clause D1.6 must specify:-

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Customer believes has committed the Prohibited Act; and

(c) the date on which this Contract shall terminate.

D1.10 Despite Clause I2 (Disputes), any dispute relating to:-

(a) the interpretation of Clause D1; or

(b) the amount or value of any gift, consideration or commission,

shall be determined by the Customer acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.

D1.11 Any termination under Clause D1.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

D1.12 In exercising its rights or remedies under Clause D1.6, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause D1.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

**D2 ANTI-DISCRIMINATION**

D2.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Parties shall not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.

D2.3 The Supplier shall provide appropriate assistance and make reasonable adjustments for Service Users, who do not speak, read or write English or who have communication difficulties (including without limitation hearing, oral or learning impairments).

D2.4 In performing this Contract the Supplier shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and

(c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it

and for the avoidance of doubt this obligation shall apply whether or not the Supplier is a public authority for the purposes of section 149 of the Equality Act 2010.

D2.5 The Supplier shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff employed in performance of this Contract.

D2.6 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.

D2.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier’s performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge:-

(a) provide any information requested in the timescale allotted;

(b) attend any meetings as required and permit the Staff to attend;

(c) promptly allow access to and investigation of any documents or data deemed to be relevant;

(d) allow the Supplier and any of the Staff to appear as witness in any ensuing proceedings, and

(e) cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

D2.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents, Sub-Contractors or Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Customer with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

D2.9 The Supplier must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

D2.10 The Supplier acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Supplier shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

**D3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

D3.1 A person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

**D4 ENVIRONMENTAL REQUIREMENTS**

D4.1 The Supplier shall, when working at any Premises in the delivery of the Services, perform its obligations under this Contract in accordance with the Customer’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**D5 HEALTH AND SAFETY**

D5.1 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working at/on the Premises and any Customer Premises in the performance of its obligations under this Contract.

D5.2 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

D5.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Contract at the Premises and/or any Customer Premises where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D5.4 The Supplier shall promptly (within twenty four (24) hours) notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at any Customer Premises and which may affect the Supplier in the performance of its obligations under this Contract.

D5.5 While on any Customer Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of its Staff and other persons working there.

D5.6 The Supplier shall co-operate with officers of the Customer, or its representatives, investigating any health and safety matter.

**D6 SAFEGUARDING**

**SAFEGUARDING CHILDREN/VULNERABLE ADULTS**

D6.1 The Supplier shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

D6.2 The Supplier, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

D6.3 The Supplier shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.

D6.4 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Supplier shall have:-

(a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;

(b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults’ welfare;

(c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;

(d) Recruitment and human resources procedures in compliance with Clause B5 in order to safeguard and promote the welfare of children/vulnerable adults;

(e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;

(f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;

(g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;

(h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;

(i) A culture of listening to and engaging in dialogue with children/vulnerable adults;

and

(j) Appropriate whistle-blowing procedures.

D6.5 The Supplier shall immediately notify the Customer of any information it reasonably requests to enable it to be satisfied that the obligations of Clauses B5 and D6 have been met.

**PROTECTION OF INFORMATION**

**E1 DATA PROTECTION**

E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer and the Supplier are Joint Controllers.

E1.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

E1.3 Where Personal Data relating to a Data Subject are collected from the Data Subject, or, someone other than the Data Subject, by either of the Joint Controllers, the Controller obtaining the Personal Data shall, at the time when Personal Data is obtained, be it from the other Controller, Data Subject or any other party provide the Data Subject with all of the following information:-

(a) the identity and the contact details of the Controller and, where applicable, of the Controller’s representative;

(b) the contact details of the Data Protection Officer, where applicable;

(c) the purposes of the processing for which the Personal Data are intended as well as the legal basis for the processing;

(d) the legitimate interests pursued by the Controller or by a third party;

(e) the recipients or categories of recipients of the Personal Data, if any;

(f) the categories of Personal Data concerned (this relates to Personal Data obtained from someone other than the Data Subject only);

(g) where applicable, the fact that the Controller intends to transfer Personal Data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or where a transfer requires safeguards under Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available; and

(h) the existence of automated decision-making, including profiling, and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject (this only relates when the Personal Data has not been obtained from the Data Subject).

E1.4 In addition to the information referred to in paragraph E1.3 the Controller who has obtained the Personal Data from the Data Subject shall, at the time when Personal Data is obtained, provide the Data Subject with the following further information necessary to ensure fair and transparent processing:-

(a) the period for which the Personal Data shall be stored, or if that is not possible, the criteria used to determine that period;

(b) the existence of the right to request from the Controller access to and rectification or erasure of Personal Data or restriction of processing concerning the Data Subject or to object to processing as well as the right to Personal Data portability;

(c) where the processing is based on the Data Subject having given consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

(d) the right to lodge a complaint with the Information Commissioner's office or any other relevant supervisory authority;

(e) whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Data Subject is obliged to provide the Personal Data and of the possible consequences of failure to provide such Personal Data; and

(f) the existence of automated decision-making, including profiling, and, at least in these cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the Data Subject.

E1.5 Where the Controller intends to further process the Personal Data obtained from the Data Subject for a purpose other than that for which the Personal Data was collected, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clauses E1.3, E1.4 and E1.5 shall not apply where and insofar as the Data Subject already has the information.

E1.6 The Controller who has obtained the Personal Data from someone other than the Data Subject shall provide the information referred to in Clause E1.3 (a) to (h):-

(a) within a reasonable period after obtaining the Personal Data, but at the latest within one (1) Month, having regard to the specific circumstances in which the Personal Data are processed;

(b) if the Personal Data is to be used for communication with the Data Subject, at the latest at the time of the first communication to that Data Subject; or

(c) if a disclosure to another recipient is envisaged, at the latest when the Personal Data are first disclosed.

E1.7 Where the Controller who has obtained the Personal Data from someone other than the Data Subject intends to further process the Personal Data for a purpose other than that for which the Personal Data was obtained, the Controller shall provide the Data Subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in Clause E1.3 (a) to (h).

E1.8 Clause E1.3 (insofar as it relates to Data obtained from someone other than the Data Subject) and Clauses E1.5 to E1.7 shall not apply where and insofar as:-

(a) the Data Subject already has the information;

(b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or in so far as the obligation referred to in Clause E1.3 of this Contract is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the Controller shall take appropriate measures to protect the Data Subject’s rights and freedoms and legitimate interests, including making the information publicly available;

(c) obtaining or disclosure is expressly laid down by Union or Member State law to which the Controller is subject and which provides appropriate measures to protect the Data Subject’s legitimate interests; or

(d) where the Personal Data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

E1.9 Without prejudice to the provisions set out in Clause G1.7, the Supplier shall indemnify the Customer and shall keep the Customer indemnified against all liabilities, losses, damages, costs or consequential losses or loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses suffered or incurred by the Customer arising out of or in connection with any claim made against it in relation to any breach by the Supplier of the DPA or GDPR or the Supplier's obligations under this Contract.

E1.10 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:-

(a) a systemic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

E1.11 Subject to Clause E1.12, either Party shall notify the other Party and the point of contact identified in Part A of Schedule 7 immediately if it :-

(a) receives a Data Subject Request (or purported Data Subject Request) including a request to rectify, block or erase any Personal Data any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation with the details of any such request;

(b) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(c) 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

(d) becomes aware of a Data Loss Event.

E1.12 The Supplier's obligation to notify under Clause E1.11 shall include the provision of further information to the Customer in phases, as details become available.

E1.13 The Party receiving a request as identified in Clause E1.11, shall be responsible for responding to the Data Subject provided that the receiving party shall at all times consult with the other Party with regards the response unless otherwise agreed between the Parties.

E1.13A The Party who becomes aware of a Data Loss Event shall inform the other Party of the breach and the Parties shall identify which Party would be most appropriate to report the Data Loss Event to the Information Commissioner's Office and to inform the Data Subject(s).

E1.14 Both Parties shall comply with their obligations under Article 30 of the GDPR and shall maintain complete and accurate records and information to demonstrate its compliance with this clause E1.

E1.15 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

E1.16 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

E1.17 The Customer may, at any time on not less than thirty (30) Working Days' notice, revise this Clause E1 by replacing it with any applicable controller to controller standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

E1.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

E1.19 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

E1.20 In the event that through failure by the Supplier to comply with its obligations under the Contract, the Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

E1.21 In the event that the Supplier is placed into liquidation as outlined in Clause H1.1 (b) and H1.1(c) or the Contract is terminated by the Customer pursuant to the provisions of the Contract relating to termination on insolvency in accordance with Clause H1.1, the Supplier (or a liquidator or provisional liquidator acting on behalf of the Supplier) shall at its own cost and at no cost to the Customer:-

(a) conduct a full and thorough search for any electronic and paper records held by the Supplier which contain Customer Personal Data in accordance with the Customer's instructions;

(b) return all relevant records to the Customer in accordance with the Customer's instructions;

(c) permanently destroy all copies of any relevant electronic records; and

(d) provide written confirmation to the Customer that the actions outlined above in this Clause E1.21 have been completed.

E1.22 In the event of a Sub-Contractor of the Supplier being in liquidation then it is the responsibility of the Supplier to recover records and Customer Personal Data held by the Sub-Contractor and/or Sub-processor and provide assurance to the Customer that they have been recovered.

E1.23 In the event that the Supplier is put into administration as outlined in Clause H1.1 (a) the Customer shall work closely with the administrator to ensure that the Supplier is able to maintain the Customer Personal Data and other records they have created in accordance with Clause E1 of this Contract and maintain the standards of safekeeping as set out in this Contract including Schedule 7.

E1.24 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.]

**E2 CONFIDENTIAL INFORMATION**

E2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-

(a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:-

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E3 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Supplier may only disclose the Customer's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.

E2.4 The Supplier shall not use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

E2.5 At the written request of the Customer, the Supplier shall procure that the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

E2.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:-

(a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;

(b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Customer or any person conducting a government office gateway review;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) for the purpose of the examination and certification of the Customer's accounts;

(e) on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract (Clause F1.8), to a Replacement Contractor (Clause H6.2) and for the purpose of the examination and certification of the Customer's accounts; or

(f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

E2.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Customer's obligations of confidentiality.

E2.8 Nothing in this Clause E2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E2.9 Any breach by the Supplier of Clauses E2.1 – E2.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Customer (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.

E2.10 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 Customer 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.

E2.11 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

**E3 TRANSPARENCY AND FREEDOM OF INFORMATION**

E3.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time, except for:-

(a) any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and

(b) Commercially Sensitive Information (together the "Transparency Information") is not Confidential Information.

E3.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

E3.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information.

E3.4 The Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Supplier. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such Information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.

E3.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

E3.6 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E2.6(c)) and E11) publish such Information. The Supplier shall provide to the Customer within five (5) Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

E3.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

E3.8 The Supplier shall and shall procure that any Sub-Contractors shall:-

(a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

(b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

(c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.9 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E3.10 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

E3.11 The Supplier acknowledges that (notwithstanding the provisions of Clause E3.7) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:-

(a) without consulting the Supplier; or

(b) following consultation with the Supplier and having taken their views into account;

provided always that where E3.11(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

E3.12 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

E3.13 The Supplier acknowledges that the Customer may be obliged to disclose Commercially Sensitive Information in accordance with this Clause E3.

**E4 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

E4.1 The Supplier shall not:-

(a) make any press announcements or publicise this Contract or its contents in any way; or

(b) use the Customer's name or brand/logo in any promotion or marketing or announcements of orders

without the Approval of the Customer which shall not be unreasonably withheld or delayed.

E4.2 Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause E4.1.

E4.3 If so requested by the Customer, the notepaper and other written material of the Supplier and Sub-Contractors relating to the delivery of the Services shall carry only logos and markings Approved by the Customer.

E4.4 All publicity and marketing material produced by the 0Supplier and/or its Sub-Contractors in relation to this Contract shall be submitted to the Customer for Approval and no such items shall be printed (other than for purposes of Approval) until such Approval is received.

**E5 SECURITY**

E5.1 The Customer shall be responsible for maintaining the security of the Customer Premises in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Customer while on any Customer Premises.

E5.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

E5.3 The Supplier shall agree to comply with the minimum information security controls detailed at Schedule 7 to this Contract at all time when processing the Customer's Personal Data for the purposes or in connection with the delivery of the Services. Failure by the Supplier to comply with this obligation shall constitute a Default and be dealt with in accordance with Clause H3.

**E6 INTELLECTUAL PROPERTY RIGHTS**

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):-

(a) furnished to or made available to the Supplier by or on behalf of the Customer shall remain the property of the Customer; and

(b) prepared by or for the Supplier on behalf of the Customer for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Customer;

and the Supplier shall not (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Supplier hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause E6.1(b). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.

E6.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

E6.4 The Customer shall grant to the Supplier a non-exclusive, revocable, free licence for the Contract period to use the IP Materials where it is necessary for the Supplier to supply the Services. The Supplier shall have the right to sub-licence the Supplier's use of the IP Materials. At the end of the Contract Period or early termination thereof the Supplier shall cease to use and shall ensure that any Sub-Contractor ceases to use the IP Materials.

E6.5 The Supplier shall grant the Customer a non-exclusive, irrevocable, free licence for the Contract Period to use the Supplier's Intellectual Property Rights where it is necessary for the Customer in the provision of the Services. At the end of the Contract Period, the Customer shall cease to use the Supplier's Intellectual Property Rights.

E6.6 The Supplier shall obtain Approval from the Customer before using any material in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable. That licence or sub-licence shall also include the right for the Customer to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Contractor or to any other third party supplying services to the Customer.

E6.7 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all Losses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause E6, except where any such claim arises from:-

(a) items or materials based upon designs supplied by the Customer; or

(b) the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Contract.

E6.8 The Customer shall notify the Supplier in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Supplier.

E6.9 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:-

(a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Customer; and

(c) shall not settle or compromise any claim without the Customer’s Approval (not to be unreasonably withheld or delayed).

E6.10 The Customer shall at the request of the Supplier provide the Supplier with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier’s obligations under this Contract. The Supplier shall indemnify the Customer for all Losses incurred in doing so.

E6.11 The Customer and the Supplier shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Customer or the Supplier in connection with the performance of this Contract.

E6.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Customer and, at its own expense and subject to the Approval of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Supplier is unable to comply with Clauses E6.12(a) or (b) within twenty (20) Working Days of receipt of the Supplier’s notification the Customer may terminate this Contract with immediate effect by notice in writing.

**E7 AUDIT**

E7.1 The Supplier shall keep and maintain until twelve (12) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer’s Representatives such access to those records as may be requested by the Customer in connection with this Contract.

E7.2 The Customer may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-

(a) to verify the accuracy of the Service Charges that become due and payable by the Customer to the Supplier in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all suppliers (including Sub-Contractors) of the Services;

(b) to review the integrity, confidentiality and security of the Customer Personal Data;

(c) to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;

(d) to review the Supplier's compliance with its obligations under the Contract;

(e) to review any records created during the provision of the Services;

(f) to review any books of account kept by the Supplier in connection with the provisions of the Services;

(g) to carry out the audit and certification of the Customer's accounts;

(h) to carry out an examination of the economy efficiency and effectiveness with which the Customer has used its resources; and

(i) to verify the accuracy and completeness of any management information delivered or required by this Contract.

E7.3 The Customer 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.

E7.4 Subject to the Customer's obligation of confidentiality, the Supplier shall on demand provide the Customer and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-

(a) all Information requested within the permitted scope of the audit;

(b) reasonable access to any premises or sites controlled by the Supplier and to any Equipment and Assets used (whether exclusively or non-exclusively) in the performance of the Services;

(c) access to the Staff;

(d) access to software owned or licenced to the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services; and

(e) accommodation (including desks) at the Supplier's premises as reasonably required to conduct the audit.

E7.5 The Customer shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

E7.6 If an audit identifies that:-

(a) the Supplier has committed a material Default which is capable of remedy, the Supplier shall correct such Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process;

(b) the Customer has overpaid any charges that became due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Supplier shall pay to the Customer the amount overpaid within twenty (20) Working Days. The Customer may deduct the relevant amount from any further payment when due if the Supplier fails to make the payment; and

(c) the Customer has underpaid any charges that become due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Customer shall pay to the Supplier the amount of the under-payment less the cost incurred by the Customer of the audit if this was due to a Default by the Supplier within twenty (20) Working Days.

**E8 EXCEPTIONAL AUDITS**

E8.1 The Supplier shall permit the Customer and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Supplier in any of the following circumstances:-

(a) actual or suspected impropriety or Fraud;

(b) there are reasonable grounds suspect that:-

(i) the Supplier is in Default under the Contract;

(ii) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt; or

(iii) a breach of the provisions set out in Schedule 7

(each an "Exceptional Circumstance").

E8.2 If the Customer notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Clause E7.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

**E9 AUDIT COSTS**

E9.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E7.2 to E8.2 unless an audit identifies a material Default by the Supplier in which case the Supplier shall reimburse:-

(a) the Customer for all the Customer's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

(b) where the Customer, a Regulatory Body and Auditor General appoint another body to conduct an audit, the Customer shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant body.

**E10 MALICIOUS SOFTWARE**

E10.1 The Supplier shall ensure anti-virus software is updated as frequently as is necessary in order to provide protection against the latest threats and delete Malicious Software from the ICT Environment.

E10.2 Notwithstanding Clause E10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Personal Data or any other data provided by the Customer, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E10.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause E10.2 shall be borne by the Parties as follows:-

(a) by the Supplier where the Malicious Software originates from the Supplier Software, third party software licenced to the Supplier or the Customer Personal Data or other data provided by the Customer whilst all such Customer Personal Data and other data was under the control of the Supplier; and

(b) by the Customer if the Malicious Software originates from the Customer Software, third party software licenced to the Customer or the Customer Personal Data whilst all such Customer Personal Data and other data was under the control of the Customer.

**E11 RECORDS AND OPEN BOOK ACCOUNTING**

E11.1 The Supplier shall (and shall procure that each Sub-Contractor shall):

(a) at all times maintain a full record of particulars of the costs of performing the Services;

(b) upon request by the Customer, provide a written summary of any of the costs referred to in Clause E11.1(a), in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under the Contract;

(c) provide such facilities as the Customer may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E11.1; and

(d) provide to the Customer copies of its annual report and accounts within twenty (20) Working Days of publication.

E11.2 Compliance with Clause E11.1 shall require the Supplier to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:

(a) administrative overheads;

(b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

(c) capital and revenue expenditure; and

(d) such other items as the Customer may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Supplier shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E11.2(a) to E11.2(d) inclusive, available for inspection by the Customer (and its advisers) upon reasonable notice pursuant to Clause E7, and shall provide a copy of these to the Customer as and when requested from time to time.

E11.3 The Supplier shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Legislation.

E11.4 Without prejudice to Clause E11.3, the Supplier shall ensure that the following are maintained:

(a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;

(b) full records of all maintenance procedures carried out during the Contract Period and;

(c) full records of all staff matters including turnover, pay and disciplinary matters,

and the Supplier shall have the items referred to in clauses E11.4(a) to E11.4(c) available for inspection by the Customer (and its advisers) upon reasonable notice, and shall provide copies of these to the Customer as and when requested from time to time.

E11.5 Upon termination or expiry of the Contract, and in the event that the Customer wishes to enter into an agreement with any Replacement Contractor, the Supplier shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Customer to provide information relating to the Supplier's costs of providing the Services (if applicable for the Services).

E11.6 All information referred to in this Clause E11 is subject to the obligations set out in Clauses E2 and E3.

**CONTROL OF THE CONTRACT**

**F1 TRANSFER AND SUB-CONTRACTING**

F1.1 Except where F1.4 and F1.5 applies, the Supplier shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval.

F1.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

F1.3 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable but at least within ten (10) Working Days of the request.

F1.4 Notwithstanding Clause F1.1, the Supplier may assign to a third party (“the Assignee”) the right to receive payment of the Service Charges or any part thereof due to the Supplier under this Contract (including any interest which the Supplier may incur under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:-

(a) reduction of any sums in respect of which the Customer exercises its right of recovery under Clause C3 (Recovery of Sums Due);

(b) all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Customer receiving notification under both Clauses F1.5 and F1.6.

F1.5 In the event that the Supplier assigns the right to receive the Service Charges under Clause F1.4, the Supplier shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment at least five (5) Working Days prior to submission of the relevant invoice.

F1.7 The provisions of Clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.

F1.8 Subject to Clause F1.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:-

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

(c) any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier’s obligations under this Contract.

F1.9 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.

F1.10 The Customer may disclose to any of its assignees Confidential Information of the Supplier which relates to the performance of the Supplier’s obligations under this Contract. In such circumstances the Customer shall authorise the assignee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee gives a confidentiality undertaking in relation to such Confidential Information.

F1.11 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

**F2 WAIVER**

F2.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**F3 CHANGE CONTROL PROCEDURE**

Without prejudice to any other provision contained in the Contract:-

**CUSTOMER CHANGE**

F3.1 The Customer has the right to propose a Change in the Services in accordance with this Clause F3.1. If the Customer requires a Change, it must serve a Customer Change Control Notice on the Supplier. The Customer shall not propose a Change that:-

(a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;

(b) would cause any consent to be revoked (or unobtainable);

(c) would, if implemented, result in a material change in the nature of the Services; and/or

(d) would materially and adversely affect the Supplier's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

F3.2 The Customer Change Control Notice shall:-

(a) set out the Change required in sufficient detail to enable the Supplier to calculate and provide an estimate of the variation in costs and or loss in revenue (the “Supplier’s Change Control Response”); and

(b) require the Supplier to provide the Customer within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Customer Change Control Notice with the Supplier’s Change Control Response.

F3.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Customer Change Control Notice, the Supplier shall deliver to the Customer the Supplier’s Change Control Response. The Supplier’s Change Control Response shall include the opinion of the Supplier on:-

(a) whether relief from compliance with obligations is required, including the obligations of the Supplier to meet the Service Levels contained in the Contract during the implementation of the Change;

(b) any impact on the provision of the Services;

(c) any amendment required to this Contract as a result of the Change; and

(d) any loss of revenue or prospective revenue to the Supplier or Sub-Contractor that results from the Change.

F3.4 As soon as practicable after the Customer receives the Supplier’s Change Control

Response, the Parties shall discuss and agree the issues set out in the Supplier’s Change Control Response, including:-

(a) providing evidence that the Supplier has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub–Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;

(b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and

(c) in such discussions the Customer may modify the Customer Change Control Notice, in which case the Supplier shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Customer of any consequential changes to the Supplier’s Change Control Response.

F3.5 If the Parties cannot agree on the contents of the Supplier’s Change Control Response then the dispute shall be determined in accordance with Clause I2 (Dispute).

F3.6 As soon as practicable after the contents of the Supplier’s Change Control Response has been agreed or otherwise determined pursuant to Clause I2 (Dispute), the Customer shall:-

(a) confirm in writing the Supplier’s Change Control Response (as modified); or

(b) withdraw the Customer Change Control Notice.

F3.7 If the Customer does not confirm in writing the Supplier’s Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Supplier’s Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Customer Change Control Notice shall be deemed to have been withdrawn.

F3.8 In the event that the Supplier’s Change Control Response has been confirmed by the Customer, the relevant Change shall be implemented within seven (7) Working Days of the Customer’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

**SUPPLIER CHANGE**

F3.9 If the Supplier wishes to introduce a Change, it must serve a Supplier Change Control Notice on the Customer.

F3.10 The Supplier Change Control Notice must:-

(a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Customer to evaluate it in full;

(b) specify the Supplier’s reasons for proposing the Change;

(c) request the Customer to consult with the Supplier with a view to deciding whether to agree to the Change and, if so, what consequential changes the Customer requires as a result;

(d) indicate any implications of the Change(s); and

(e) indicate if there are any dates by which a decision by the Customer is critical.

F3.11 The Customer shall evaluate the Supplier’s proposed Change in good faith, taking into account all relevant issues, including whether:-

(a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;

(b) the Change shall interfere with the relationship of the Customer with third parties;

(c) the financial strength of the Supplier is sufficient to perform the Change; and

(d) the Change materially affects the risks or costs to which the Customer is exposed.

F3.12 As soon as practicable after receiving the Supplier Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Customer may propose modifications or accept or reject the Supplier Change Control Notice.

F3.13 If the Customer accepts the Supplier Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Customer’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

F3.14 If the Customer rejects the Supplier Change Control Notice, it shall give its reasons for such a rejection.

F3.15 The Customer cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

**F4 SEVERABILITY**

F4.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

F5.1 In the event that the Customer is of the reasonable opinion that there has been a Default of this Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause H2 (Termination on Default) or H7 (Remediation Plan Process), do any of the following:-

(a) without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier shall once more be able to supply all or such part of the Services in accordance with this Contract;

and/or

(b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Service Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

F5.2 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Customer may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

**F6 REMEDIES CUMULATIVE**

F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**F7 FINANCIAL ASSURANCE**

F7.1 The Supplier shall immediately disclose to the Customer any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F7.2 The Supplier shall notify the Customer immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.

F7.3 Only where requested by the Customer, shall the Supplier be obliged to provide any financial information which could include but is not limited to a copy of the Supplier's annual accounts and annual returns.

**F8 ENTIRE AGREEMENT**

F8.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 Each of the Parties acknowledges and agrees that in entering into this Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

**F9 COUNTERPARTS**

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**LIABILITIES**

**G1 LIABILITY, INDEMNITY AND INSURANCE**

G1.1 Neither Party excludes or limits liability to the other Party for:-

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation; or

(e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to Clause G1.1, the Supplier’s total aggregate liability in respect of Performance Deduction shall be limited in each Contract Year to 5% of the Service Charges that are payable by the Customer in the applicable Contract Year.

G1.3 Subject to Clauses G1.4 and G1.5, the Supplier shall indemnify the Customer and keep the Customer indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier on the Premises, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, all costs related to civil data protection claims or regulatory fines issued by the Information Commissioner's Offices or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

G1.4 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under this Contract.

G1.5 Without prejudice to the Customer’s rights under this Contract, the Supplier shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-

(a) public liability insurance to a minimum of five million pounds (£5,000,000);

(b) employer’s liability insurance to a minimum of ten million pounds (£10,000,000);

(c) professional indemnity insurance of [five million (£5,000,000)]; and

(d) any other insurances as may be required by Law.

G1.6 The minimum amounts set out in Clause G1.5 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract.

G1.7 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-

(a) loss of profits, business, revenue or goodwill; and/or

(b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage.

G1.8 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

G1.9 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause G1 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of this Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

G1.11 The Supplier shall notify the Customer immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause G1.

G1.12 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

**G2 WARRANTIES AND REPRESENTATIONS**

G2.1 The Supplier warrants and represents that:-

(a) it has full capacity, authority and all necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Supplier;

(b) in entering into this Contract it has not committed any Fraud;

(c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of this Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material adverse effect on its ability to perform its obligations under this Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue;

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;

(h) in the three (3) years prior to the date of this Contract:-

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

**DEFAULT, DISRUPTION AND TERMINATION**

**H1 Termination on Insolvency and Change of Control**

H1.1 The Customer may terminate this Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator; or

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.

H1.2 The Customer may terminate this Contract with immediate effect by notice in writing where the Supplier is an individual and:-

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier’s creditors; or

(b) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrance 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 the Supplier’s assets and such attachment or process is not discharged within fourteen (14) days; or

(f) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control . The Customer may terminate this Contract by notice in writing with immediate effect within six (6) Months of:-

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

**H2 Termination on Default**

H2.1 The Customer may terminate this Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

(a) the Supplier has not remedied the Default to the satisfaction of the Customer in accordance with a Remediation Plan; or

(b) the Default is not, in the opinion of the Customer, capable of remedy; or

(c) the Default is a material breach of this Contract.

H2.2 Without prejudice to any other rights or remedies that the Customer has under the Contract (including without limitation Clause C5 and Clauses H1 or H2.1) where the Customer considers that the Supplier has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Customer shall be entitled to serve a written notice ( a "Formal Warning Notice") on the Supplier:-

(a) specifying that it is a Formal Warning Notice;

(b) giving details of the Persistent Breach;

(c) stating that if the Persistent Breach recurs two or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by the Persistent Breach.

H2.3 If:-

(a) twenty (20) Working Days after service of a Formal Warning Notice the Supplier has failed to demonstrate to the Customer's satisfaction that:-

(i) the Persistent Breach specified has not continued; and

(ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur; or

(b) within a three (3) Month period after the date of service of the Formal Warning Notice the Supplier has failed to demonstrate to the satisfaction of the Customer that:

(i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and

(ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur

then the Customer may deem such failure to be a Default which is a material breach of the Contract for the purposes of Clause H2.1 (c).

H2.4 The Customer may terminate this Contract with immediate effect by written notice to the Supplier if it becomes apparent that the Supplier should have been excluded from the procurement process leading to the award of this Contract in accordance with the Public Contracts Regulations.

H2.5 In the event that through any Default of the Supplier, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.6 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clauses C3 (Recovery of Sums Due).

**H3 BREAK**

H3.1 The Customer shall have the right to terminate this Contract at any time by giving three (3) Months’ written notice to the Supplier. The Customer may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension.

H3.2 Without prejudice to Clause H3.1, the Customer may by no less than three (3) Months' written notice to the Supplier terminate this Contract where it becomes apparent that:-

(a) this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or

(b) this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

H3.3 Notwithstanding the provisions of Clauses H3.1 and H3.2, either Party may terminate this Contract in whole or in part by giving the other at least twelve (12) Months' notice in writing, or such other period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any previous Default, in the event of termination pursuant to this Clause H3.3, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination other than as provided for by Clause H4.3.

**H4 CONSEQUENCES OF EXPIRY OR TERMINATION**

H4.1 Where the Customer terminates this Contract under Clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure.

H4.2 Where this Contract is terminated under Clauses H2 (Termination on Default), no further payments shall be payable by the Customer to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with this Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.

H4.3 Subject to Clause H4.4, where the Customer terminates this Contract under Clause H3 (Break), the Customer shall pay to the Supplier the unavoidable direct Losses incurred by the Supplier by reason of such termination provided that the Supplier takes all reasonable steps to mitigate all such Losses. Where the Supplier holds insurance, the Customer shall only have to reimburse the Supplier in respect of those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct Losses which it is seeking to recover from the Customer, with supporting evidence, of such alleged Losses reasonably and actually incurred by the Supplier as a result of termination under Clause H3 (Break). Any payment paid by the Customer in accordance with this Clause H4.3 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Customer pursuant to Clause H3. The Supplier shall have no other rights or remedies available to it in respect of any such termination.

H4.4 The Customer shall not be liable under Clause H4.3 to pay any sum which:-

(a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Supplier for loss of profit, due to early termination of this Contract.

H4.5 On expiry or termination of the Contract or any part thereof:-

(a) the Supplier shall repay at once to the Customer any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract; and

(b) the Supplier shall cease to use all of the Customer's Intellectual Property Rights and IP Materials and shall return or destroy as the Customer requires all documents, materials (including those in electronic format) incorporating or referring to the same.

H4.6 Save as otherwise expressly provided in this Contract:-

(a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti Discrimination), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H4.7 The Parties shall comply with the provisions set out in Schedule 8.

**H5 RECOVERY UPON TERMINATION**

H5.1 On the expiry, early termination or termination of this Contract for any reason, the Supplier shall:-

(a) immediately return to the Customer all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Customer all Assets (including materials, documents, information and access keys) provided to the Supplier under Clause B8. Such Assets shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

(d) promptly provide all information concerning the provision of the Services including records as referred to in Clause E11 which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of enabling the Customer or the Replacement Contractor to provide a continued delivery of the Services.

H5.2 If the Supplier fails to comply with Clause H5.1 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors premises where any such items may be held.

H5.3 Where the end of the Contract Period arises due to the Supplier’s Default, the Supplier shall provide all assistance under Clause H5.1 free of charge. Where the Contract ends for other reasons the Customer shall pay the Supplier's directly incurred reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

**H6 DISRUPTION**

H6.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Customer, its employees or any other supplier employed by the Customer.

H6.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by the Supplier or others for whom the Supplier is responsible, which affects or might affect its ability at any time to perform its obligations under this Contract.

H6.3 In the event of industrial action by the Staff, the Supplier shall seek Approval as to its proposals to continue to perform its obligations under this Contract.

H6.4 If the Supplier’s proposals referred to in Clause H6.3 are considered insufficient or unacceptable by the Customer acting reasonably, then this Contract may be terminated with immediate effect by the Customer by notice in writing.

H6.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Customer, the Supplier may request a reasonable allowance of time.

**H7 REMEDIATION PLAN PROCESS**

H7.1 If the Supplier commits a Default and the Default is in the reasonable opinion of the Customer capable of remedy, the Customer may elect to operate the Remediation Plan Process. If the Customer elects to operate the Remediation Plan Process, the Customer shall serve a Remediation Notice on the Supplier which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.

H7.2 Within seven (7) Working Days of receipt of the Remediation Notice, the Supplier shall either:-

(a) submit a draft Remediation Plan to the Customer even if the Supplier disputes that it is responsible for the matters which are the subject of the Remediation Notice; or

(b) inform the Customer that it does not intend to submit a Remediation Plan in which event the Customer shall be entitled to terminate the Contract by written notice.

H7.3 The Customer shall either approve the draft Remediation Plan within seven (7) Working Days of its receipt pursuant to Clause H7.2 or it shall inform the Supplier within the same time period why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan which it shall submit to the Customer within three (3) Working Days of its receipt of the Customer’s comments. Once agreed the Supplier shall immediately start work on the actions set out in the Remediation Plan.

H7.4 If, despite the measures taken under Clause H7.3 a Remediation Plan cannot be agreed within twenty (20) Working Days, then the Customer may elect to end the Remediation Plan Process and serve a notice to terminate the Contract.

H7.5 If a Remediation Plan is agreed between the Parties but the Supplier fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Customer may:-

(a) terminate this Contract by serving a notice of termination; or

(b) give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or

(c) escalate any issue arising out of the failure to implement the Remediation Plan to the Supplier’s Representative under the dispute resolution procedure set out in Clause I2.

H7.6 If, despite the measures taken under Clause H7.5, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Customer may elect to end the Remediation Plan Process and refer the matter to dispute resolution in accordance with Clause I2 or serve a notice of termination of the Contract.

H7.7 The Customer shall be under no obligation to initiate the Remediation Plan Process if it issues a notice of termination as provided for under this Contract.

**H8 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

H8.1 A suspension event shall have occurred if:-

(a) the Customer reasonably considers that a breach by the Supplier of any obligation under this Contract:-

(i) may create an immediate and serious threat to the health or safety of any Service User; or

(ii) may result in a material interruption in the provision of any one or more of the Services; or

(b) Clause H8.1 does not apply, but the Customer, acting reasonably, considers that the circumstances constitute an emergency affecting provision of the Services; or

(c) the Supplier is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent

(each a "Suspension Event").

H8.2 Where a Suspension Event occurs the Customer:

(a) may by written notice to the Supplier and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Supplier demonstrates to the reasonable satisfaction of the Customer that it is able to and shall perform the suspended Services, to the required standard; and

(b) shall where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

H8.3 During the suspension of any Services under Clause H8.2, the Supplier shall comply with any steps the Customer reasonably specifies in order to remedy the Suspension Event, including where the Customer’s decision to suspend pursuant to Clause H8.2 has been referred to dispute resolution under Clause I (Dispute Resolution).

H8.4 During the suspension of any Services under Clause H8.2, the Supplier shall not be entitled to claim or receive any payment for the suspended Services except in respect of:

(a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause H8.2; and/or

(b) all or part of the Services which the Supplier continues to deliver during the period of suspension in accordance with Clause H8.3.

H8.5 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

H8.6 The Supplier shall indemnify the Customer in respect of any Losses directly and reasonably incurred by the Customer in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).

H8.7 Following suspension of any Services the Supplier shall at the reasonable request of the Customer and for a reasonable period:

(a) co-operate fully with the Customer and any Replacement Contractor of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Customer or members of the public; and

(b) at the cost of the Supplier:

(i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Replacement Contractor; and

(ii) deliver to the Customer all materials, papers, documents and operating manuals owned by the Customer and used by the Supplier in the provision of the suspended Services.

H8.8 As part of its compliance with Clause H8.7 the Supplier may be required by the Customer to agree a transition plan with the Customer and/or any alternative Replacement Contractor.

H8.9 If it is determined, pursuant to Clause I (Dispute Resolution), that the Customer acted unreasonably in suspending any of the Services, the Customer shall pay to the Supplier any Losses directly and reasonably incurred by the Supplier in respect of that suspension provided always that the Supplier shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Customer pursuant to this Contract.

H8.10 During any suspension of any Services the Supplier, where applicable, shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the other parts of the Services.

**H9 FORCE MAJEURE**

H9.1 Subject to the remaining provisions of this Clause H9 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause B16, a Party may claim relief under this Clause H9 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

H9.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H9.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H9 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated but the Supplier has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

H9.4 Subject to Clause H9.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

H9.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

H9.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clauses H1 and H3; and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Supplier fails to perform its obligations in accordance with this Contract:

(i) the Customer shall not be entitled to apply Performance Default Points or withhold and retain any of the Service Charges as compensation to the extent that a Service Failure has been caused by the Force Majeure Event; and

(ii) the Supplier shall be entitled to receive payment of the Service Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

H9.7 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 Contract.

H9.8 Relief from liability for the Affected Party under this Clause H9 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H9.7.

H9.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of [three (3) Months] or more, either Party may serve notice of termination with immediate effect on the other Party.

**DISPUTES AND LAW**

**I1 GOVERNING LAW AND JURISDICTION**

I1.1 Subject to the provisions of Clause I2, the Customer and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**I2 DISPUTE RESOLUTION**

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Contract Managers of each Party for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days after the dispute has been referred to the Contract Managers, either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Customer’s Representative and the Supplier’s Representative for resolution.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties' Representatives pursuant to Clause I2.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause I2.5.

I2.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by reference of a dispute to mediation and the Supplier shall comply fully with the requirements of this Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

(a) A neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.

(e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

(g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**LEARNING DISABILITY INVOLVEMENT CONTRACT SIGNATURE PAGE – THE COUNCIL**

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** for and on behalf of **LINCOLNSHIRE COUNTY COUNCIL** (the Customer) | | )  )  )  ) |  |
|  |  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Authorised Officer**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Print name** | |
| **SIGNED** for and on behalf of **[provider name]** (the Supplier) | | )  )  )  ) |  |
|  |  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Authorised Signatory**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Print name**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Position** | |

**SCHEDULE 1**

**SPECIFICATION**

[*insert description of the Services to be supplied including, where appropriate, the Premises and the Quality Standards*]

**SCHEDULE 2**

**SUPPLIER SERVICE DELIVERY PLAN**

[*Insert Supplier’s proposals as per Tender Documentation*]

**SCHEDULE 3**

**PAYMENT MECHANISM**

1. The Council has a fixed budget for the Learning Disability Involvement Contract of £74,737. This budget represents an affordability level for the service and as such it is a threshold that Bidders will not be able to exceed with their pricing proposals.
2. The payment will be made through a block payment mechanism.
3. The Supplier shall submit an invoice to the Customer in respect of the Services rendered on a Monthly basis in arrears and not later than the last day of each relevant Month.
4. The Customer shall pay each invoice within thirty (30) days of receipt of an invoice that complies with the requirements set out in this Schedule.
5. In respect of any invoice, the Supplier shall ensure that each invoice:-

(a) clearly displays a valid purchase order number which number must be obtained from the Customer;

(b) only contains one purchase order number relating to the Contract. For the avoidance of doubt, any invoice which contains more than on purchase order number shall be rejected;

(c) includes the Supplier's name, address, contact details;

(d) details the Services which the invoice relates to including the delivery address;

(e) a unique invoice reference number;

(f) is either electronically typed or handwritten but no invoice shall be accepted which has been electronically typed and manually altered, e.g. manually corrected or updated;

(g) is submitted via e-mail to [invoices@lincolnshire.gov.uk](mailto:invoices@lincolnshire.gov.uk) in PDF or TIF format without security being applied and is sent as a separate file or is sent by post addressed to Lincolnshire County Council, Invoice Scanning Bureau, PO Box 146, Liverpool, L33 7WP;

(h) which is submitted by e-mail shall only consist of an invoice and no other documentation; and

(i) which is to be accompanied by documentation, is submitted by post to the address identified in sub-paragraph (g) above.

6. If the Supplier fails to submit an invoice in accordance with paragraph 8 above, no payment shall become due until such time as an invoice has been submitted by the Supplier which conforms in all respects with the requirements set out in paragraph 8 above. For the avoidance of doubt, the Supplier shall not be able to exercise any right under Clause H2.6 until such time as it has submitted an invoice in full compliance with the requirements set out in paragraph 8 above.

10. Where any payment is made by the Customer and it is subsequently established that in the circumstances existing at the relevant time the Customer was only liable under the terms of this Contract to pay the Supplier a lesser sum (or none at all), the Supplier shall repay the amount of the overpayment within five (5) Working Days from receiving notice from the Customer of such overpayment.

**SCHEDULE 4**

**PERFORMANCE MONITORING**

This section relates to the service levels, key performance indicators and contract management arrangements required to ensure that the contract is being delivered to the required standard.

**1. Contract Management Arrangements**

* 1. The Purchaser's Financial and Contract Regulations state the requirement to ensure that value for money is achieved in all services commissioned. It is a requirement that value for money is demonstrated through delivery of positive outcomes for Service users in receipt of commissioned services. Service Commissioners and Suppliers must ensure that robust contract management is taking place in order to achieve, and evidence achievement of, value for money and positive outcomes.
  2. Contract Management Meetings will take place quarterly. Meeting dates will be agreed between the Council's representative and Supplier.
  3. Reporting requirements are detailed in Specification Sections 3b and 3c.

**2. Responsibilities of the Council**

2.1 The Council will ensure that:

* A Contract Officer is assigned to monitor this contract and work with the Supplier to ensure positive outcomes for Service Users
* Contract Management meetings shall be arranged for the forthcoming year on a rolling basis. Frequency of contract management meetings will be dependent upon a risk analysis assessment of the Service.
* Contract Management meetings shall be properly recorded and areas for improvement and action points with reasonable timescales shall be entered onto an improvement plan which will be shared with the Supplier.
* The Contract Management function shall challenge the performance of the service and compliance with the Service Specification.
* Information made available by the Supplier shall be scrutinised, analysed and challenged by the Contract Officer
* The Contract Officer shall be informed of issues with regard to the performance and/or conduct of a Supplier to ensure compliance with the Contract and Service Specification
* The Contract Officer shall be asked for support and advice as and when required
* The Contract Officer will monitor Contract Management Information submitted by the Supplier on a weekly, monthly, quarterly and annual basis, in line with specified reporting requirements and discuss any required actions with the Supplier.

2.2 An indication of the expected workflow in relation to effective management of Strategic Contracts at the Council:

Step 1: Supplier to send through required reports 7 days before CMM

Step 2: Council's Contract Manager sends through the completed Strategic Contract Management form to the Supplier within 7 days of the meeting.

Step 3: Supplier will sign and return form within 10 days of receipt.

Step 4: Action dates will then be fulfilled by identified parties.

Step 5: The next CMM date will be arranged on the expected quarterly basis however if there are concerns they will be arranged on a monthly basis.

2.3 The Performance Data, Management Information and Key Performance Indicator data will be collected from the Supplier on a monthly basis.

2.4 The Purchaser may request a contract management meeting with the Supplier at any time or may increase the frequency of contract management meetings if any concerns in the following areas are identified:

* Service level
* Contract compliance
* Contract Value and payments
* Quality
* Issue of a default Notice
* Complaints
* Risk to the Purchaser

2.5 The frequency of the contract management meetings is also subject to change throughout the duration of the contract.

2.6 The Supplier shall be issued with an agenda prior to the contract management meeting. The standard agenda items are subject to change throughout the duration of the contract, but will include:

* Service utilisation and demand
* Service performance against Key Performance Indicators, outcome measures and Service levels
* Financial viability and payments
* Service operations including feedback, complaints and staffing resources
* Service development and market analysis
* Contract and service risks
  1. The Supplier is equally given the opportunity to contribute to the agenda prior to the contract management meeting.
  2. Annual contract reviews will take place on or immediately following the first contract anniversary and then on an annual basis thereafter. These reviews will focus on:
* Contract compliance
* Quality Assurance
* Staffing
* Service User involvement
* Continuous Improvement and engagement

2.7 The Purchaser retains the right to canvass confidentially the views of the Service users and/ or their representative in relation to the Service.

**3. Responsibilities of the Supplier**

3.1 The Supplier will:

* Meet or exceed KPI Service Levels as detailed in Section 3b and 3c at all times.
* Submit the specified information at the required intervals.
* Where performance targets are unlikely to be met or where the Supplier is experiencing any difficulties it is important that the Supplier alerts the Contracts Officer at the earliest opportunity.
* The Supplier shall at all times co-operate with the processes of the Purchaser for monitoring, evaluation and quality audit in whatever way reasonably requested, and shall provide copies of any documents that are reasonably requested by the Purchaser.
* The Supplier shall maintain regular communication with the Contracts Officer in whatever way reasonably required by the Purchaser.
* The Supplier shall allow the Contracts Officer or his representative's reasonable access to the premises where the Service is provided, including access to all documents relating to the performance of the Service under this Agreement.
* The Supplier shall make available relevant information concerning Service users on request from the Purchaser.

**4. Performance Management and Monitoring Information**

4.1 Contract management meetings shall be designed to share and exchange information that will support continuous improvement of service provision. The contract management process should lead to partnership learning and offer opportunities to share good practice with the wider partnership.

4.2 In addition to the submission of statutory data, monitoring of advocacy for protected groups under the Equalities Act and safeguarding reporting, output monitoring will be needed in respect of all referrals, staff training and development, recruitment and retention levels.

4.3 Referral information will be split by primary need, both relating to advocacy and the person's needs, to help identify spikes in referrals and possible groups under/over represented for preventative action if required.

4.4 The Provider is expected to demonstrate how the identified outcomes related to this service have been achieved and what difference the service has made for those accessing it. The Contract Management Framework will provide evidence of how the strategic outcomes will be delivered. The data to be provided is detailed in Section 3C.

4.5 Key Performance Indicators shall be used as a tool to assist management and monitoring of contract performance. The Supplier shall provide all Key Performance Information required. The data to be provided is detailed in Section 3C.

4.6 Management Information shall be used as a tool to assist management and monitoring of contract performance. The Supplier shall provide all Monitoring Information required. The data to be provided is detailed in Section 3C.

1. **Quality Assurance**

5.1 The Supplier shall be expected to provide Quality Assurance through providing evidence of:

* Carrying out activities related to supporting people through the service and signpost appropriately to other services for any other interventions
* Ensuring the safety of individuals while under their care.
* Performing risk assessments when the Service requires it, and make them available to the Council if requested, to ensure business continuity
* Ensuring all policies, protocols and procedures of organisation, including and relating especially to health and safety, financial, clinical, employment, confidentiality and human resources policies will be available and assessed through the annual Contract Management process.
* Ensuring any exceptions or complaints by ethnicity, disability, gender and age that details and actions are taken to resolve issues, within one month of the quarter end.

1. **Monitoring Progress** 
   1. The Supplier shall work with the Council to agree how best to meet the performance monitoring requirements listed above. These are service minimum requirements and shall have to be communicated regularly to the Council, through the contract management process:

**Annually**

* 1. The Supplier shall produce an annual report on the services delivered to include performance and outcomes.

**Quarterly**

* 1. The Supplier shall report on the quarterly contract management performance measures and management information as required as detailed in Section 3C.

**Audit**

* 1. The Supplier shall be required to undertake audits – being mutually agreed by both parties (Council/Supplier).

**7. Payment, Performance and Invoicing.**

7.1 The Supplier should produce valid quarterly invoices to the Council. The annual contract payment will be in accordance with the Suppliers tendered prices in the Pricing Schedule.

7.2 The Supplier will be paid as follows:

The Supplier shall invoice the Authority for payment of the Charges **quarterly in arrears** which the Authority shall pay within 28 calendar days of receipt.

7.3 An open book accounting process will be adopted as part of the contract management framework. This will include an annual reconciliation of tendered versus actual costs. The outcome of this reconciliation will be considered in accord with the levels of service demand, and volumes of service delivered against target. Suppliers must be able to evidence that the available budget is maximised.

7.4 As the Fee is based on an assumption of volume set out in the Specification, in the event the Service Supplier fails to deliver that volume of service, the Council reserves the right to withhold a proportionate part of the Fee and/or to recover any overpayment due to the lack of volume or under-provision of Services. This will be applied in accordance with the process set out below:

* Stage 1 - Ensure all statutory requirements are met;
* Stage 2 - Deliver the non-statutory professional minimum volumes as stated in accord with the primary eligibility criteria;
* Stage 3 - Consider wider eligibility for non-statutory professional advocacy funding more preventative elements of advocacy and / or building community and volunteer capacity;
* Stage 4 - If following Stage 3 there is still demand that has not been met and the Provider has failed to bridge any identified gaps in provision then the full amount of underutilised funds will be claw backed in the form of a service credit at the end of the contract year. This will be applied based upon the number of hours under delivered multiplied by the hourly rate. Any service credit will be capped at 5% of the annual budget.

1. **Remediation Plans** 
   1. If the service delivery is below the target set for any Key Performance Indicator, as defined in specification section 3C, the Council will work with the Supplier to develop a Remediation Plan.

**SCHEDULE 5**

**KEY PERSONNEL**

**PART 1**

**Customer’s Key Personnel**

|  |  |  |
| --- | --- | --- |
| **Name** | **Job Title** | **Responsibilities** |
|  | Customer’s Representative |  |
|  | Customer’s Contract Manager |  |
|  | *[OTHERS]* |  |
|  |  |  |

**PART 2**

|  |  |  |
| --- | --- | --- |
| **Name** | **Job Title** | **Responsibilities** |
|  | Supplier's Representative |  |
|  | Supplier's Contract Manager |  |
|  | *[OTHERS]* |  |
|  |  |  |

**SCHEDULE 6**

**DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

**1. CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

1.1 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan includes:-

(a) details of how the Supplier shall implement the Disaster Recovery and Business Continuity Plan;

(b) details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Customer (as notified by the Customer from time to time);

(c) details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;

(d) identification of all reasonably possible failures of or disruptions to the Services;

(e) In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be ''dual sourced'' so as to eliminate or minimise single points of failure and business continuity maintenance;

(f) identification of all potential disaster recovery scenarios;

(g) provision of appropriate levels of spares, maintenance equipment and test equipment;

(h) responsibilities of the Sub-Contractors in the event of a Disaster;

(i) Service Levels that the Supplier shall have to comply with in the event of a Disaster; and

(j) Customer obligations and dependencies.

1.2 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:

(a) identification of Service priorities in the event of a Disaster;

(b) risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, Key Personnel, Premises, key resources and key Sub-Contractors and/or suppliers;

(b) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;

(c) a communications strategy for Staff, the media and key internal and external stakeholders;

(d) identification of key internal and external interdependencies;

(e) identification of essential resources and Equipment needed during a Disaster;

(f) a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Supplier to provide the Services; and

(d) procedures for reverting to normal Service delivery.

**2. REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

The Disaster Recovery and Business Continuity Plan shall be reviewed by the Customer and the Supplier annually, or at such other times as may be requested by the Customer or the Supplier.

**SCHEDULE 7**

1. The Customer and Supplier have jointly determined the purpose and means of processing as set out in this Schedule.

2. The point of contact for Data Subjects is Amy Jaines, Data Protection Officer, Lincolnshire County Council, or her successor.

**A. PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Identity of the Customer and the Supplier | The Parties acknowledge that for the purposes of the Data Protection Legislation that they are Joint Controllers. |
| Subject matter of the processing | The processing is needed in order to ensure that the Provider can effectively deliver the Contract. |
| Duration of the processing | For the duration of the contract. |
| Nature and purposes of the processing | 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 purposes might include:   * statutory obligation in respect of advocacy services * non-statutory obligations as defined in the specification in respect of advocacy services * contract management requirements * recruitment assessment * employment processing * corporate administration and all activities we are required to carry out as a data controller and public authority |
| Type of Personal Data | The type of Personal Data which is Processed under this Contract may include:   * Personal details e.g. name, address, date of birth, NI number, telephone number, images, biometric data; * family detail e.g. personal details of relatives, legal guardians and friends; * financial details e.g. pay, bank details, credit/debit card details * lifestyle and social circumstances e.g. physical or mental health details, racial or ethnic origin, trade union membership, political affiliation, political opinions, offences (including alleged offences), religious or other beliefs of a similar nature, criminal proceedings, outcomes and sentences; * employment and education details; * health information, * case file information. |
| Categories of Data Subject | [DN Examples include: Staff (including volunteers, agents and temporary workers), customers/clients, suppliers, patients/service users, students/pupils, members of the public, users of a particular website etc.]  Categories of Data Subject may include:   * Purchasers of the service * Providers * Staff * temporary / agency workers * persons contracted to provide a service * volunteers * service users * patients * complainants, enquirers or their representatives * professional advisers and consultants * carers, representatives or legal guardians * landlords * recipients of benefits * representatives of other organisations * members of the public |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | Upon termination or expiry of the contract all Personal Data shall be returned to the Purchaser, unless instructed otherwise.  If the Purchaser does not request the Personal Data to be returned then it shall be deleted or destroyed within 30 days and the Provider shall confirm in writing that the data has been securely deleted or destroyed. |

**B. MINIMUM INFORMATION SECURITY CONTROLS**

The minimum security controls detailed within this Schedule are to be in place at all times when processing Information for the purpose of or in connection with the delivery of the Services. Such Information includes Personal Data and other Confidential Information or data.

**1. GENERAL**

1.1 The Supplier shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

**2. ICT INFRASTRUCTURE**

**Boundary Firewall and Internet Gateways**

2.1 Information, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

**Secure Configuration**

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

**User Access Control**

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

(a) avoidance of the use of weak or predictable passwords;

(b) all default passwords are changed;

(c) robust measures are in place to protect administrator passwords; and

(d) account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

**Malware Protection**

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

**Patch Management and Vulnerability Assessment**

2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.

2.8 The Supplier shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.

2.9 Software which is no longer supported shall be removed from ICT systems and devices.

**Cloud Services**

2.10 The Supplier shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles:

<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

**3. PROTECTING INFORMATION**

**Electronic Information**

3.1 Electronic copies of Information shall be encrypted at rest to protect against unauthorised access.

3.2 When transmitting Information over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Supplier shall use an encrypted communication protocol.

3.3 The Supplier shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

**Hard Copy Confidential Information**

3.4 Hard copy Confidential Information shall be stored securely when not in use and access to it shall be controlled.

3.5 Hard copy Confidential Information shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

**Secure Destruction of Information**

3.6 Electronic copies of Information shall be securely destroyed when no longer required, including Information stored on servers, desktops, laptops or other hardware and media.

3.7 Hard copy Information shall be securely destroyed when no longer required.

3.8 Secure destruction means destroying Information so it cannot be recovered or reconstituted.

3.9 A destruction certificate may be required by the Customer to provide the necessary assurance that secure destruction has occurred.

**4. SECURITY INCIDENTS/PERSONAL DATA BREACH**

4.1 The Supplier shall notify the Customer immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Customer Information, ICT services or assets.

4.2 The Supplier shall notify the Customer immediately of any Personal Data Breach which relates to personal data processed under this agreement.

4.3 The Supplier shall fully co-operate with any investigation that the Customer requires as a result of such a security incident or Personal Data breach.

**5. COMPLIANCE**

5.1 The Supplier shall inform the Customer of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate a Remediation Plan shall to be implemented with the aim of reducing, where possible, those deficiencies.

5.2 Independent validation which has been used as evidence of appropriate security controls by the Supplier shall be maintained by the Supplier for the duration of the Contract.

5.3 The Supplier shall inform the Customer of any expired or revoked evidence used as independent validation.

**SCHEDULE 8**

**EXIT STRATEGY REQUIREMENTS**

1. Without prejudice to the provisions set out in the Contract (including clause B7 and Section H) upon notification of this Contract terminating, howsoever caused, or twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Supplier shall, at no cost to the Customer, provide such cooperation, information and assistance to the Customer as may be reasonably required by the Customer to transfer and to enable a smooth migration of the Services being supplied by the Supplier including enabling the Customer and/or a Replacement Contractor to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract.

2. The Supplier and the Customer shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Customer or a Replacement Contractor.

3. The Supplier agrees that if it is requested by the Customer it shall use all reasonable endeavours to assign or novate any then existing contracts which the Supplier has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Customer or to any Replacement Contractor.

4. The Supplier shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "Applicable Period") in relation to the Services except with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:

4.1 incur any expenditure or enter into any commitments other than in the ordinary course of trading;

4.2 dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, Intellectual Property Rights (excluding those assets which the Customer is the full legal and beneficial owner of) other than stock in the ordinary course of trading;

4.3 materially vary the terms of any contracts with any provider of goods and/or services already entered into;

4.4 enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;

4.5 enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;

4.6 grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;

4.7 permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;

4.8 in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;

4.9 pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;

4.10 release, waive or modify any warranty or guarantee given by any supplier of goods or services;

4.11 cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Supplier and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;

4.12 terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Customer to such termination save where, in the reasonable opinion of the Supplier, termination is justified for cause due to the actions of any such of the Relevant Employees;

4.13 alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar individuals within the Supplier's workforce or as is required by law (for the avoidance of doubt, the Supplier shall provide upon request by the Customer evidence that any such wage or salary award is in line with those offered generally for similar individuals);

4.14 relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed; or

4.15 make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Customer or Replacement Contractor.