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| **Safeguarding Children Training Standing List Call-Off Contract between** |
| **Torbay Council** |
| *and* |
|  |
| *in respect of* |
| **Safeguarding Children Foundation Training Course 2016-2018** |

**AUTHORITY TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES**

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| --- | --- |
| **The Authority** | **Torbay Council of The Town Hall, Castle Circus, Torquay. TQ1 3DR** |
| **The Supplier** |  |
| **Date** | **01 June 2016** |
| **Type of Services** | **Provision of Safeguarding Children Foundation Training Course(s) 2016-2018** |

This Contract is made on the date set out above subject to the terms set out in the schedules listed below (“**Schedules**”). The Authority and the Supplier undertake to comply with the provisions of the Schedules in the performance of this Contract.

The Supplier shall supply to the Authority, and the Authority shall receive and pay for, the Services on the terms of this Contract.

The Definitions in Schedule 4 apply to the use of all capitalised terms in this Contract.

**Schedules**

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| --- | --- |
| **Schedule 1** | Key Provisions |
| **Schedule 2** | General Terms and Conditions |
| **Schedule 3** | Information Governance Provisions |
| **Schedule 4** | Definitions and Interpretations |
| **Schedule 5** | Further Competition and Supplier Response Documents |

**Signed by the authorised representative of THE AUTHORITY**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  |  |  |

**Signed by the authorised representative of THE SUPPLIER**

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Signature: |  |
| Position: |  |  |  |

**Schedule 1**

**Key Provisions**

**Standard Key Provisions**

1. **Application of the Key Provisions**
   1. The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 shall apply to this Contract.
   2. The optional Key Provisions at Clauses 8 to 11 of this Schedule 1 shall only apply to this Contract where they have been checked and information completed as applicable.
   3. Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1.
2. **Term**
   1. This Contract shall commence on the 1 June 2016 and the Term of this Contract shall expire two (2) years from the Commencement Date. (Contract period is to be up to a period of one (1) year with an option to extend up to a period of one (1) further year, or until the end of the allocated budget, subject to termination clauses contained with the Contract terms and conditions).
3. **Contract Managers**
   1. The Contract Managers at the commencement of this Contract are:
      1. for the Authority:

**Lucinda Wills** Workforce Development Officer

* + 1. for the Supplier:

1. **Names and Addresses for Notices**
   1. Notices served under this Contract are to be delivered to:
      1. for the Authority:

Torbay Council

Town Hall

TQ1 3DR

* + 1. for the Supplier:

1. **Management Levels for Dispute Resolution**
   1. The management levels at which a dispute will be dealt with are as follows:

|  |  |  |
| --- | --- | --- |
| **Level** | **Authority representative** | **Supplier representative** |
| **1** | Contract Manager |  |
| ***2*** | Quality Assurance Manager - - Safeguarding and Wellbeing |  |
| ***3*** |  |  |

1. **Order of Precedence**
   1. Subject always to Clause 1.10 of Schedule 4, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:
      1. the provisions on the front page of this AUTHORITY Contract for the Provision of Services (Contract Version);
      2. Schedule 1: Key Provisions;
      3. Schedule 5: Further Competition and Supplier Response Documents;
      4. Schedule 2: General Terms and Conditions;
      5. Schedule 3: Information Governance Provisions;
      6. Schedule 4: Definitions and Interpretations; and
2. **Application of TUPE at the commencement of the provision of Services**
   1. The Parties agree that at the commencement of the provision of Services by the Supplier, TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.

**Optional Key Provisions**

1. **Services Commencement Date** 
   1. The Services Commencement Date shall be 1 June 2016 and the Long Stop Date referred to in Clause of Schedule 2 shall be 1 June 2016.
2. **Different levels and/or types of insurance**
   1. The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

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| --- | --- |
| **Type of insurance required** | **Minimum cover** |
| Employer’s Liability | **£10 Million** |
| Public Liability | **£5 Million** |
| Professional Indemnity | **£2 Million** |

1. **Inclusion of a Change Control Process** 
   1. Any changes to this Contract, including to the Services, may only be agreed in accordance with the Change Control Process set out in Schedule 2 (Clause 20)
2. **Data Processing** 
   1. The Parties acknowledge that the Authority is the Data Controller and the Supplier is the Data Processor in respect of any Personal Data Processed under this Contract.
3. **Extra Key Provisions**
   1. The successful Applicant is responsible for all costs throughout the life of the Contract.

**Schedule 2**

**General Terms and Conditions**

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| **Contents** |
| 1. Provision of Services |
| 2. Premises, locations and access |
| 3. Cooperation with third parties |
| 4. Use of Authority equipment |
| 5. Staff |
| 6. Business continuity |
| 7. The Authority’s obligations |
| 8. Contract management |
| 9. Contract Pricing |
| 10. Warranties |
| 11. Intellectual property |
| 12. Indemnity |
| 13. Limitation of liability |
| 14. Insurance |
| 15. Term and termination |
| 16. Consequences of expiry or earlier termination of this Contract |
| 17. Complaints |
| 18. Sustainable development |
| 19. Electronic services information |
| 20. Change management |
| 21. Dispute resolution |
| 22. Force majeure |
| 23. Records retention and right of audit |
| 24. Conflicts of interest and the prevention of fraud |
| 25. Equality and human rights |
| 26. Notice |
| 27. Assignment, novation and subcontracting |
| 28. Prohibited Acts |
| 29. General |

1. **Provision of Services**
   1. The Authority appoints the Supplier and the Supplier agrees to provide the Services:
      1. promptly and in any event within any time limits as may be set out in this Contract;
      2. in accordance with all other provisions of this Contract;
      3. with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
      4. in accordance with the Law and with Guidance;
      5. in accordance with Good Industry Practice;
      6. in accordance with the Policies; and
      7. in a professional and courteous manner.
   2. Immediately following the Commencement Date, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
   3. The Supplier shall commence delivery of the Services on the Services Commencement Date.
   4. The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
   5. The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
   6. If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
   7. The Supplier shall notify the Authority forthwith in writing:
      1. of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
      2. of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
   8. Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
   9. Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 or any report or communication pursuant to Clause 1.8 of this Schedule 2, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier and the Supplier shall cooperate fully with any such request.
   10. Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority’s incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority’s Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier’s Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority’s Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
   11. The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier’s obligations.
2. **Premises, Locations and Access**
   1. The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing (“**Premises and Locations**”).
   2. Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
   3. Subject to Clause 2.4 of this Schedule 2, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2.
   4. Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
   5. Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 2. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 2.1 of this Schedule 2. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 2.3 of this Schedule 2.
3. **Cooperation with Third Parties**
   1. The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.
4. **Use of Authority Equipment**
   1. Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
      1. shall be provided at the Authority’s sole discretion;
      2. shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
      3. must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
      4. shall be used by the Supplier at the Supplier’s risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).
5. **Staff**
   1. Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
   2. The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
   3. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
   4. The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
   5. The Supplier shall:
      1. employ only those Staff who are careful, skilled and experienced in the duties required of them;
      2. ensure that every member of Staff is properly and sufficiently trained and instructed;
      3. ensure all Staff have the qualifications to carry out their duties;
      4. maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier’s expense) in respect of the Staff; and
      5. ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by any relevant regulatory body or any industry body in relation to such Staff.
   6. The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority’s staff, patients, service users or visitors at risk unless otherwise agreed in writing with the Authority.
   7. The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons:
      1. are questioned concerning their Convictions; and
      2. obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
   8. The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier’s cost and expense.
   9. The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority’s prior written consent if:
      1. the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1of this Schedule 2;
      2. the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2; or
      3. the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2.
   10. In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
       1. warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
       2. warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
       3. shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to residents, visitors Authority staff or any other person.
   11. The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to patients, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority’s written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
   12. The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 have been met.
   13. The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority’s concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding patient or service user safety.
6. **Business Continuity** 
   1. The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Authority’s business continuity plan where relevant to the provision of the services.
   2. Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
      1. the criticality of this Contract to the Authority; and
      2. the size and scope of the Supplier’s business operations, regarding continuity of the provision of the Services during and following a Business Continuity Event.
   3. The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier’s business operations. The Supplier shall promptly provide to the Authority, at the Authority’s written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 2 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
   4. The Authority may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Authority to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Authority in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Authority into such Business Continuity Plan it will explain the reasons for not doing so to the Authority.
   5. Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.
   6. During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.
7. **The Authority’s Obligations**
   1. Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2.
   2. The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
   3. The Authority shall comply with the Authority’s Obligations, as may be referred to in the Key Provisions.
8. **Contract Management** 
   1. Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority’s Contract Manager.
   2. Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
   3. Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
      1. details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
      2. details of any complaints from or on behalf of patients or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
      3. the information specified in the Specification and Tender Response Document;
      4. a status report in relation to the implementation of any current Remedial Proposals by either Party; and
      5. such other information as reasonably required by the Authority.
   4. Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 21.3 of this Schedule 2.
   5. The Supplier shall provide such management information as the Authority may reasonably request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) (“**Third Party Body”**). The Supplier confirms and agrees that the Authority may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.
   6. Upon receipt of management information supplied by the Supplier to the Authority and/or the Third Party Body, or by the Authority to the Third Party Body, the Parties hereby consent to the Third Party Body and the Authority:
      1. storing and analysing the management information and producing statistics; and
      2. sharing the management information or any statistics produced using the management information with any other Contracting Authority.
   7. If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).
   8. The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month’s written notice of any changes.
9. **Contract Pricing**
   1. The Contract Pricing shall be £49,999 for the period of the Contract, inclusive of all costs but exclusive of VAT, as set out in Volume 4a Pricing Schedule of the tender documents (Refer to Schedule 5).
   2. Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.
   3. The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
10. **Warranties**
    1. The Supplier warrants and undertakes that:
       1. it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfill its obligations under this Contract;
       2. it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
       3. it has and shall maintain a properly documented system of quality processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality processes;
       4. it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Authority in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
       5. where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
       6. receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
       7. it will comply with all Law and Guidance in so far as it is relevant to the provision of the Services;
       8. it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfill all requirements of this Contract using appropriately skilled, trained and experienced staff;
       9. unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
       10. limitation to the generality of Clause 10.1.7 of this Schedule 2, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier’s access to the Premises and Locations in accordance with this Contract;
       11. without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
       12. any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer’s specification;
       13. it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
       14. it will promptly respond to all requests for information regarding the Contract and the provision of the Services at the frequency and in the format that the Authority may reasonably require;
       15. all information included within the Supplier’s responses in the Specification and Tender Response Document and all accompanying materials is accurate;
       16. it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfill its obligations under this Contract;
       17. it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
       18. all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
       19. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
       20. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
       21. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
       22. it has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and has gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
    2. The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
    3. The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 have been breached or there is a risk that any warranties may be breached.
    4. Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.
11. **Intellectual Property**
    1. The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.
    2. Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority’s normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.
12. **Indemnity**
    1. The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:
       1. any injury or allegation of injury to any person, including injury resulting in death;
       2. any loss of or damage to property (whether real or personal); and/or
       3. any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 2; and/or
       4. any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier’s negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

* 1. Liability under Clauses 12.1.1 and 12.1.3 of this Schedule 2 and Clause 2.6 of Schedule 3 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2.
  2. In relation to all third party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
     1. relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or
     2. relating to the Authority’s membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

1. **Limitation of Liability** 
   1. Nothing in this Contract shall exclude or restrict the liability of either Party:
      1. for death or personal injury resulting from its negligence;
      2. for fraud or fraudulent misrepresentation; or
      3. in any other circumstances where liability may not be limited or excluded under any applicable law.
   2. Subject to Clauses 12.2, 13.1, and 13.3 of this Schedule 2, the total liability of the Supplier to the Authority under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to five million GBP (£5,000,000).
   3. There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the Authority:
      1. extra costs incurred purchasing replacement or alternative services;
      2. Not Used.
      3. the costs of extra management time; and/or
      4. loss of income due to an inability to provide the services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the Supplier’s breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

* 1. Clause 13 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.

1. **Insurance**
   1. Subject to Clauses 14.2 and 14.3 of this Schedule 2 and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer’s liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000).
   2. Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Authority, if specified in the Key Provisions.
   3. The amount of any indemnity cover and/or self insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover arrangement is insufficient to cover the settlement of any claim.
   4. The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
   5. The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
   6. Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.
2. **Term and Termination**
   1. This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
   2. The Authority shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.
   3. In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach (“**Remedial Proposal**”) before exercising any right to terminate this Contract in accordance with Clause 15.4.1(ii) of this Schedule 2. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:
      1. put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
      2. comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
      3. remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.1(ii) of this Schedule 2, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

* 1. Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:
     1. commits a material breach of any of the terms of this Contract which is:

1. not capable of remedy; or
2. in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
   * 1. has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.
   1. The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:
      1. the Supplier does not commence delivery of the Services by any Long Stop Date;
      2. the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
      3. the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;
      4. the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 27.1 of this Schedule 2; or
      5. pursuant to and in accordance with the Key Provisions and Clauses 15.6, 22.8; 24.2; 24.4 and 28.2 of this Schedule 2.
   2. If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:
      1. the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
      2. a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
      3. a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 21.3 of this Schedule 2) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4.1(i) of this Schedule 2.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

* 1. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 shall be deemed mutual termination rights and the Supplier may terminate this Contract forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
  2. Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

1. **Consequences of Expiry or Earlier Termination of this Contract**
   1. Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
   2. Immediately following expiry or earlier termination of this Contract:
      1. the Supplier shall comply with its obligations under any agreed exit plan; and
      2. all data owned by the Authority, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to patients or other service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date.
   3. The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 16.2 of this Schedule 2 for the period set out in Clause 23.1 of this Schedule 2.
   4. The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
   5. Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with the Key Provisions shall automatically terminate.
   6. The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
   7. The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
2. **Complaints** 
   1. To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure.
3. **Sustainable Development**
   1. The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
      1. comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Supplier’s supply chain;
      2. maintain relevant policy statements documenting the Supplier’s significant social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier’s business operations; and
      3. maintain plans and procedures that support the commitments made as part of the Supplier’s significant social and environmental policies, as referred to at Clause 18.1.2 of this Schedule 2.
   2. The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier’s compliance with the provisions of Clause 18 of this Schedule 2.
4. **Electronic Services Information**
   1. Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
   2. The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 19 of this Schedule 2.
   3. If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
   4. The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority’s contracts from time to time. Subject to Clause 19.5 of this Schedule 2, no right to illustrate or advertise the Services Information is granted to the Supplier by the Authority, as a consequence of the licence conferred by this Clause 19.4 of this Schedule 2.
   5. The Authority may reproduce for its sole use the Services Information provided by the Supplier in the Authority's services catalogue from time to time which may be made available on any Authority communications networks in electronic format and/or made available on the Authority's external website and/or made available on other digital media from time to time.
   6. Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 19.6 of this Schedule 2 or otherwise under the terms of this Contract.
   7. If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.
5. **Change Management**
   1. The Supplier acknowledges to the Authority that the Authority’s requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Volume Two (2) Specification and Tender Response Document, as may be requested by the Authority from time to time.
   2. Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.
6. **Dispute Resolution**
   1. During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
   2. In the case of a dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 21.3 of this Schedule 2 before commencing court proceedings.
   3. If any dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the dispute. Level 1 of the management levels of the dispute as set out in Clause 5 of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.
   4. If the procedure set out in Clause 21.3 of this Schedule 2 above fails to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution (“**CEDR**”); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.
   5. To initiate mediation a Party shall:
      1. give notice in writing (“**Mediation Notice**”) to the other Party requesting mediation of the dispute; and
      2. send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.
   6. Neither Party may issue a Mediation Notice until the process set out in Clause 21.3 of this Schedule 2 has been exhausted.
   7. The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
   8. Nothing in this Contract shall prevent:
      1. the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
      2. either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of patients and other service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.
   9. Clause 21 of this Schedule 2 shall survive the expiry of or earlier termination of this Contract for any reason.
7. **Force Majeure**
   1. Subject to Clause 22.2 of this Schedule 2 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
   2. The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 22 of this Schedule 2 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
      1. the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2;
      2. the Force Majeure Event does not arise directly or indirectly as a result of any willful or negligent act or default of the Supplier; and
      3. the Supplier has complied with the procedural requirements set out in Clause 22 of this Schedule 2.
   3. Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
   4. Where the Force Majeure Event affects the Supplier’s ability to perform part of its obligations under the Contract the Supplier shall fulfill all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
   5. If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
   6. Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
   7. The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
   8. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
   9. Following such termination in accordance with Clause 22.8 of this Schedule 2 and subject to Clause 22.10 of this Schedule 2, neither Party shall have any liability to the other.
   10. Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 22.8 of this Schedule 2 shall continue in full force and effect unless otherwise specified in this Contract.
8. **Records Retention and Right of Audit** 
   1. Subject to any statutory requirement and Clause 23.2 of this Schedule 2, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
   2. Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
   3. The Authority shall have the right to audit the Supplier’s compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier’s compliance with its obligations under this Contract.
   4. Should the Supplier subcontract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier’s obligations under this Contract that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
   5. The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier’s compliance with this Contract for the purposes of:
      1. the examination and certification of the Authority’s accounts; or
      2. any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
   6. The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 23 of this Schedule 2 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3) (d) and 6(5) of the National Audit Act 1983.
   7. The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
   8. The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier’s compliance with the requirements of this Contract.
9. **Conflicts of Interest and the Prevention of Fraud**
   1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.
   2. The Authority 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 Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 24.2 of this Schedule 2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
   3. The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
   4. If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Authority resulting from the termination.
10. **Equality and Human Rights**
    1. The Supplier shall:
       1. ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
       2. in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority’s obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
       3. the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 25 of this Schedule 2.
    2. The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier’s compliance with the provisions of Clause 25 of this Schedule 2.
11. **Notice**
    1. Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
    2. A notice shall be treated as having been received:
       1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
       2. if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
       3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.
12. **Assignment, Novation and Subcontracting** 
    1. The Supplier shall not assign, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent to be in the Authority’s absolute discretion. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
    2. Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Authority in writing, which:
       1. contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such subcontracting;
       2. contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
       3. contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be in the Authority’s absolute discretion);
       4. contain a right for the Authority to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract; and
       5. require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.
    3. The Authority shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall not have the right to redact any confidential pricing information in relation to such copies of subcontracts.
    4. The Authority may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.
13. **Prohibited Acts**
    1. The Supplier warrants and represents that:
       1. it has not committed any offence under the Bribery Act 2010 or done any of the following (“**Prohibited Acts**”):
14. offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
15. in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and
    * 1. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
    1. If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:
       1. the Authority shall be entitled:
16. to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
17. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
18. to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;
    * 1. any termination under Clause 28.2.1 of this Schedule 2 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and
      2. notwithstanding Clause 21 of this Schedule 2, any dispute relating to:
19. the interpretation of Clause 28 of this Schedule 2; or
20. the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

1. **General**
   1. Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
   2. Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
   3. The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
   4. Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
   5. Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
   6. Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
   7. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 29.7 of this Schedule 2, right includes any power, privilege, remedy, or proprietary or security interest.
   8. A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
   9. This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud.
   10. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
   11. Subject to Clause 21 of this Schedule 2, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
   12. All written and oral communications and all written material referred to under this Contract shall be in English.

**Schedule 3**

**Information Governance Provisions**

1. **Confidentiality**
   1. In respect of any Confidential Information it may receive directly or indirectly from the other Party (“**Discloser**”) and subject always to the remainder of Clause 1 of this Schedule 3, each Party (“**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser’s prior written consent provided that:
      1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
      2. the provisions of Clause 1 of this Schedule 3 shall not apply to any Confidential Information:
   2. which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
   3. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
   4. which is authorised for disclosure by the prior written consent of the Discloser;
   5. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
   6. which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
   7. Nothing in Clause 1 of this Schedule 3 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 (“**FOIA**”), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities’ Functions or on the Management of Records (“**Codes of Practice**”) or the Environmental Information Regulations 2004 (“**Environmental Regulations**”).
   8. Provided the Authority makes clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 3, the Authority may disclose the Supplier’s Confidential Information to the following third parties:
      1. any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to 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 Contracting Authority);
      2. to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
      3. to any relevant party for the purpose of the examination and certification of the Authority’s accounts; or
      4. to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
   9. The Supplier may only disclose the Authority’s Confidential Information, and any other information provided to the Supplier by the Authority in relation to the provision of the Services, to the Supplier’s Staff or professional advisors who are directly involved in the performance of or advising on the Supplier’s obligations under this Contract. The Supplier shall ensure that such Staff are aware of and shall comply with the obligations in Clause 1 of this Schedule 3 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority’s written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority’s Confidential Information received otherwise than for the purposes of performing the Supplier’s obligations in this Contract.
   10. For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 3, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
   11. Clause 1 of this Schedule 3 shall remain in force:
       1. without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
       2. for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract.
2. **Data Protection**
   1. The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.
   2. Where the Supplier is Processing Personal Data under or in connection with this Contract, the Supplier must, in particular, but without limitation:
      1. only Process such Personal Data as is necessary to perform its obligations under this Contract, and only in accordance with any instructions given by the Authority under this Contract;
      2. put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements of Clause 2 of this Schedule 3, the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;
      3. take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in Clause 2 of this Schedule 3; and
      4. not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the Authority.
   3. The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
   4. Where, as a requirement of this Contract, the Supplier is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to patients and/or service users as part of the Services, the Supplier shall:
      1. complete and publish an annual information governance assessment using the Authority information governance toolkit;
      2. achieve a minimum level 2 performance against all requirements in the relevant Authority information governance toolkit;
      3. nominate an information governance lead able to communicate with the Supplier’s board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier’s board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
      4. report all incidents of data loss and breach of confidence to the Authority
      5. put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
      6. Not used
      7. put in place and maintain agreed protocols for the lawful sharing of Personal Data with other Authority organisations and (as appropriate) with non-Authority organisations in circumstances in which sharing of that data is required under this Contract; and
      8. where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings.
   5. Where any Personal Data is Processed by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 2 of this Schedule 3, as if such subcontractor were the Supplier.
   6. The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier’s unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.
3. **Freedom of Information and Transparency**
   1. The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
   2. The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
      1. that this Contract and any recorded information held by the Supplier on the Authority’s behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;
      2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;
      3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Authority;
      4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;
      5. that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and
      6. to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Authority within five (5) Business Days of that request and without charge.
   3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
   4. Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
   5. In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 3, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority’s absolute discretion.
   6. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
   7. Where any information is held by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 3, as if such subcontractor were the Supplier.
4. **Information Security**
   1. Without limitation to any other information governance requirements set out in this Schedule 3, the Supplier shall:
      1. notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority’s information governance Policies; and
      2. fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
   2. Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.

**Schedule 4**

**Definitions and Interpretations**

**1 Definitions**

* 1. In this Contract the following words shall have the following meanings unless the context requires otherwise

|  |  |
| --- | --- |
| **“Actual Services Commencement Date”** | means the date the Supplier actually commences delivery of all of the Services; |
| **“Authority”** | * 1. means the authority named on the form of Contract on the first page; |
| **“Authority’s Obligations”** | * 1. means the Authority’s further obligations, if any, referred to in the Key Provisions; |
| **“Business Continuity Event”** | * 1. means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including any Force Majeure Event; |
| **“Business Continuity Plan”** | * 1. means the Supplier’s business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event; |
| **“Business Day”** | * 1. means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales; |
| **“Cabinet Office Statement”** | * 1. the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2007) as may be amended or replaced; |
| **“Change Control Process”** | * 1. means the change control process, if any, referred to in the Key Provisions; |
| **“Codes of Practice”** | * 1. shall have the meaning given to it in Clause 1.2 of Schedule 3; |
| **“Commencement Date”** | * 1. means the date of this Contract; |
| **“Commercial Schedule”** | * 1. means the document set out at Schedule 6; |
| **“Confidential Information”** | * 1. means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is:   (a) Personal Data or Sensitive Personal Data  (b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or  (c) Policies and such other documents which the Supplier may obtain or have access to through the Authority’s intranet; |
| **“Contract”** | * 1. means the form of contract at the front of this document and all schedules attached to the form of contract; |
| **“Contracting Authority”** | means any contracting authority as defined in regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5) (as amended), other than the Authority; |
| **“Contract Manager”** | means for the Authority and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2; |
| **“Contract Price”** | means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract; |
| **“Convictions”** | means, other than in relation to 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 or any replacement or amendment to that Act); |
| **“Data Controller”** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Data Processor”** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Data Protection Legislation”** | means the Data Protection Act 1998 and any other Law relating to the protection of personal data and the privacy of individuals, including where applicable guidance and codes of practice issued by the Information Commissioner; |
| **“Data Subject”** | shall have the same meaning as set out in the Data Protection Act 1998; |
| **“Dispute Resolution Procedure”** | means the process for resolving disputes as set out in Clause 21 of Schedule 2; |
| **“Electronic Trading System(s)”** | means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time; |
| **“Employment Liabilities”** | means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever; |
| **“Environmental Regulations”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| **“Equality Legislation”** | means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998; |
| **“FOIA”** | shall have the meaning given to the term in Clause 1.2 of Schedule 3; |
| **“Force Majeure Event”** | means any event beyond the reasonable control of the Party in question to include, without limitation:  (a) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party’s ability to perform its obligations under this Contract;  (b) acts of terrorism;  (c) flood, storm or other natural disasters;  (d) fire;  (e) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;  (f) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;  (g) compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen;  (h) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any subcontractor of the Supplier; and  (i) a failure in the Supplier’s and/or Authority’s supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties; |
| **“Fraud”** | means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority; |
| **“Good Industry Practice”** | means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations; |
| **“Guidance”** | means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified the Supplier by the Authority in its capacity as a Highway Authority and/or any other regulator or competent body; |
| **“Implementation Plan”** | means the implementation plan, if any, referred to in the Key Provisions; |
| **“Intellectual Property Rights”** | means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs; |
| **“Interested Party”** | means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Authority; |
| **“Key Provisions”** | means the key provisions set out in Schedule 1; |
| **“KPI”** | means the key performance indicators as set out in Schedule 5; |
| **“Law”** | means:  (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;  (b) any applicable European Union directive, regulation, decision or law;  (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;  (d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;  (e) requirements set by any regulatory body; and  (f) any applicable code of practice,  in each case as applicable in England and Wales; |
| **“Long Stop Date”** | means the date, if any, specified in the Key Provisions; |
| **“Mediation Notice”** | has the meaning given under Clause 21.5.1 of Schedule 2; |
| **Authority** | means Torbay Council; |
| **“Party”** | means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier; |
| **“Personal Data”** | means personal data as defined in the Data Protection Act 1998; |
| **“Policies”** | means the policies, rules and procedures of the Authority as notified to the Supplier from time to time; |
| **“Premises and Locations”** | has the meaning given under Clause 2.1 of Schedule 2; |
| **“Process”** | has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing. Processing and Processed shall be construed accordingly; |
| **“Remedial Proposal”** | has the meaning given under Clause 15.3 of Schedule 2; |
| **“Sensitive Personal Data”** | means sensitive personal data as defined in the Data Protection Act 1998; |
| **“Services”** | means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Authority as issued to tenderers as part of the procurement process and the Supplier’s response to these requirements); |
| **“Services Commencement Date”** | means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date; |
| **“Services Information”** | means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 19 of Schedule 2 for inclusion in the Authority's services catalogue from time to time; |
| **“Specification and Tender Response Document”** | means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract; |
| **“Staff”** | means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any subcontractors and person employed or engaged by such subcontractors; |
| **“Step In Rights”** | means the step in rights, if any, referred to in the Key Provisions; |
| **“Successor”** | means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract; |
| **“Supplier”** | means the supplier named on the form of Contract on the first page; |
| **“Supplier Personnel”** | means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services; |
| **“Term”** | means the term as set out in the Key Provisions; |
| **“Third Party”** | means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date; |
| **“Third Party Body”** | has the meaning given under Clause 8.5 of Schedule 2; |
| **“Third Party Scheme”** | means a retirement benefits scheme in which the Third Party participates, which provides pension benefits in respect of Ex-Authority Employees and which might be or include the AUTHORITYPS; |
| **“Transfer Date”** | means the Actual Services Commencement Date; |
| **"TUPE"** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and |
| **“VAT”** | means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax. |

* 1. References to any statute or order shall include any statutory extension, modification or re enactment, and any order, regulation, bye law or other subordinate legislation.
  2. References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
  3. References in this Contract to a “Schedule”, “Appendix”, “Paragraph” or to a “Clause” are to schedules, appendices, paragraphs and clauses of this Contract.
  4. References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
  5. The Supplier shall bear the cost of complying with its obligations under this Contract.
  6. The headings are for convenience only and shall not affect the interpretation of this Contract.
  7. Words denoting the singular shall include the plural and vice versa.
  8. Where a term of this Contract provides for a list of one or more items following the word “including” or “includes” then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
  9. Where there is a conflict between the Supplier’s responses to the Authority’s requirements (the Supplier’s responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.
  10. Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
  11. Any guidance notes in grey text do not form part of this Contract.

**Schedule 5**

**Further Competition and Supplier Response Documents**