

TORBAY COUNCIL

TORBAY COUNCIL TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES FRONT SHEET

Contract between

The Authority

Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR

And

The Supplier.

[Insert name, registered office address and, where applicable, the company number of the Supplier]

Contract Number and Title

TELS5222 - Two to Five (2-5) Childcare / Nursery Provision 2023

Date

[Insert the date when signed by both parties]

Commencement Date

01 June 2023

Summary of Services

Two to Five (2-5) Childcare / Nursery Provision on the top floor of the Zig Zags Children's Centre at 32 Market Street, Torquay TQ1 3AQ, from 01 June 2023 onwards

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 3 and those defined within this Contract apply to the use of all capitalised terms in this Contract.

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| Schedule 1 | Key Provisions |
| Schedule 2 | General Terms |
| Schedule 3 | Definitions and Interpretations |
| Schedule 4 | Specification |
| Schedule 5 | Supplier's Tender Response Document |
| Schedule 6 | Payment Schedule |
| Schedule 7 | Exit Management Schedule |
| Schedule 8 | Exit Plan |
| Schedule 9 | TUPE |
| Schedule 10 | Evidence of Insurance |
| Schedule 11 | Change Control |
| Schedule 12 | Further Information |
| Schedule 13 | Not Used |
| Schedule 14 | Performance Management System |
| Schedule 15 | Data Protection Roles and Responsibilities |
| Schedule 16 | Supplier's Social Value Response |
| Schedule 17 | Not Used |
| Schedule 18 | Draft Lease (top floor of the Zig Zags Children's Centre at 32 Market Street, Torquay TQ1 3AQ - October 2022) |

Executed as a deed by affixing the common seal of **Torbay Council** in the presence of:

.....

Name:

Position:

COMMON SEAL

Signed by the Authorised Representative of THE SUPPLIER

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

Schedule 1 Key Provisions

Background

- (A) The Authority published a contract notice with contract reference [**insert the contract notice reference that will be found on the Authority's contract notice for this Contract**] on [**insert date that the contract notice was published**] on Find a Tender and Contracts Finder seeking expressions of interest from potential providers for [for provision of nursery day care on the top floor of the Zig Zags Children's Centre at 32 Market Street, Torquay TQ1 3AQ.
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Contract.
- (C) Documents that form part of this Contract are
- (i) the completed tender documents including the Specification, Supplier Tender Response Payment Schedule, and any other supporting documentation; and
 - (ii) the Front Sheet and its associated Schedules.

Standard Key Provisions

1 APPLICATION OF THE KEY PROVISIONS

- 1.1 The standard Key Provisions at clauses 1 to 5 of these Key Provisions shall apply to this Contract.
- 1.2 The optional Key Provisions at clauses 6 to 20 of these Key Provisions shall apply to this Contract if they are set out in the section below. The tick boxes are purely for administrative purposes and have no bearing on the terms of this Contract
- 1.3 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 1 .

2 TERM

- 2.1 This Contract shall take effect on the Commencement Date and shall continue for the Term unless terminated early or extended as appropriate in accordance with the terms conditions or clauses of this Contract.
- 2.2 The Initial Term shall be the period commencing on the Commencement Date and ending 31 May 2027 unless terminated in advance of this date.

3 AUTHORISED REPRESENTATIVES

- 3.1 At the commencement of this Contract:
- (a) the Authority Authorised Representative is:
Sarah White, Finance & Business Officer, Children's Services - Early Years
 - (b) the Supplier Authorised Representative is:
[insert name and role of the Supplier's Authorised Representative].

4 NAMES AND ADDRESSES FOR NOTICES

- 4.1 Notices served under this Contract are to be delivered to:
- (a) for the Authority:
Sheena Wright and Emma Kerridge,
Senior Early Years Advisory Teacher,
Children's Services,
Torbay Council.

Town Hall,
 Castle Circus,
 Torquay,
 Devon
 TQ1 3DR

Email: sheena.wright@torbay.gov.uk ; emma.kerridge@torbay.gov.uk

(b) for the Supplier:

[complete name and/or role (this is normally going to be the Authorised Representative identified at 3.1(b) above and postal address that they shall be contacted at – please note the address may be different to the registered office address of the Supplier above)].

[insert e-mail address of the person identified above]

5 ORDER OF PRECEDENCE

5.1 Should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- (a) the provisions of the Front Sheet of this Contract;
- (b) Schedule 1 : Key Provisions;
- (c) Schedule 4 : Specification;
- (d) Schedule 6 : Payment Schedule;
- (e) Schedule 2 : General Terms;
- (f) Schedule 15: Data Protection Schedule
- (g) Schedule 5 : Supplier's Tender Response Document
- (h) Schedule 9 : TUPE;
- (i) Schedule 3 : Definitions and Interpretations; and
- (j) the order in which all subsequent schedules, if any, appear.

Optional Key Provisions

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| <input type="checkbox"/> | 6 NOT USED |
| <input type="checkbox"/> | 7 NOT USED |
| <input checked="" type="checkbox"/> | <p>8 INSURANCE</p> <p>8.1 In the event that this clause applies, the following shall amend the wording of clause 15.2 of the General Terms:</p> <ul style="list-style-type: none"> (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims; (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and |

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| | <p>(c) suitable insurance(s) to cover operational risk e.g. Contents Insurance cover, with appropriate minimum levels of cover</p> <p>(the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.</p> |
| <input type="checkbox"/> | 9 NOT USED |
| <input type="checkbox"/> | 10 NOT USED |
| <input type="checkbox"/> | 11 NOT USED |
| <input checked="" type="checkbox"/> | <p>12 EXIT MANAGEMENT AND CONSEQUENCES OF TERMINATION</p> <p>The parties shall comply with the provisions of Schedule 7 in relation to orderly transition of the Services to the Authority or a Replacement Supplier.</p> |
| <input type="checkbox"/> | 13 NOT USED |
| <input checked="" type="checkbox"/> | <p>14 EXTENDING THE INITIAL TERM</p> <p>14.1 The Authority may extend this Contract beyond the Initial Term by a further period or periods of up to 4 years (Extension Period), awarded in two increments of up to 2 years. If the Authority wishes to extend this Contract, it shall give the Supplier at least 6 months' written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>14.2 If the Authority or any individual member of the Authority gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>14.3 If the Authority does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and clause 12 of the Key Provisions shall apply.</p> |
| <input checked="" type="checkbox"/> | <p>15 BUSINESS CONTINUITY</p> <p>15.1 Within 3 months following the Commencement Date, the Supplier shall prepare a draft business continuity plan relating to its provision of the Services and submit that plan to the Authority for its approval. The draft business continuity plan shall:</p> <p>(a) address how the Supplier will respond to, and rectify, any destruction or loss of the Hardware, Software, Data or any other facilities used by the Supplier in providing the Services so that there is no disruption to the Authority or the performance of the Supplier's obligations under this Contract, and</p> <p>(b) detail how and when the Supplier will test its business continuity plan;</p> |

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| | <p>(c) address how it intends to mitigate against any Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Supplier's Personnel or a Supplier Party; the Supplier's supply chain any issues with regard to the supply of equipment or accommodation;</p> <p>(d) address how it intends to mitigate against any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</p> <p>(e) address how it intends to mitigate against any other threats or risks to the provision by the Supplier of the Services.</p> <p>15.2 The Authority shall within a reasonable time provide its comments on the Supplier's draft business continuity plan, and if necessary, the parties shall discuss the Authority's comments and the Supplier shall then promptly prepare a revised draft business continuity plan which addresses the Authority's comments and submit it to the Authority for approval within 30 days of receipt of the Authority's comments provided under this clause 15.2. This process shall be repeated until the Authority approves the business continuity plan in writing.</p> <p>15.3 Once the Authority has approved the Supplier's draft business continuity plan in writing it will form part of this Contract and the Supplier shall perform its obligations under the approved business continuity plan.</p> <p>15.4 The Supplier shall review its business continuity plan at least every 12 months and update it as necessary to reflect any changes in the way the Supplier carries on business or provides the Services, any changes made to any aspect of this Contract or any other changes required as a result of changes by the Authority to its business continuity requirements. Such a plan will as a minimum identify ways in which the Supplier intends to mitigate against impact of:</p> <p>(a) Covid19 or any similar emerging pandemic, epidemic or global health emergency in particular in respect of the Supplier's Personnel or a Supplier Party; the Supplier's supply chain any issues with regard to the supply of equipment or accommodation;</p> <p>any reasonably foreseeable events which would otherwise fall within the definition of Force Majeure Event; and</p> <p>(b) any other threats or risks to the provision by the Supplier of the Services.</p> |
| <input type="checkbox"/> | <p>16 NOT USED</p> |
| <input checked="" type="checkbox"/> | <p>17 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS</p> <p>17.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.</p> <p>17.2 The Supplier shall:</p> <p>(a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service;</p> |

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| | <p>(a) monitor the level and validity of the checks under this clause 17 for each member of staff;</p> <p>(b) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.</p> <p>17.3 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.</p> <p>17.4 The Supplier shall sign up to the Authority's internal safeguarding policies and shall ensure that the Services are carried out in accordance with these policies at all times.</p> <p>17.5 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 17 have been met.</p> <p>17.6 The Supplier shall refer information about any person carrying out the Services to the Disclose and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children, or vulnerable adults.</p> |
| <input checked="" type="checkbox"/> | <p>18 REPORTING AND MEETINGS</p> <p>18.1 The Supplier shall provide the Management Reports in the form and at the intervals set out in the Specification.</p> <p>18.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in the Specification and the Supplier shall, at each meeting, present its previously circulated Management Reports.</p> |
| <input checked="" type="checkbox"/> | <p>19 CONTINUOUS IMPROVEMENT</p> <p>19.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative for the remainder of the Term on:</p> <p>(a) the emergence of new and evolving relevant technologies which could improve the Services;</p> <p>(a) new or potential improvements to the Services; and</p> <p>(b) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority.</p> <p>19.2 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 19.1 shall be addressed by the parties using the Change Control Procedure.</p> |
| <input type="checkbox"/> | <p>20 NOT USED</p> |

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| <input type="checkbox"/> | 21 | NOT USED |
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Additional Key Provisions

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| <input type="checkbox"/> | 22 | NOT USED |
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Schedule 2 General Terms

1 SUPPLY OF SERVICES

- 1.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this Contract in accordance with the provisions of this Contract.
- 1.2 In the event that the Supplier does not comply with the provisions of clause 1.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**). The Default Notice shall be in the form set out in Schedule 14.

2 SERVICE LEVELS

- 2.1 The Service Level Arrangements (if any) shall apply with effect from the Commencement Date (unless the Specification provides to the contrary).

3 COMPLIANCE

- 3.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has used best endeavours to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 Without prejudice to clause 2, the Supplier shall provide the Services, or procure that they are provided:
- (a) with all reasonable skill and care and in accordance with Best Industry Practice;
 - (b) in all respects in accordance with the Authority's requirements set out in the Specification which may from time to time be amended in accordance with this Contract by the Authority; and
 - (c) in accordance with all applicable laws.
- 3.4 Without limiting the general obligation set out in clause 3.1, the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998;
 - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment;
 - (c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
 - (d) comply with the Supplier's Social Value Response (where applicable).
- 3.5 Where requested by the Supplier and agreed by the Authority in writing pursuant to the Brand Guidelines, the Supplier may use the Marks (as defined in the Brand Guidelines and agreed by the Authority in the Permission Request Form) for the purposes outlined and agreed by the Authority in the Permission Request Form.

4 AUTHORITY PREMISES AND AUTHORITY ASSETS

- 4.1 The Authority shall, subject to clause 3 and clause 9, provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
- 4.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority Premises as agreed by the parties from time to time.
- 4.3 Subject to the requirements of the Key Provisions on exit management (if relevant), in the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 4.4 The Supplier shall ensure that:
- (a) where using the Authority Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority Authorised Representative's reasonable directions regarding the security of the same;
 - (b) only those of the Supplier's Personnel that are duly authorised to enter upon the Authority Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Supplier are not removed from Authority Premises unless expressly permitted under this Contract or by the Authority Authorised Representative.
- 4.5 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority Premises or to any property of any other recipient of the Services in the course of providing the Services.

5 HEALTH AND SAFETY

- 5.1 The Supplier shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Authority Premises and that may affect the Supplier in the performance of the Contract.
- 5.2 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of staff and other persons working on the Authority Premises.
- 5.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Authority Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 5.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Authority's Premises in the performance of the Contract.
- 5.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.

6 CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Supplier.
- 6.2 The Charges shall be calculated as set out in the Payment Schedule.
- 6.3 Unless otherwise stated in the Payment Schedule the Charges:
- (a) shall be payable from the Commencement Date;
 - (b) shall remain fixed during the Term unless agreed by both parties; and

- (c) are the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.

6.4 The Authority shall pay each properly submitted invoice received by the Supplier within 30 days of the date when Authority has determined that the invoice is a valid and undisputed invoice. The Supplier shall accept payment electronically via BACS. In order for an invoice to be properly submitted:

- (a) it must (if required) be submitted appropriately using the Authority's e-invoicing system and/or at least contain the following information:
 - (i) the date of the invoice;
 - (ii) a unique invoice number;
 - (iii) the period during which the Services were provided or other period(s) to which the relevant Fee(s) relate;
 - (iv) where the Fees are to be charged on an open book basis any additional reporting; information in respect of any maximum profit margins and/or any Supplier costs and expenses where required by the Authority;
 - (v) the correct reference for this Contract;
 - (vi) the reference number of the purchase order to which it relates (if any);
 - (vii) the dates between which the Services subject of each of the Fees detailed in the invoice were performed;
 - (viii) a description of the Services provided;
 - (ix) the pricing mechanism used to calculate the Charges (i.e. fixed price; time and materials; target cost and/or guaranteed maximum price);
 - (x) where Services are to be provided to meet certain milestones, any certificates in respect of the achievement of such milestones;
 - (xi) the details of any Services credits under any Service Level Arrangements or delay payments or similar deductions that shall apply to the Fees detailed on the invoice;
 - (xii) reference to any reports required by the Authority in respect of the Services to which the Fees detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);
 - (xiii) (where relevant the bank details for the Supplier for payment via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - (xiv) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).
- (b) The Supplier shall invoice the Authority in respect of Services in accordance with the requirements the Payment Schedule. The Supplier shall first submit to the Authority a draft invoice setting out the Fees payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- (c) Each invoice shall at all times be accompanied by supporting documentation reasonably required by the Authority from time to time. Any assessment by the Authority as to what constitutes supporting documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

- 6.5 The Authority will consider and verify any invoices submitted by the Supplier for payment in a timely fashion and agrees that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed. The Authority shall regard an invoice as valid only if it complies with the provisions of this clause 6. Where any invoice does not conform to the Authority's requirements set out in this clause 6, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements. For the purposes of this Contract any such 'returned' invoices shall be treated as a disputed invoice and no interest shall be payable thereon or any claim made by the Supplier for non-payment in respect of the same.
- 6.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with the Dispute Resolution Procedure. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties.
- 6.7 Subject to clause 6.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this Contract under clause 21 for failure to pay undisputed charges.
- 6.8 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall at all times comply with the requirements relating to VAT as more particularly detailed in this Contract and the Specification. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Contract.
- 6.9 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this Contract. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.
- 6.10 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Contract.
- 6.11 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 6.12 In this clause 6.12, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clauses 6.4 and 6.5 above; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 6.4 and 6.5 above.
- 6.13 For the purposes of this clause 6 (but no other) "Sub-Contractor" means a person under a contract, at any stage of remoteness from the Authority in a subcontracting chain, who has entered into a contract wholly or substantially for the purpose of performing (or contributing to the performance of) the whole of any part of this Contract.
- 6.14 Where IR35 regulations may apply to an individual, sole trader or personal services company, the Authority will conduct an employment status check to find out if such entity or individual

should be classed as employed or self-employed for tax purposes (CEST). Where applicable a Status Determination Statement will be issued which will declare the Supplier's deemed employment status following the IR35 assessment and provide reasons for reaching this conclusion. Please note that this may affect the way in which the Supplier is paid and could include the possible deduction of Tax and National Insurance.

7 DUE DILIGENCE

7.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
- (b) it has received all information requested by it from the Authority pursuant to paragraph (a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract and the Fees set out in this Contract;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to paragraph (b);
- (d) it has raised all relevant due diligence questions with the Authority before the Commencement Date; and
- (e) it has entered into this Contract in reliance on its own due diligence.

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

7.3 The Supplier:

- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender Response remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet the Service Level Arrangements.

7.4 The Supplier shall not be entitled to recover any additional costs or Fees from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 7.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

7.5 Nothing in this clause 7 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

8 KEY PERSONNEL

8.1 Each party shall appoint the persons named as such in the Specification as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the

implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the Authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

- 8.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the Authority.
- 8.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 8.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
- 8.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its absolute opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities or for any reason which impacts on the management or operation of any applicable Authority's Premises.
- 8.6 If the Supplier replaces the Key Personnel as a consequence of this clause 8, the cost of effecting such replacement shall be borne by the Supplier.

9 SUPPLIER'S PERSONNEL USED TO PROVIDE THE SERVICES

- 9.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services;
 - (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority Premises; and
 - (e) where the Services are regulated activities enabling the Supplier to obtain a Disclosure Barring Service (**DBS**) certificate, it holds a clear DBS certificate for each of the Supplier's Personnel.
- 9.2 The Authority in its absolute discretion may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 9.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with all reasonable skill and care. Following the

removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

9.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

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

9.6 The Supplier shall indemnify the Authority against all Employee Liabilities that may arise as a result of claims brought against the Authority by any of the Authority's employees or former employees and/or any of the Supplier's Personnel or a Supplier Party where such claim arises from any act or omission of the Supplier, the Supplier's Personnel or a Supplier Party.

10 TUPE

The parties agree that the provisions of Schedule 9 shall apply to any Relevant Transfer of staff under this Contract.

11 MONITORING

11.1 The Authority may monitor the performance of the Services by the Supplier at its discretion.

11.2 The Supplier shall co-operate with the Authority in carrying out the monitoring referred to in clause 11.1 at no additional charge to the Authority.

12 DISPUTE RESOLUTION PROCEDURE

12.1 If a Dispute arises then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives of both the Authority and the Supplier shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives of the Authority the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to senior officers of both the Authority and the Supplier who shall attempt in good faith to resolve it; and

(c) if the senior officers of the Authority and the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

12.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

12.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 37 and 38 which shall apply at all times.

12.4 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 37 and 38 of these General Terms.

13 SUB-CONTRACTING AND ASSIGNMENT

- 13.1 The Supplier shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the Authority. The Supplier shall not sub-contract the whole or any part of its obligations under this Contract nor shall it replace a Sub-Contractor approved under this Contract or permit a Sub-Contractor approved under this Contract to assign, novate or otherwise dispose of any or all of its rights and obligations under the Sub-Contract, except with the express prior written consent of the Authority.
- 13.2 In the event that the Supplier enters into any Sub-Contract in connection with this Contract it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors and shall indemnify and keep indemnified the Authority against any loss or claim arising resulting from the failure of the Sub Contractor or an employee of the Sub Contractor in the performance of the duties of the Sub Contractor to provide the Services on behalf of the Supplier under this Contract;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms and, if necessary, imposes obligations on any further sub-contractors in its sub-contract pursuant to this Contract; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's 'Authorised Representative.
- 13.3 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 13.4 The Authority may, by notice in writing to the Contractor, require the Contractor immediately (or as specified in the notice) to cease to engage a specified Sub-Contractor for the performance of any of its obligations under this Contract where any of the circumstances specified in Regulation 57(1) or (8) of the Public Contracts Regulations 2015 applies to the Sub-Contractor.

14 LIMITATION OF LIABILITY

- 14.1 Subject to clause 14.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 14.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 14.3 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

15 INSURANCE

- 15.1 The policy limits set out below shall apply unless expressly amended in the Key Provisions.
- 15.2 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; and
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 15.3 The Supplier shall, prior to the Commencement Date and on each subsequent anniversary of the Commencement Date, provide the Authority with copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. This evidence of insurance will be added annually to this Contract in Schedule 10 .
- 15.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier including by way of set off against payments that may be made by the Authority to the Supplier for the provision of the Services.
- 15.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 15.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract.
- 15.7 The Supplier shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Contract, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this Contract by the Authority.

16 FREEDOM OF INFORMATION AND TRANSPARENCY OBLIGATIONS

- 16.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and transparency obligations under the Public Contracts Regulations 2015, and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with its obligations under the FOIA and the EIRs and its transparency obligations under the Public Contracts Regulations 2015.
- 16.2 The Supplier shall and shall procure that its Sub-Contractors shall:
 - (a) transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within 5 Working Days of receiving a Request for Information;
 - (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 16.3 The Authority shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or
 - (b) is to be disclosed in response to a Request for Information.

- 16.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 16.5 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs. The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 16.6 The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 16.5.
- 16.7 The Supplier acknowledges that the United Kingdom Government's transparency agenda, including the transparency obligations under the Public Contracts Regulations 2015, requires that contracts, such as the Contract, and any tender document, such as the invitation to tender and certain other information, are published on a designated, publicly searchable website and the Supplier consents to such publication.
- 16.8 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in their absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 16.9 Notwithstanding any other term of the Contract, the Supplier hereby consents to the Authority publishing the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 16.10 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.

17 DATA PROTECTION

- 17.1 The parties acknowledge and agree that the allocation of the role of data controller, joint data controller or data processor (as such terms are defined in the Data Protection Laws) is a question of fact rather than being determined by contractual agreement. However, the parties agree that circumstances may arise in connection with the provision of the Services whereby:
- (a) both parties are independent data controllers of Contract Personal Data;
 - (b) the parties are joint data controllers of Contract Personal Data;
 - (c) one party acts as a data processor on behalf of the other party in relation to Contract Personal Data; or
 - (d) a combination of two or more of the circumstances set out above.
- 17.2 The parties agree to confirm the role of each party (as described in 17.1 above) prior to the commencement of the processing of personal data in respect of any Services in the relevant SOW or otherwise in writing.
- 17.3 Depending on the roles of each party in relation to any Project or any processing of Contract Personal Data, the parties agree in each case to comply with the terms of this clause 17 and Schedule 15.

- 17.4 The parties shall each be responsible for their own costs of compliance with this clause 17 and Schedule 15 save where any data protection related audit carried out by or on behalf of the Authority reveals any material non-compliance by the Supplier in relation to the Supplier's obligations under this clause 17, Schedule 15 or the Data Protection Laws, in which case Supplier shall promptly reimburse the Authority's reasonable costs incurred in relation to such audit.
- 17.5 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by, or awarded against the Authority arising from any breach of the Supplier's obligations in this clause 17 except and to the extent that such liabilities have resulted directly from the Authority's instructions.

18 CONFIDENTIALITY

- 18.1 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is required for disclosure by any applicable law, provided that clause 16.5 shall apply to any disclosures required under the FOIA or the EIRs;
 - (b) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Authorised Representatives in breach of this clause);
 - (c) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (d) is disclosed by the Authority to any other department, office or agency of the Government;
 - (e) where in the reasonable opinion of the Authority it is necessary to disclose information or required to disclose information to any court tribunal arm of Government or Local Government;
 - (f) may assist in the enabling of a determination to be made under clause 12;
 - (g) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - (h) the parties agree in writing is not confidential or may be disclosed.
- 18.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Contract (**Permitted Purpose**); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 18.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Contract,
- and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.
- 18.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court

or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

- 18.5 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 18.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party, or to be implied from this Contract.
- 18.7 On termination of this Contract, the Supplier shall:
- (a) return to the Authority all documents and materials (and any copies) containing, reflecting, incorporating or based on the Authority's Confidential Information;
 - (b) erase all the Authority's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
 - (c) certify in writing to the Authority that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the Authority's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 18.8 Except as expressly stated in this Contract, no party makes any express or implied warranty or representation concerning its Confidential Information.

19 AUDIT

- 19.1 During the Term and for a period of 7 years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes;
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Contract) and/or the costs of all Suppliers (including Sub-Contractors) of the Services;
 - (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - (c) to review the Supplier's compliance with the Data Protection Act and the FOIA in accordance with clause 17 and clause 16 and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Authority's accounts;
 - (g) to carry out an examination pursuant of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports (if applicable) and any other management information delivered or required by this Contract.
- 19.2 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 19.3 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;

- (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 19.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 19.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Contract in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 19.6 If an audit identifies that:
- (a) the Supplier has failed to perform its obligations under this Contract in any material manner; the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 Working Days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
 - (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 Working Days.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 Unless expressly stated otherwise in the Specification or in a separate prior written agreement signed by both parties to the contrary, all Intellectual Property Rights created by the Supplier, Supplier Personnel, a Sub-Contractor or any other employee, agent or subcontractor of the Supplier:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 20.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis and all other reasonable professional costs and expenses), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

21 TERMINATION FOR BREACH

- 21.1 The Authority may terminate this Contract with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this Contract provided that if the breach is capable of remedy or the Authority has served the Supplier with a Default Notice, the Authority may only terminate this Contract under this clause 21.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
 - (b) if a Service Failure Default has occurred;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if an Insolvency Event has occurred;

- (e) if the Supplier ceases or threatens to cease to meet its obligations under this Contract for any reason;
 - (f) if there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Supplier to which the Authority reasonably objects; or
 - (g) in accordance with clause 25.9.
- 21.2 The Authority may terminate this Contract by giving not less than 30 days written notice on the Supplier in any of the following circumstances:
- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - (b) at the Commencement Date one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 (including as a result of the application of regulation 57(2)) applied:
 - (i) to the Supplier such that it should have been excluded from the procurement procedure; or
 - (ii) to a Sub-Contractor on which the Supplier relied in its tender to the Authority for this Contract and the Supplier does not cease to engage that Sub-Contractor within 30 days of a notice from the Authority requiring the Supplier to cease to engage that Sub-Contractor.
 - (c) in the event that the Government announces or instigates a national or local lockdown which has the effect of materially impacting the provision of the Services or the Authority's ability to effectively use or apply the output of the Services; and
 - (d) in the event that any third party lease (including in respect of any Authority Premises) to which the Authority is a party is terminated or expires provided that the Services provided by the Supplier relates specifically to the property to which the lease relates.
- 21.3 If this Contract is terminated by the Authority for cause in accordance with clause 21.1 or 21.2 such termination shall be at no loss or cost to the Authority.

22 TERMINATION ON NOTICE

- 22.1 The Authority may terminate this Contract at any time by giving not less than 30 days written notice to the Supplier.
- 22.2 Any individual member of the Authority in respect of an applicable Authority Premises may terminate this Contract in so far as it relates to an applicable named Authority Premises at any time by the service of 30 days written notice on the Supplier.

23 FORCE MAJEURE

- 23.1 Subject to the remaining provisions of this clause 23, neither party to this Contract shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event.
- 23.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 23.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 23.7 The Authority may, during the continuance of any Force Majeure Event, terminate this Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days.

24 ANTI-SLAVERY

- 24.1 The Supplier will not, and will procure that any other persons who perform services or supply goods for or on behalf of it in connection with this Contract (including each Supplier Party and/or the Supplier's Personnel) will not engage in any practice or omit to do any act or thing that amounts to modern slavery as defined under the Modern Slavery Act 2015 ("**Modern Slavery Practice**").
- 24.2 The Supplier will (and procure that its Supplier Party/ies or Supplier Personnel will):
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
 - (b) comply with all applicable any anti-slavery policy and/or code of conduct adopted by the Authority from time to time;
 - (c) conduct proper and detailed checks on its own suppliers and contractors and all persons employed or engaged on or in connection with the Services to ensure that they do not engage in any Modern Slavery Practice;
 - (d) include in its contracts with its subcontractors and suppliers (including any Supplier Party) anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 24;
 - (e) provide the Authority (at the Supplier's cost) with assistance and information to enable the Authority to prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015;
 - (f) permit the Authority and any person nominated by it for this purpose to have such access on demand to the Supplier's (or any relevant Supplier Party's) premises, personnel, systems, books and records as the Authority may require to verify the Supplier's compliance with this clause 24.
- 24.3 The Supplier represents and warrants (on behalf of itself and its Supplier Personnel and Supplier Party/ies) that neither the Supplier (its Supplier Party/ies or Supplier Personnel) nor any of its/their officers, employees or other persons associated with it:
- (a) have been convicted of any offence involving slavery and human trafficking;
 - (b) have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

- 24.4 The Supplier will (and procure that its Supplier Party/ies and/or Supplier Personnel) immediately give written notice to the Authority upon a breach, potential or suspected breach, of any of its obligations referred to in Clauses 24.1 to 24.3 occurring. The notice will set out full details of the breach or suspected breach or non-compliance.
- 24.5 The Authority may terminate this Contract (or any part thereof as applicable) immediately and without liability by giving written notice to that effect to the Supplier if the Supplier (or any of the Supplier Party/ies or Supplier Personnel) is/are in breach of any of their obligations under this clause 24 or has reasonable cause to believe such a breach has occurred.
- 24.6 The Supplier will indemnify the Authority (against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that the Authority does or will incur or suffer arising out of or in connection with any breach by the Supplier (or its Supplier Party/ies or Supplier Personnel) of any of its obligations under this Clause 24.

25 PREVENTION OF BRIBERY AND CORRUPTION

25.1 The Supplier:

- (a) shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract commit a Prohibited Act or contravene any of the Authority's policies or rules with regard to anti-bribery notified to the Supplier in writing from time to time;
- (b) shall not do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act;
- (c) warrants, represents and undertakes that:
 - (i) it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract;
 - (ii) neither the Supplier, the Supplier Party/ies or any of the Supplier Personnel has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act;
 - (iii) neither the Supplier, the Supplier Party/ies or any of the Supplier Personnel has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts including[,without limitation,] any exclusion under regulation 57 of the Public Contracts Regulations 2015 or regulation 80 of the Utilities Contracts Regulations 2016 (SI 2016/274);
 - (iv) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(iv)) none of the officers or employees of the Supplier or any person associated with it or any other person who is performing the Services in connection with this Contract is a foreign public official; and/or
 - (v) (except as notified in writing to the Authority, specifically referring to this clause 25.1(c)(v)) no foreign public official owns a direct or indirect interest in the Supplier or any person associated with it (including any Supplier Party or the Supplier Personnel) or any other person for whom the Supplier is responsible under this Contract and no public official has any legal or beneficial interest in any payments made by the Authority under this Contract.

- 25.2 The Supplier shall promptly notify the Authority if, at any time during the continuance of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clauses 25.1 and 25.3 at the relevant time. Breach of clause 25.1 and 25.3 shall be a material breach of this Contract. If the Authority terminates this Contract for breach of clause 25.1, the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.
- 25.3 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Party or Supplier Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 25.4 The Supplier shall:
- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 25 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.
- 25.5 The Supplier shall establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and that are compliant with the Bribery Act and shall enforce it where appropriate. Any sub-contract shall be recorded in writing and shall:
- (a) impose on and secure from the Sub-Contractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Supplier in this clause 25.1 (**Relevant Terms and Conditions**) in each case for the benefit of the Authority, such provisions to be directly enforceable by the Authority under the Contract (Rights of Third Parties) Act 1999 (**Third Party Rights Act**);
 - (b) include an undertaking from the Sub-Contractor in favour of the Authority (directly enforceable by the Authority under the Third Party Rights Act) not to enter into any further subcontract with any third party;
 - (c) include provisions, directly enforceable by the Authority under the Third Party Rights Act, granting the Authority and its representatives:
 - (i) the same direct access to the premises, records, information and personnel of the Sub-Contractor as the Authority has to the premises, records, information and personnel of the Supplier; and
 - (ii) the same auditing rights in respect of the Sub-Contractor's compliance with the Relevant Terms and Conditions as the Authority has regarding the Supplier's compliance with this clause; and
 - (iii) include provisions allowing termination of the Sub-Contract by the Authority in accordance with this Contract and a provision for automatic

termination of the subcontract in the event of, and at the same time as, the termination of this Contract.

- 25.6 After any subcontract has been entered into, the Supplier shall:
- (a) within thirty (30) days (or such other period agreed in writing with the Authority) of it being entered into, provide the Authority with a copy of the Subcontract;
 - (b) be responsible for the observance and performance by the Sub-Contractor of the Relevant Terms and Conditions, and shall be directly liable to the Authority for any breach by the Sub-Contractor of any of the Relevant Terms and Conditions;
 - (c) notify the Authority in the case of any such breach; and
 - (d) if the Sub-Contractor fails to perform or observe any of the Relevant Terms and Conditions, and if requested by the Authority, immediately give the Sub-Contractor notice, specifying the breach complained of, and:
 - (i) where the breach is not capable of remedy, terminating the subcontract immediately; or
 - (ii) where the breach is capable of remedy, giving notice that the subcontract is to terminate thirty (30) days from the date of the notice being given unless the Sub-Contractor has remedied the breach within that period.
- 25.7 If any breach of clause 25.1 or clause 25.3 is suspected or known, the Supplier must notify the Authority immediately.
- 25.8 If the Supplier notifies the Authority that it suspects or knows that there may be a breach of clause 25.1 or clause 25.3, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- 25.9 The Authority may terminate this Contract by written notice with immediate effect and without liability to the Supplier, Supplier Party or any Supplier Personnel if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 25.1 or clause 25.3. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
- (a) with the Authority; or,
 - (b) with the actual knowledge;
of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
 - (c) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.
- 25.10 Any notice of termination under clause 25.9 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 25.11 Despite clause 12, any dispute relating to:
- (a) the interpretation of clause 25; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 25.12 Any termination under clause 25.9 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

26 NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this Contract, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

27 WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Authority to the Supplier in respect of the Services or any omission on the part of the Authority to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of this Contract.

28 ACCUMULATION OF REMEDIES

Subject to the specific limitations set out in this Contract, no remedy conferred by any provision of this Contract is intended to be exclusive of any other remedy except as expressly provided for in this Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

29 SEVERABILITY

29.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

29.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

30 PARTNERSHIP OR AGENCY

30.1 Nothing in this Contract shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this Contract.

30.2 Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

31 THIRD PARTY RIGHTS

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

32 PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority.

33 NOTICES

33.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Contract. Notices may be sent by:

- (a) first-class mail,
- (b) e-mail (provided that the e-mail is sent to the e-mail address of the Authorised Representative of the receiving party as set out at clause 4 of the Key Provisions, or as notified by one party to the other in writing from time to time and are confirmed within 24 hours by first class mailed confirmation of a copy) however notice of a parties' intention to terminate this Contract or informing the other party of a breach of this Contract shall not be accepted in email form and may only be sent by first class mail or facsimile transmission; or
- (c) facsimile transmission (provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy).

33.2 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 33.3:

| Delivery method | Deemed delivery date and time |
|--|---|
| Delivery by hand. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage. | 9.00 am on the third Working Day after posting or at the time recorded by the delivery service. |
| Pre-paid airmail providing proof of postage. | 9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service. |
| Facsimile transmission/E-mail. | At the time of transmission provided that they are confirmed as set out above. |

33.3 For the purpose of clause 33.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday, outside the hours of 9.00 am to 5.00 pm, or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

34 CHANGES TO THE CONTRACT

No Change to this Contract shall be effective unless it is processed in accordance with the Change of Control Procedure set out in Schedule 11 .

35 ENTIRE AGREEMENT

This Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and

supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

36 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract. No counterpart shall be effective until each party has executed at least one counterpart.

37 GOVERNING LAW

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by and construed exclusively in accordance with the law of England and Wales.

38 JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract of its subject matter or formation (including non-contractual disputes).

This Contract has been entered into on the date stated at the beginning of it.

Schedule 3 Definitions and Interpretation

1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Contract.

Authorised Representative: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in the Key Provisions

Authority Assets: any materials, consumables, resources, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services as set out in Schedule 12 .

Authority Premises: the premises which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Contract as set out in the Specification.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

Brand Guidelines: means those guidelines set out in Schedule 16.

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

Catastrophic Failure: any action by the Supplier, whether in relation to the Services and this Contract or otherwise, which in the reasonable opinion of the Authority's Representative has or may cause significant harm to the reputation of the Authority.

Change: any change to this Contract including to any of the Services.

Change Control Procedure: the procedure for making a Change, as set out in clause 34 of the General Terms.

Charges: means the charges referred to in clause 6 of the General Terms and more particularly set out in the Payment Schedule.

Commencement Date: the date on which this Contract commences as set out on the Front Sheet, or, if the Front Sheet does not expressly state the Commencement Date, the date on which the Contract is signed.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives whether before or after the date of this Contract in connection with the Contract, concerning:

- (a) the existence and terms of this Contract;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
- (c) any information developed by the parties in the course of carrying out this Contract.

Contract: means this agreement and no other.

Contract Personal Data: any and all personal data which is collected or otherwise processed by the Supplier as a result of or in connection with this Contract or the Services.

Contract Price: the aggregate Charges paid or payable by the Authority to the Supplier for the Services assuming that the Contract runs for the duration of the Term or, if it is not possible to calculate this value; either:

- (a) the price agreed by the parties (acting reasonably) in writing; or
- (b) an amount calculated by the parties (acting reasonably) taking into account the average Charges of the Contract prior to the liability incident and the projected future spend extrapolated to the end of the Term.

Contract Year: a period of 12 months, commencing on the Commencement Date

Data: shall have the meaning as set out in the Specification.

Data Protection Laws: Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (commonly referred to as the "GDPR"), the Data Protection Act 2018, the UK GDPR (as defined by the Data Protection, Privacy and Electronic Communications (amendments etc.) (EU Exit) Regulations 2019 (SI 2019/419)), the Privacy and Electronic Communications (EC Directive) Regulations 2003, , the Investigatory Powers Act 2016, the Investigatory Powers (Interception by Businesses etc. for Monitoring and Record-keeping Purposes) Regulations 2018/356, the Electronic Communications Data Protection Directive 2002/58/EC, together with any and all other laws, regulations or other statutory instruments relating to the protection of personal data applicable to either party in any relevant jurisdiction.

Default Notice: is defined in clause 1.2 of the General Terms.

Dispute: a dispute arising out of or in connection with this Contract or the performance, validity or enforceability of it.

Dispute Resolution Procedure: the procedure set out in clause 12 of the General Terms.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Employee Liabilities: means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fines, losses, orders, penalties, disbursements, payments made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation and any legal costs and expenses.

Exit Management Plan: the plan (if any) set out in Schedule 8 .

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

Force Majeure Event: any circumstance not within a party's reasonable control affecting the performance by a party of its obligations under this Contract arising from acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic (including any subsequent act of Government including lockdown, trade restriction, travel ban or trade embargo), terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, interruption or failure of utility service, and any labour or trade dispute, strikes, industrial action or lockouts, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

Front Sheet: the front sheet of the Contract.

General Terms: the provisions set out in Schedule 2 .

Hardware: shall have the meaning as set out in the Specification.

Information: has the meaning given under section 84 of FOIA.

Initial Term: shall have the meaning as set out in the Key Provisions.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Insolvency Event: where;

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Key Personnel: those personnel identified in the Specification for the roles attributed to such personnel, as modified from time to time in accordance with the terms of this Contract.

Key Provisions: the terms set out in Schedule 1 .

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 18 of the Key Provisions and the Specification.

Necessary Consents: means all consents required from time to time by UK law and all reasonable local consents required by the Authority.

Payment Schedule: the document set out at Schedule 6 .

Personal Data Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Prohibited Act: the following constitute Prohibited Acts:

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

Public Contracts Regulations 2015: the Public Contracts Regulations 2015 as enacted or the same or equivalent provisions in any re-enactment/amendment.

Regulated Activity: in relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 in relation to vulnerable adults as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority in accordance with clause 21.1(a) of the General Terms.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Service Failure: a failure by the Supplier to provide the Services in accordance with the Service Level Arrangements.

Service Failure Default: a failure by the Supplier to provide the Services in accordance with the Service Level Arrangements that the Authority deems shall result in termination of the Contract as set out in the Specification.

Service Level Arrangements: the service level arrangements set out in the Specification.

Software: shall have the meaning as set out in the Specification.

SOW: Statement of Work

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Social Value Response: means the response set out (where applicable) at Schedule 15.

Supplier's Tender Response: the tender response document submitted by the Supplier and other associated documentation set out in Schedule 5 .

Services: the services to be delivered by or on behalf of the Supplier under this Contract, as more particularly described in the Specification which may from time to time be altered by the Authority.

Specification: the specification detailed in Schedule 4 .

Sub-Contract: (except in clause 6.12 of the General Terms) any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this Contract which are agreed pursuant to clause 14 of the Key Provisions; or
- (b) the earlier termination of this Contract in accordance with its terms.

Termination Date: the date of expiry or termination of this Contract.

Transferable Contracts: the third-party contracts (including any licenses to third-party software) that are necessary to enable the transition of the Services to the Authority or any Replacement Supplier on expiry or termination of this Contract.

Transferring Contracts: shall have the meaning as set out in Schedule 7 .

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

- 1.4 The schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to statute, legislation, regulations or a statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes facsimile transmission and e-mail.
- 1.10 Any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Contract) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Contract; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression so far as any party is aware or to any party's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

Schedule 4 **Specification**

Guidance - See Specification in the tender pack – before signing the Contract the Specification will need to be inserted here.

Guidance: Insert the details of what the Supplier shall be doing as fully and completely as possible.

Schedule 5 **Supplier's Tender Response Document**

Guidance - See Supplier's tender response document – before signing the Contract the Tender Response Document will need to be inserted here.

Schedule 6 **Payment Schedule**

Guidance - See Payment Schedule in the tender pack – before signing the Contract the Payment Schedule will need to be inserted here.

Schedule 7 Exit Management Schedule

1 INTRODUCTION

- 1.1 This Schedule describes the duties and responsibilities of the Supplier to the Authority or any individual member of the Authority leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Contract and the transfer of service provision to a Replacement Supplier.
- 1.2 The objectives of this Schedule 7 are to ensure a smooth transition of the availability of the Services from the Supplier to the Authority and/or Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Contract.

2 EXIT AND SERVICE TRANSFER ARRANGEMENTS

The Supplier agrees to indemnify and keep the Authority fully indemnified for itself and on behalf of any replacement Supplier in respect of any claims, costs (including reasonable legal costs), demands, and liabilities arising from the provision of incorrect information provided to the Authority by the Supplier, to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing services similar to the Services.

3 EXIT MANAGEMENT PLAN

- 3.1 Where required by the Authority, no later than three (3) months after the Commencement Date, and thereafter as specified in paragraph 3.4 of this Schedule, the Supplier shall prepare an Exit Management Plan for review by the Authority which will set out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this Contract.
- 3.2 The Authority shall review the Exit Management Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Management Plan. In this respect, the Authority will act neither unreasonably, capriciously nor vexatiously. Such suggested revisions shall be discussed and resolved within ten (10) Working Days of them being communicated to the Supplier. Once agreed, the Exit Management Plan shall be inserted into this Contract at Schedule 8 . The agreed Exit Management Plan shall be signed as approved by each party. If the parties are unable to agree the contents of the Exit Management Plan within 30 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.3 The Exit Management Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services, including the following details as a minimum:
- (a) how the information in paragraph 6.1 of this Schedule 7 is obtained;
 - (b) how the Supplier will deal with the expiry or termination of this Contract;
 - (c) a detailed description of both the transfer and cessation processes, including a timetable;
 - (d) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);
 - (e) the scope of any services and activities to be performed by the Supplier to assist the Authority and/or the Replacement Supplier in the transfer of the Services to the Authority and/or Replacement Supplier including a timetable (where applicable);
 - (f) how each of the issues set out in this Schedule 7 will be addressed to facilitate the transition of the Services from the Supplier to the Authority and/or the

Replacement Supplier with the aim of ensuring that there is no disruption to or degradation of the Services;

- (g) proposals for the identification and transfer of documentation providing details of the Services;
- (h) proposals for the identification of all leases, maintenance agreements and support agreements utilised by the Supplier in connection with the provision of the Services, together with details of the relevant lessors and contractors, the payment terms, expiry dates and any relevant novation and/or early termination provisions;
- (i) proposals to enable the Authority or the Replacement Supplier to recruit suitably skilled personnel;
- (j) proposals for the training of key members of the Authority's and/or the Replacement Supplier's personnel in connection with the continuation of the provision of the Services following the expiry or termination (howsoever arising) of this Contract charged at rates agreed between the parties at that time;
- (k) proposals for the granting of licences to use all software (including the Software) necessary for the Authority's' receipt of the Services and the provision of copies of all related documentation;
- (l) proposals for the transfer of all Authority Data then in the Supplier's possession to either the Authority and/or a Replacement Supplier, including:
 - (i) an inventory of all Authority Data;
 - (ii) details of the data structures in which the Authority Data is stored, in the form of an agreed data model together with information on other data structures in which the Authority Data could be stored;
 - (iii) proposed transfer methods, both physical and electronic; and
 - (iv) proposed methods for ensuring the integrity of the Authority Data on transfer;
- (m) proposals for providing the Authority and/or a Replacement Supplier with copies of all documentation used in the provision of the Services and necessarily required for the continued use thereof, in which the Intellectual Property Rights are owned by the Supplier; and
- (n) proposals for the supply of any other information or assistance reasonably required by the Authority or a replacement Supplier in order to affect an orderly hand over of the provision of the Services.

3.4 The Exit Management Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Management Plan to the Authority on each year (or more frequently as may be agreed between the parties). The revised Exit Management Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.2 of this Schedule.

3.5 Within 20 Working Days after service of a notice to terminate this Contract by either party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Management Plan in a final form that could be implemented immediately. The final form of the Exit Management Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Management Plan was last agreed.

4 TERMINATION OBLIGATIONS

4.1 The Supplier shall comply with all of its obligations contained in the Exit Management Plan.

- 4.2 On termination or expiry of this Contract for any reason, the Supplier shall (to the extent that it does not adversely affect the Supplier's performance of the Services and the Exit Management Plan):
- (a) immediately deliver to the Authority all Authority Assets (where applicable), copies of information, documentation and Data provided by the Authority to the Supplier for the purposes of this Contract;
 - (b) immediately repay to the Authority all Charges that it has been paid in respect of Services not provided by the Supplier as at the date of expiry or termination or any other sums due to the Authority in accordance with this Contract;
 - (c) cease to use the Authority Data or where reasonably stipulated by the Authority hold the Authority's Data on the Authority's behalf in accordance with the terms of this Contract in respect of the security and confidentiality of such Authority Data until release is requested by the Authority in writing;
 - (d) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of all Authority Data;
 - (e) certify to the Authority that it has not retained any copies of any Authority documentation or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 18 of the General Terms;
 - (f) vacate any Authority Premises; and
 - (g) provide such information relating to the Services as remains in the possession or control of the Supplier.
- 4.3 On termination of this Contract for whatever reason or in the case of any suspension of this Contract (or part thereof), the Supplier, subject to any other relevant clauses in this Contract, will only be entitled to the payment of Fees relating to the Services provided properly and in accordance with the terms of this Contract up to the date of termination or expiry or suspension (as the case may be).
- 4.4 On termination or expiry of this Contract for any reason:
- (a) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry, shall not be affected;
 - (b) the Supplier shall pay to the Authority any amounts that are then outstanding immediately (including any overpayments for Services not yet provided or where the Authority has not received deliverables or the Services in accordance with this Contract) and the Authority shall not be liable to the Supplier for any of the following:
 - (i) any costs expenses or payments to any Supplier's Personnel or a Supplier Party in respect of the redeployment or reallocation of their respective Supplier's Personnel or Supplier Party including any other costs of redeployment of the same;
 - (ii) any costs or expenses, including any contractual penalties, in respect of the termination, novation or assignment of any contracts with any third party suppliers or any sub-contracts incurred following and as a result of termination or expiry of the Contract;
 - (iii) the cost of any assets, equipment, connectivity, infrastructure or other materials purchased, leased or otherwise procured by the Supplier in order to facilitate the provision of the Services or its other obligations under this Contract;
 - (iv) any other additional shutdown costs, expenses or liabilities that may be incurred in relation to the termination or expiry of this Contract;

- (v) any sums incurred by the Supplier under this Contract (but not yet invoiced to the Authority up to the date of termination) that the Supplier has used its best endeavours to avoid paying to any sub-contractor or any third party suppliers or Supplier Party in relation to the Services (or part thereof);
- (vi) any sums paid or payable by the Authority to the Supplier under this Contract for Services or any other deliverables or any other materials provided (whether invoiced or not and/or paid or outstanding) for which the Authority has not received any benefit under this Contract. In the event that the Authority has paid the Supplier for such amounts, the Supplier shall refund the Authority for any such sums immediately and/or upon written request (including any pro rata amounts paid by the Authority for an unexpired period during which the Services would have been supplied if the termination had not occurred); and
- (i) any termination or cancellation fees or other breakage costs (including anything similar to any third party suppliers or any Supplier Party).

4.5 The provisions of clauses 14 (Limitation of Liability) 15 (Insurance), 16 (Freedom of Information), 17 (Data Protection), 18 (Confidentiality), 19 (Audit), 20 (Intellectual Property Rights) 21 (Termination for Breach) of the General Terms and this paragraph 4 and clause 18 (Reporting and meetings) (if applicable) of the Key Provisions shall survive termination or expiry of this Contract.

4.6 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

5 ASSISTANCE ON EXPIRY OR TERMINATION

5.1 In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Authority in accordance with this Schedule 7 , provide assistance to the Authority to migrate the provision of the Services to a Replacement Supplier.

6 PRE- SERVICE TRANSFER OBLIGATIONS

6.1 The Supplier agrees that, subject to compliance with the Data Protection Legislation:

- (a) within twenty (20) Working Days of the earliest of:
 - (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
 - (iii) the date which is six (6) months before the expiry date of this Contract,
 it shall provide to the Authority and/or its Replacement Suppliers:
 - (iv) details of the Services;
 - (v) details of all Authority Assets currently used in providing the Services;
 - (vi) details of the Transferable Contracts;
 - (vii) a list of those of its, or its Sub-Contractors', employees who are wholly or mainly assigned to the provision of the Services which the Supplier believes will transfer to the Authority or the replacement Supplier (as the case may be), together with Staffing Information in relation to such employees,
 - (viii) an inventory of any Authority Data in the Supplier's possession or control;

- (ix) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (x) a list of ongoing and/or threatened disputes in relation to the provision of the Services,
 - (xi) such other material and information as the Authority shall reasonably require, and
- (b) at least ten (10) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority for itself or on behalf of any replacement Supplier (as the case may be) a final list of employees which shall transfer under TUPE.
- 6.2 Within 10 Working Days of the Authority receiving the information in 6.1(a), the Authority shall notify the Supplier which, if any, of the Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the **Transferring Contracts**). Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services.
- 6.3 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 6.4 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 6.5 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.6 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to paragraph 6.3 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.
- 6.7 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement.
- 6.8 The Supplier warrants that all information provided under paragraph 6 of this Schedule shall be true, accurate and complete and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to prepare an informed offer for those Services and to not be disadvantaged in any subsequent procurement process compared to the Supplier.
- 6.9 The Supplier shall notify the Authority within 5 Working Days of any change to the information provided in paragraph 6.1 and shall consult with the Authority regarding such changes
- 6.10 From the date of the earliest event referred to in paragraphs 6.1(a)(i) to 6.1(a)(iii) of this Schedule 7 , the Supplier agrees that it shall not, and agrees to procure that its Sub-

Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:

- (a) increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
- (b) replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise; or
- (c) make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment).

Schedule 8 **Exit Management Plan**

Guidance: To insert the pre-agreed Exit Management Plan if applicable.

If an Exit Management Plan is to be developed during the Contract, it should be inserted here when it is agreed by both parties.

Schedule 9 TUPE

Part 1 Transfer of employees

1 DEFINITIONS

The definitions in this paragraph apply in this schedule:

Appropriate Pension Provision: in respect of Eligible Employees membership, continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer.

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Authority or any Third Party Employer to the Supplier or Sub-Contractor.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE.

Employment Liabilities: all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date from the Supplier or Sub-contractor to the Authority or a Replacement Supplier by virtue of the application of TUPE.

Supplier's Final Staff List: the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Supplier's Provisional Staff List: the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-contractor to the Authority or any Replacement Supplier.

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including but not limited to the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Transfer Date: 01 June 2023

Transferring Employees: employees whose contracts of employment will transfer with effect from the Transfer Date to the Supplier by virtue of the application of TUPE as listed in Part 2 of this Schedule 9 .

2 TRANSFER OF EMPLOYEES TO THE SUPPLIER

2.1 The Authority and the Supplier agree that the contracts of employment of the Transferring Employees shall transfer to the Supplier or Sub-contractor on the Transfer Date.

2.2 The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE.

- 2.3 Not used.
- 2.4 The Supplier shall be liable for and indemnify and keep indemnified the Authority against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Transfer Date.
- 2.5 The Supplier shall immediately on request by the Authority provide details of any measures that the Supplier or any Sub-Contractor of the Supplier envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier shall give confirmation of that fact, and shall indemnify the Authority against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3 EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 3.2 The Supplier shall (and shall procure that any Sub-Contractor shall) on receiving notice of termination of this agreement, or otherwise on request from the Authority, provide the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including but not limited to information as to the potential application of TUPE to the personnel identified in the Supplier's Provisional Staff List. The Supplier shall notify the Authority of any changes to this information as and when they occur.
- 3.3 At least 14 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.
- 3.4 The Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 In the six months prior to termination of this Agreement, and at any point after notice has been served to terminate this Agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not without the prior written consent of the Authority, assign any person to the provision of the Services who is not listed in the Supplier's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on the Supplier's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;

- (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List;
 - (c) increase the proportion of working time spent on the Services by any of the Supplier's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
 - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Staff List; and
 - (e) replace any of the Supplier's Personnel listed on the Supplier's Provisional Staff List or deploy any other person to perform the Services or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Staff List.
- 3.8 The Supplier will promptly notify the Authority or, at the direction of the Authority, the Replacement Supplier of any notice to terminate employment received from any persons listed on the Supplier's Provisional Staff List regardless of when such notice takes effect.
- 3.9 The Supplier shall indemnify the Authority and at the Authority's request each and every Replacement Supplier in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority or any Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any claim, demand, action or proceeding which is made or brought by a Relevant Employee, or any trade union or other body or person representing any Relevant Employee, against the Authority or any Replacement Supplier at any time and which relates to circumstances or events occurring or arising on or prior to the Service Transfer Date;
 - (b) any failure by the Supplier or any Sub-Contractor to comply with its or their obligations under this paragraph 3.
- 3.10 The Supplier shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Supplier against all Employment Liabilities relating to:
- (a) any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Supplier and/or any Sub-Contractor),
- arising from or connected with any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 3.11 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.11, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4 PENSIONS

- 4.1 The Supplier shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this agreement.
- 4.2 The provisions of paragraph 4 and paragraph 5 of this Schedule 9 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-contractor.

5 NOT USED

6 SUPPLIER PENSION SCHEME

Where the Supplier or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS or such other broadly comparable scheme, the Supplier shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

- (a) established no later than three months prior to the date of the Relevant Transfer; and
- (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Eligible Employees' pension scheme

and the Supplier shall produce evidence of compliance with this paragraph to the Authority prior to the date of the Relevant Transfer. :

Part 2 Not Used

Part 3 Not Used

Schedule 10 Evidence of Insurance

Guidance: To insert evidence of the Supplier's compliance with the insurance obligations on receipt.

Schedule 11 Change Control Procedure

1 DEFINITIONS

The definitions in this paragraph apply in this Schedule 11 .

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

2 PERMITTED CHANGES

2.1 Changes to the Contract shall be made only where:

- (a) Such a Change is permitted by the Public Contracts Regulations 2015, Regulation 72(1)(b) to (f); or
- (b) permitted under paragraph 2.2 below.

2.2 A Change is permitted where each of requirements (a) to (d) below is satisfied:

The successful Applicant must ensure that they keep up to date with all changes that affect the nursery. This could include changes as follows:

| (a) the Change is of the following scope and nature: | (b) the price of the Change is calculated as follows: | (c) the circumstances necessitating the Change are: |
|--|---|--|
| i The Early Years Foundation Stage Statutory Guidance (EYFS) | i n/a no change | i Changes to relevant legislation |
| ii Ofsted Inspection Guidance | ii n/a no change | ii Changes required by Ofsted following any inspection |
| iii Working Together to Keep Children Safe in Education | iii n/a no change | iii Changes to relevant legislation |
| iv Health and Safety Legislation | iv n/a no change | iv Changes to relevant Health and Safety legislation |
| v Funding Guidance (Statutory Guidance and Operational Guidance) | v n/a no change | v Changes to relevant Statutory and Operational Guidance |
| vi Funding entitlements | vi n/a no change | vi Changes to relevant legislation |
| vii Funding rates | vii n/a no change | vii Changes to relevant legislation |

| (a) the Change is of the following scope and nature: | (b) the price of the Change is calculated as follows: | (c) the circumstances necessitating the Change are: |
|---|--|--|
| viii Provider agreements relating to the funding entitlements | viii n/a no change | viii Changes to relevant legislation |
| ix Updates or amendments to any of the law related to the Children Act | ix n/a no change | ix Changes to relevant legislation |
| x Updates or amendments to any of the law related to equality, disability, discrimination etc. (as outlined throughout this document) | x n/a no change | x Changes to relevant legislation |

(d) the Change does not alter the overall nature of the Contract.

2.3 In respect of paragraph 2.2(b) the cost of additional services, changes or modifications will:

- (a) be proportionate to the changes being made;
- (b) be calculated in accordance with the Authority's budget and/or any additional funding available;
- (c) offer best value to the Authority;
- (d) take into consideration the pricing proposals set out in the Supplier's tender submission.

3 GENERAL PRINCIPLES

- 3.1 Where the Authority or the Supplier sees a need to change this Contract, the Authority may at any time request and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 4 of this Schedule 11 .
- 3.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall continue to perform this Contract in compliance with its terms before such Change.
- 3.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 3.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 11 , shall be undertaken entirely at the expense and liability of the Supplier.

4 PROCEDURE

- 4.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:

- (a) no further action being taken; or
- (b) a request to change this Contract by the Authority; or
- (c) a recommendation to change this Contract by the Supplier.

4.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Authority within three weeks of the date of the request.

4.3 A recommendation to amend this Contract by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

4.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Authority and the Supplier.

4.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

4.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this Contract.

4.7 The Authority may identify a Change request as an emergency Change or agree on a Change request being a minor Change. If this occurs then the procedure for agreeing the Change shall either be:

- (a) accelerated in accordance with the emergency as indicated by the Authority in the Change request. A Change would be an emergency Change request in circumstances where there is a new or continuing Force Majeure Event (inter alia) and the Authority requires the terms of the Contract to be amended to circumvent or alleviate the circumstances arising from the Force Majeure Event. Where an emergency Change is agreed by the parties in respect of what would otherwise be determined to be a Force Majeure Event which enables the Supplier to continue performing its obligations (as amended by the emergency Change) the Supplier will no longer be permitted to claim relief in respect of that Force Majeure Event to the extent that its performance is no longer restricted or prevented; or
- (b) truncated in accordance with the minor nature of the Change request.

Schedule 12 Further Information

1. AUTHORITY ASSETS

- Zig Zags Children's Centre building (containing the nursery provision on the top floor) at 32 Market Street, Torquay, TQ1 3AQ.

Schedule 13 Not Used

Schedule 14 Performance Management System

1 KEY PERFORMANCE INDICATORS, OUTCOMES AND TARGETS.

1.1 The Authority requires good quality service. The Supplier acknowledges this requirement and undertakes to use its best endeavours to provide such a service based on the philosophy of "Get it right first time. The Authority shall be entitled to take steps to ascertain whether the Supplier has performed the Service and that they have done so in complete accordance with the Contract.

1.2 The Supplier's performance will be measured against the following KPIs and targets, as varied from time to time in accordance with the contract terms:

| Ref | Performance Indicator | Targets | Frequency | Method of Measurement | Consequence of non-compliance |
|-----|----------------------------------|----------------------------------|-------------|---|--|
| 1. | Service Requirements | Set in the specification C1 | Bi-annually | Contract report submission, quality monitoring visits & discussions within contract meeting | <ul style="list-style-type: none"> • Additional measures • Unannounced drop in visits • Enhanced support • Increased frequency of contract monitoring meetings • Improvement action plan/Remedial action plan <p>If all of the above does not result in improved compliance, then next steps will include:</p> <ul style="list-style-type: none"> • Formal proceedings • Contract may not be continued/extended • Contract termination |
| 2. | Quality & Legal Requirements | Set in the specification C2 & C7 | | | |
| 3. | Child Requirements | Set in the specification C3 | | | |
| 4. | Parent/Carer Requirements | Set in the specification C4 | | | |
| 5. | Fees & Financial Requirements | Set in the specification C5 | | | |
| 6. | Partnership Working Arrangements | Set in the specification C6 | | | |

1.3 If the Parties have agreed a consequence in relation to the Supplier failing to meet an Outcome or KPI, the Authority may exercise the agreed consequence immediately, without issuing a Contract Query, irrespective of any other rights the Authority may have under this paragraph 1.

1.4 The provisions under this paragraph 1 do not affect any other rights and obligations the Parties may have under this Contract.

2 SERVICE QUALITY PERFORMANCE REPORT / NOT USED

- 2.1 On a bi-annual basis the Supplier shall submit to the Authority a report in respect of the previous 6 months containing the information set out in paragraph 2.2 below.
- 2.2 The Service Quality Performance Report, shall as a minimum contain the following information:
- (a) a summary assessment of performance against all KPIs, Outcomes and targets;
 - (b) a full and complete accounting record for the expenditure under the Contract to date, including any variances and mitigations for managing those.
- 2.3 The Service Quality Performance Report shall be submitted by email to the Authority's Authorised Representative in the following format(s):
- (a) service levels, KPI's and Outcomes to be reported in Microsoft Word using the template provided
 - (b) financial data to be reported in Microsoft Excel or similar format containing profit & loss data
 - (c) case studies, narrative reports, audits, service user/carer feedback to be reported in Microsoft Word or Adobe Acrobat PDF
- 2.4 The Authority shall notify the Supplier in writing within 10 Working Days of receipt by the Authority of the relevant report from the Supplier if there is any part of that report which the Authority (acting reasonably and without delay) disputes.
- 2.5 The Authority and the Supplier shall use all reasonable endeavours to resolve any dispute that arises in this respect. Should it not be possible to resolve the dispute before the end of the quarter following the quarter that the report relates to, they should make use of the dispute resolution procedures set out in clause 12 of the General Terms.

3 FINANCIAL MONITORING

- 3.1 The Supplier acknowledges the importance to the Authority of transparency and complete and accurate records in relation to financial matters and the provision of the Services.
- 3.2 During the Contract Term and for a period of 12 years following the end of the Contract Term or earlier termination of this Contract the Supplier shall maintain and retain the financial records referred to at paragraph 3.1 above and shall allow the Authority and its authorised agents access to that information upon the Authority giving at least 10 Working Days' notice in writing.

4 INFORMATION PROVISION

- 4.1 The Supplier shall make available to the Authority, on demand, a copy of the following policies, procedures or other documentation:
- (a) statement of purpose, business plan, business continuity plans and latest copy of any relevant inspection reports;
 - (b) accounts (audited where required by law and other relevant financial information (where this is reasonable)
 - (c) evidence of appropriate and adequate insurance cover;

- (d) risk and needs assessment, support planning, security, health and safety, protection from abuse, fair access, diversity and inclusion, child protection (where appropriate), confidentiality and quality standards policy;
- (e) policy & procedure for staff recruitment, induction, training and development;
- (f) complaint procedure and copy of records relating to complaints made in relation to the service and the Supplier's response;
- (g) any other documentation that may be reasonably required in order to verify the service.

5 MEETINGS

5.1 As a minimum the following meetings shall take place between the Parties during the term of the Contract:

| MEETING | TYPE | QUORUM | FREQUENCY | AGENDA (including but not limited to) |
|---------------------------|---|--|--|---|
| Contract Review | Face-to-face (virtual or physical) or conference call | Authority's Authorised Representative and Supplier's Authorised Representative | Quarterly as a minimum and on an ad-hoc basis as required to deal with any urgent issues | <ul style="list-style-type: none"> • performance review • service development • partnership working • operational issues • complaints • good new stories • incidents requiring reporting • safeguarding service user involvement |
| Performance Review | Face-to-face (virtual or physical) | To be defined upon agreement of Terms of Reference for Quarterly Performance Review Meetings | Bi-annually | |
| | | | | |
| | | | | |

Performance Monitoring

- 5.2 Additionally the Authority may undertake a Performance Review at any time where there is concern about the performance of the Agreement, giving not less than 10 Working Days' notice in writing to the Supplier.
- 5.3 Any Performance Review undertaken shall be carried out in accordance with any applicable statutory or regulatory guidelines and directions.
- 5.4 The Supplier shall co-operate with the Authority in carrying out the Performance Review.
- 5.5 The Authority will prepare a Service Improvement Plan taking into account the views of Stakeholders and the Supplier. This will be agreed with the Contract Manager within 4 weeks of Performance Review being undertaken.
- 5.6 The Supplier agrees to discharge the duties set out in the Service Improvement Plan.
- 5.7 The Authority reserves the right in all circumstances to notify any Regulatory Body or other relevant agency of any issue of concern identified during the Accreditation, performance Review or associated processes that fall within the jurisdiction of that Regulatory Body or agency.

6 ANNUAL SERVICE DEVELOPMENT PLAN

- 6.1 As part of the contract and performance monitoring arrangements it is expected that the Supplier will provide to the Authority an annual service development plan including, but not limited to:
 - (a) Outcomes;
 - (b) digital development;
 - (c) community hubs;
 - (d) workforce;
 - (e) integration;
 - (f) social value;
 - (g) governance;
 - (h) financial management;
- 6.2 This annual service development plan should incorporate the expectations included within the Milestones Document (Appendix 2). Details within the milestones document are indicative and are subject to negotiation and change.
- 6.3 It is intended that service users will be included as part of the contract and performance review meetings. Details and agreement regarding how this will be achieved will be negotiated between the Supplier and Authority and be informed by the voice of service users.

7 DEFAULT AND REMEDIES

Default Notice

- 7.1 The Authority will issue a Default Notice to the Supplier when:
- (a) the Supplier's performance against one or more KPIs within the agreed reporting period does not meet the expected target;
 - (b) the Supplier's performance against KPIs demonstrates significant or consistent underperformance or non-performance that is impacting on the outcomes for Service Users;
 - (c) the Supplier breaches a Remedial Action Plan and does not remedy the breach within 5 Working Days of its occurrence.
- 7.2 The Default Notice will set out:
- (a) details of the incident(s) of non-performance;
 - (b) any additional information in relation to the incident(s) of non-performance;
 - (c) a timeframe for submission by the Supplier of the Draft Remedial Action Plan;
 - (d) a timeframe for rectification by the Supplier of the incident(s) of non-performance;
 - (e) details of any consequences of failing to rectify the non-performance within the agreed timeframe.
- 7.3 Where a Default Notice is issued, the Supplier will acknowledge receipt within one Working Day. The Supplier will provide the Authority with a Remedial Action Plan for approval by the Authority, within the timescale specified within the Default Notice. Once agreed by the Authority, the Supplier will implement the Remedial Action Plan within the agreed timescale.
- 7.4 The Remedial Action Plan must set out:
- (a) details of the incident(s) of non-performance;
 - (b) the actions required to make the necessary improvements;
 - (c) the dates on which the actions will be completed;
 - (d) who will be responsible for completing the actions;
 - (e) any issues or concerns, if applicable, that the Supplier has and wants to raise with the Authority, in order to assist with the completion of the necessary actions.
- 7.5 Where deficient service has been identified and it is not possible to reform the service (whether or not a Default Notice has been issued) the Supplier shall use its best endeavours to ameliorate the situation.
- 7.6 Should the Supplier fail to remedy the issue referred to in a Default Notice then the Authority shall have power to implement clause 11 Step in Rights of the Key Provisions or rely on the provisions of clause 21 Termination for Breach or clause 22 Termination on Notice of the General Terms depending upon the nature and seriousness of the breach.

7.7 The Authority reserves the right to notify the Supplier's Chief Executive and/or Board of Directors or any relevant Regulatory Body of the default in order that each of them may take whatever steps they think are appropriate.

Withholding Payment for Breach of a Remedial Action Plan

7.8 If the Supplier breaches a Remedial Action Plan:

- (a) the Authority may withhold, in respect of each milestone not met, up to 2% of the aggregate monthly sums payable by the Authority, from the date of issuing the Default Notice in respect of the breach and for each month the Supplier's breach continues, subject to a maximum monthly withholding of 10% of the aggregate monthly sums payable by the Authority in relation to each Remedial Action Plan;
- (b) the Authority must pay the Supplier any sums withheld under paragraph 7.8 above within 10 Working Days following the Authority's confirmation that the breach of the Remedial Action Plan has been rectified. Subject to paragraph 7.9 below no interest will be payable on those sums.

Unjustified Withholding of Payment

7.9 If the Authority withholds sums under paragraph above and within 20 Working Days of the date of that withholding the Supplier produces evidence satisfactory to the Authority that the relevant sums were withheld unjustifiably, the Authority must pay those sums to the Supplier within 10 Working Days following the date of the Authority's acceptance of that evidence, together with interest at the Default Interest Rate for the period for which the sums were withheld. If the Authority does not accept the Supplier's evidence the Supplier may refer the matter to dispute resolution.

Retention of Sums Withheld on Expiry or Termination of the Contract

7.10 If the Supplier does not rectify a breach of a Remedial Action Plan before the Expiry Date or earlier termination of this Contract, the Authority may retain permanently any sums withheld under paragraph 7.8 above.

APPENDIX 14A DEFAULT NOTICE

This is a Default Notice given by the Authority to the Supplier under the contract referred to below.

If the defaults referred to below are capable of remedy, it is important that the Supplier remedies those defaults. Failure to remedy the defaults may give rise to a right for the Authority to terminate the Contract.

| | |
|--|--|
| Name of the Authority | |
| Name of the Supplier | |
| Contract Description | |
| Contract Commencement Date | |
| Details of Supplier's default | |
| Any additional information | |
| Details of agreed actions to remedy the default and timescales for completion | |
| Details of consequences of failing to meet timescales for completion of remedial actions | |

APPENDIX 14B REMEDIAL ACTION PLAN

PERFORMANCE IMPROVEMENT PLAN

| Supplier: | | <table border="1"> <tr> <th colspan="2">PROGRESS KEY</th> </tr> <tr> <td style="background-color: red;"></td> <td>For Action</td> </tr> <tr> <td style="background-color: yellow;"></td> <td>In Progress</td> </tr> <tr> <td style="background-color: green;"></td> <td>Completed</td> </tr> </table> | PROGRESS KEY | | | For Action | | In Progress | | Completed |
|----------------------|-------------|---|--------------|--|--|------------|--|-------------|--|-----------|
| PROGRESS KEY | | | | | | | | | | |
| | For Action | | | | | | | | | |
| | In Progress | | | | | | | | | |
| | Completed | | | | | | | | | |
| Officer: | | | | | | | | | | |
| Recipients: | | | | | | | | | | |
| Date of Plan: | | | | | | | | | | |
| Objective: | | | | | | | | | | |

| |
|---|
| DETAILS OF THE INCIDENTS OF NON-PERFORMANCE: |
| 1. |
| 2. |
| 3. |
| 4. |

| ACTION PLAN | | | | | |
|--------------------|---------------|----------------|---------------|----------------------|-----------------------|
| | Action | By When | By Who | Action Update | Completed Date |
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |

| | | | | |
|----|--|--|--|--|
| 5. | | | | |
| 6. | | | | |

SUPPORT PLAN – Any Issues or concerns that the Supplier has and wants to raise with Torbay Council.

| | Improvement Area | Action | Person(s) Responsible | Due Date | Completed Date |
|----|------------------|--------|-----------------------|----------|----------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |

RECORD OF FORMAL COMMUNICATIONS – To monitor and track key meetings and communications.

| Date | Method | Subject / Action | Due Date |
|------|--------|------------------|----------|
| | | | |

Schedule 15 Data Protection Roles and Responsibilities

1. When both parties act as **independent data controllers** of Contract Personal Data:
 - (a) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data which shall include, but not be limited to, where applicable:
 - (i) promptly informing the competent supervisory authority or affected data subjects of a personal data breach;
 - (ii) providing the data subject with required information under the Data Protection Laws' transparency requirements;
 - (iii) complying with any data subject's valid rights requests regarding the processing of their personal data; and
 - (iv) only processing Contract Personal Data where the party has a valid lawful basis to do so;
 - (b) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws;
 - (c) both parties shall establish and maintain a lawful basis for processing the Contract Personal Data in accordance with the Data Protection Laws and, where a party no longer has a lawful basis to process all (or part of) the Contract Personal Data, the party shall permanently and securely delete all the relevant parts of (as applicable) the Contract Personal Data;
 - (d) on written request, each party shall provide (and, if it is updated, shall continue to provide throughout the term of the Agreement) the other party with the party's privacy policy so that the other party may provide said policy to data subjects on request in order to fulfil transparency related obligations or other obligations under the Data Protection Laws; and
 - (e) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.
2. When one party (the "**Controller**") is a data controller and the other party acts as a data processor (the "**Processor**") appointed on behalf of the Controller in relation to the Contract Personal Data:
 - (a) the parties shall agree the details of the processing and include these details in the relevant SOW in accordance with the template "particulars of processing" table set out in paragraph 5 below. The Processor shall only process Contract Personal Data for the purposes of complying with its obligations under this Contract (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;
 - (b) the Processor shall comply with its obligations under any applicable laws regarding the Contract Personal Data (including the Data Protection Laws), and shall not by any act or omission put the Controller in breach of any such laws (including the Data Protection Laws). The Supplier will not engage a sub-processor without first receiving the written consent of the Authority and any agreed arrangements with sub-processors must be subject to a written contract;;
 - (c) other than as required to do so by applicable law in the UK or European Union (in which case the Processor shall inform the Controller of the relevant legal requirement before processing), the Processor shall only process any Contract Personal Data for the purposes of complying with its obligations under this

agreement (and for no other purpose whatsoever) and only in accordance with the Controller's written instructions from time to time;

- (d) the Processor shall notify the Controller as soon as is reasonably practicable if the Processor reasonably believes an instruction from the Controller breaches (or could cause either party to breach) the Data Protection Laws;
- (f) the Processor shall ensure that access to the Contract Personal Data is strictly limited to persons who need access to it as strictly necessary to comply with the Processor's obligations under this agreement and that all such persons are informed of the confidential nature of the Contract Personal Data, are subject to contractual or statutory obligations of confidentiality, are assessed by the Processor to ensure their reliability, and have received appropriate training with regards the processing of personal data and the Data Protection Laws;
- (g) the Processor shall keep appropriate records of all processing activity carried out on behalf of the Controller in accordance with this agreement;
- (h) the Processor shall implement, and at all times during this agreement maintain, appropriate technical and organisational measures to protect the Contract Personal Data (ensuring in each case a level of security appropriate to the risk, including in relation to any special categories of personal data) against unauthorised or unlawful processing or accidental loss or damage;
- (i) without prejudice to the generality of sub-paragraph (g) immediately above, where the Supplier is the Processor, the Supplier shall ensure that it implements any and all measures as may be necessary to ensure that the Contract Personal Data is protected in accordance with the minimum standards notified to the Supplier by the Authority;
- (j) the Processor shall provide to the Controller at any time on request a detailed written description of the technical and organisational measures in place to protect the Contract Personal Data as required under sub-paragraph (g) above;
- (k) the Processor shall not transfer the Contract Personal Data to countries outside the UK or the European Economic Area ("**EEA**") without Controller's prior written authorisation (not to be unreasonably withheld or delayed) and, at the reasonable request of the Controller, shall enter into a separate written agreement relating to the transfer of personal data outside of the UK or EEA (or otherwise enter into an alternative arrangement as may be approved under the Data Protection Laws relating to the transfer of data outside of the UK or EEA). The parties may agree to pre-authorise specific transfers of Agreement Personal Data in a SOW. This provision shall equally apply to circumstances where the Supplier is a Joint Controller in respect of the relevant Personal Data;
- (l) the Processor shall promptly and fully notify the Controller in writing of any notices received by the Processors (or any sub-processor) relating to the processing of any Contract Personal Data, including requests from individual data subjects in relation to the exercise of their rights (including subject access requests), complaints and/or correspondence from any regulatory body including any competent data protection supervisory authority and provide such information and assistance as the Controller may reasonably require in relation to any such notice;
- (m) the Processor shall assist the Controller in meeting the Controller's obligations regarding the exercise of data subjects' rights in accordance with the Data Protection Laws;
- (n) the Processor shall assist the Controller in meeting the Controller's obligations under the Data Protection Laws with respect to data security, breach notification (including notifications to competent supervisory authorities and/or data subjects), data

protection impact assessments and prior consultation with or notification to a competent data protection supervisory authority;

- (o) in the event of a personal data breach or reasonably suspected Personal Data Breach in relation to Contract Personal Data, the Processor shall (without prejudice to sub-paragraph (o) above:
 - (i) immediately (or as soon as practicable thereafter and in any event within 24 hours of becoming aware of the relevant incident) provide the Controller with details in writing of the Personal Data Breach, potential breach or threat. Where the Controller is the Authority, the Supplier shall contact the Authority by emailing infocompliance@torbay.gov.uk;
 - (ii) immediately initiate a full investigation and take appropriate steps to remedy the Personal Data Breach or prevent the potential breach or remove the threat;
 - (iii) promptly implement measures to ensure there is no repetition of the incident in the future;
 - (iv) promptly (and in any event within 48 hours of becoming aware of the relevant incident) provide the Controller with full details in writing of the steps and measures taken to mitigate risks and comply with this agreement and the Data Protection Laws; and
 - (v) comply with all reasonable requests made by the Controller in respect of the same;
- (p) the Processor shall not permit any processing of the Contract Personal Data by any agent, sub-contractor, service provider or other third party ("**sub-processor**") without the prior written authorisation of the Controller in each case (such authorisation may be given in a SOW), and shall ensure in each case that prior to the sub-processor processing any Contract Personal Data, terms equivalent to this Schedule 15 paragraph 2 are included in a written contract between the Processor and any sub-processor engaged in the processing of Contract Personal Data;
- (q) on request at any time and on termination of this agreement, at the Controller's option either return to the Controller all Contract Personal Data and copies of it in such format as the Controller may require or, at the Controller's written request, securely destroy the Contract Personal Data in any manner the Controller may specify; and
- (r) at the reasonable request of the Controller, make available to the Controller all information reasonably necessary to demonstrate the Processor's (and any sub-processor's) compliance with this clause Schedule 3 paragraph 2 and on reasonable prior notice and on reasonable terms, permit the Controller and its representatives to inspect and audit the Processor's data processing activities (and those of its sub-processors) and comply with all reasonable requests to enable the Controller to verify that the Processor (and any sub-processor) is complying with this Schedule 15 paragraph 2.

3. When the parties act as **joint data controllers** of Contract Personal Data:

- (a) the parties shall specify in writing in the SOW:
 - (i) their respective roles in relation to the Contract Personal Data; and
 - (ii) their respective responsibilities for compliance with the Data Protection Laws, in particular but without limitation as regards to the obligation to

provide information to individual data subjects and the exercising of the rights of individual data subjects;

- (b) both parties shall comply at all times with the Data Protection Laws when processing Contract Personal Data;
- (c) both parties agree not to do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Laws; and
- (d) each party shall provide reasonable cooperation and assistance to the other party to enable the latter party to fulfil its respective obligations under the Data Protection Laws.

4. Whenever the parties are required to describe the processing of Contract Personal Data in accordance with paragraph 3(a) above, the parties shall as a minimum ensure that the following information is included in the relevant SOW or other written document duly executed between the parties:

| | |
|---|---|
| Role of Supplier | Data Controller responsible for determining the purposes for which and the means by which Contract Personal Data is processed. |
| Subject matter of the processing | Processing of the Contract Personal Data in connection with the provision of the Services. |
| Duration of the processing | The term of the contract; up to 8 years (4+2+2) |
| Nature and purpose of the processing | Hosting of personal data of children, families and staff in UK-based servers for the purposes of delivering nursery childcare services. |
| Type of personal data processed | Personal data of children, families and staff including; full name, DOB, home address, bank details, NI numbers, attendance, contact details, child level information, safeguarding data. |
| Categories of data subjects | Staff, parents, children (service users) |
| Method of Processing | Applicants are to provide details within their tender submission. |
| Rights and obligations of the controller | As described in the Contract dated 01 June 2023. |
| <ul style="list-style-type: none"> • Approved sub-processors and in each case: <ul style="list-style-type: none"> ○ Nature and purpose of processing ○ Location of processing | N/A |
| Details of approved international transfers of Contract Personal Data together with details of approved transfer mechanisms | N/A |
| Details of the technical and organisational measures in place to protect Contract Personal Data. | Applicants are to provide details within their tender submission. |

Schedule 16 Supplier's Social Value Response

Supplier's Social Value Response to be included where applicable

Schedule 17 Not Used

**Schedule 18 Draft Lease (top floor of the Zig Zags Children's Centre at 32 Market Street, Torquay TQ1
3AQ - October 2022)**

DATED

LEASE

relating to

The Children's Nursery at
The Childrens Centre South, 32 Market Street Torquay, Devon

between

(1) The Council of the Borough of Torbay

and

(2) [TENANT]

[and

(3) [GUARANTOR]]

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LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

DN436212

LR2.2 Other title numbers

None

LR3. Parties to this lease

Landlord

The Council of the Borough of Torbay of Town Hall, Castle Circus, Torquay, Devon
TQ1 3DR

Tenant

[[COMPANY] NAME]

[[REGISTERED OFFICE] ADDRESS]

[COMPANY REGISTERED NUMBER]

Other parties

[[None

OR

[[COMPANY] NAME]

[[REGISTERED OFFICE] ADDRESS]

[COMPANY REGISTERED NUMBER]

Guarantor]

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

See the definition of "Property" in Clause 0 and Schedule 0 of this lease.

LR5. Prescribed statements etc.

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

None.

LR5.2 This lease is made under, or by reference to, provisions of:

None.

LR6. Term for which the Property is leased

The term specified in the definition of "Contractual Term" in Clause 0 of this lease.

LR7. Premium

None.

LR8. Prohibitions or restrictions on disposing of this lease

This lease contains a provision that prohibits or restricts dispositions.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None.

LR9.2 Tenant's covenant to (or offer to) surrender this lease

None.

LR9.3 Landlord's contractual rights to acquire this lease

None.

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None.

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

The easements set out in paragraph 0 to this lease are granted by this lease for the benefit of the Property.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

The easements set out in 0 to this lease are granted or reserved over the Property for the benefit of other property.

LR12. Estate rentcharge burdening the Property

None.

LR13. Application for standard form of restriction

[The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] [against title number [NUMBER]]

OR

[None].

LR14. Declaration of trust where there is more than one person comprising the Tenant

[OMIT ALL INAPPLICABLE STATEMENTS]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]

[The Tenant is more than one person. They are to hold the Property on trust [COMPLETE AS NECESSARY].]

This lease is dated

PARTIES

- (1) THE COUNCIL OF THE BOROUGH OF TORBAY of Town Hall, Castle Circus, Torquay, Devon TQ1 3DR (**Landlord**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] OR [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS] (**Tenant**)
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] OR [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS] (**Guarantor**)

BACKGROUND

- (A) The Landlord is the freehold owner of the Property.
- (B) The Landlord has agreed to grant a lease of the Property to the Tenant on the terms set out in this lease.
- (C) [The Guarantor has agreed to guarantee the Tenant's obligations under this lease.]

AGREED TERMS

Interpretation

The following definitions and rules of interpretation apply in this lease.

Definitions:

Annual Rent: rent at an initial rate of £10,000 per annum and then as revised under Schedule 0.

Authorised Person: any:

undertenant or person deriving title under the Tenant;

workers, contractors or agents of the Tenant or of any person referred to in paragraph (a) of this definition; or

person at the Property with the actual or implied authority of the Tenant or any person referred to in paragraph (a) or paragraph (b) of this definition.

Break Date: [31 May 2027] and [31 May 2029]

Break Notice: written notice to terminate this lease specifying the relevant Break Date and served in accordance with clause 0.

Building: 32 Market Street, Torquay TQ1 3AQ

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Common Parts: the stairwell, the laundry room on the second floor, lift and such other parts of the Building as are designated by the Landlord during the Term for the common use and enjoyment of the Tenant and other occupiers of or visitors to the Building including the area coloured brown on Plan 1.

Contractual Term: a term of 8 years from and including 1 June 2023 to and including 31 May 2031.

Default Interest Rate: 4% per annum above the Interest Rate.

Energy Assessor: an individual who is a member of an accreditation scheme approved by the Secretary of State in accordance with regulation 22 of the EPC Regulations.

Energy Performance Certificate: a certificate as defined in regulation 2(1) of the EPC Regulations.

EPC Regulations: Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

Excluded Insurance Items: any:

glass forming part of the Property; and

tenant's fixtures that are installed by or for the Tenant, any undertenant or occupier of the Property and that form part of the Property.

Expert: an independent surveyor:

who is a Member or Fellow of the Royal Institution of Chartered Surveyors;

with at least 10 years' post-qualification experience including relevant experience in the subject matter of the dispute; and

appointed in accordance with paragraph of Part 5 of Schedule 0.

[Group Company: a company within the same group of companies as the Tenant within the meaning of section 42(1) of the LTA 1954.]

Insolvency Event: subject to clause 0, any one or more of the following:

the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or any guarantor;

the making of an application for an administration order or the making of an administration order in relation to the Tenant or any guarantor;

the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant or any guarantor;

the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or any guarantor;

the commencement of a voluntary winding-up in respect of the Tenant or any guarantor, except a winding-up for the purpose of amalgamation or

reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;

the making of a petition for a winding-up order or a winding-up order in respect of the Tenant or any guarantor;

the striking-off of the Tenant or any guarantor from the Register of Companies or the making of an application for the Tenant or any guarantor to be struck-off;

the Tenant or any guarantor otherwise ceasing to exist (but excluding where the Tenant or any guarantor dies); [or]

the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant or any guarantor[. **OR** ; or]

[the levying of any execution or other such process on or against, or taking control or possession of, the whole or any part of the Tenant's assets.]

Insurance Rent: the aggregate in each year of:

the gross cost of any premiums that the Landlord expends and any fees and other expenses that the Landlord reasonably incurs in insuring the Property (excluding the Excluded Insurance Items) against the Insured Risks for the Reinstatement Cost in accordance with this lease;

the gross cost of the premium for insurance for loss of Annual Rent from the Property for three years; and

any IPT and any VAT (except to the extent that the Landlord obtains credit for such VAT as input tax or otherwise recovers it) payable on any sum set out in paragraphs (a) and (b) of this definition.

Insured Risks: (except to the extent any of the following are Uninsured Risks) fire, explosion, lightning, earthquake, tempest, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, damage to underground water, oil or gas pipes or electricity wires or cables, impact by aircraft and aerial devices and articles dropped from them, impact by vehicles, terrorism, subsidence, ground slip, heave, riot, civil commotion, strikes, labour or political disturbances, malicious damage, and any other risks against which the Landlord decides to insure against from time to time and **Insured Risk** means any one of the Insured Risks.

Interest Rate: the base rate from time to time of National Westminster Bank plc or, if that base rate stops being used or published, a comparable commercial rate specified by the Landlord (acting reasonably).

IPT: Insurance Premium Tax chargeable under the Finance Act 1994 or any similar replacement or additional tax.

LPA 1925: Law of Property Act 1925.

LTA 1954: Landlord and Tenant Act 1954.

LTCA 1995: Landlord and Tenant (Covenants) Act 1995.

Other Tenant: “Action for Children” or such other tenant or occupier of any part of the Building not included in this lease.

Permitted Use: use as a day care nursery within Use Class E of the Town and Country Planning (Use Classes) Order 1987 as at the date this lease is granted.

Plan 1: the plan marked “Plan 1” annexed to this lease.

Plan 2: the plan marked “Plan 2” annexed to this lease.

President: the president for the time being of the Royal Institution of Chartered Surveyors or a person acting on their behalf.

[Previous Lease: a lease of the Property dated [DATE] made between (1) [LANDLORD] [and] (2) [TENANT] [and] (3) [GUARANTOR]] including any deed, licence, consent, approval or other instrument supplemental or collateral to it.]

Property: the property described in Schedule 0.

Property Damage: damage to or destruction of the Property (excluding the Excluded Insurance Items) that makes the Property wholly or partially unfit for occupation and use.

Rates and Taxes: all present and future rates, taxes and other impositions and outgoings payable in respect of the Property, its use and any works carried out there (or a fair proportion of the total cost of those rates, taxes, impositions and outgoings if any are payable in respect of the Property together with any other property) but excluding any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease.

Recommendation Report: a report as defined in regulation 4 of the EPC Regulations.

Reinstatement Cost: the full cost of reinstatement of the Property (excluding the Excluded Insurance Items) taking into account inflation of building costs and including any costs of demolition, site clearance, site protection, shoring up, professionals' and statutory fees and incidental expenses and any other work to the Property that may be required by law and any VAT on all such costs, fees and expenses.

Rents: the rents set out in clause 0.

Rent Commencement Date: [subject to paragraph 4.3(b) of Schedule 60,][[DATE] OR the date of this lease].

Rent Payment Dates: 01 January, 01 April, 01 July and 01 October.

Reservations: the rights excepted and reserved in paragraph 1 of Schedule 3.

Rights: the rights granted in paragraph 1 of Schedule 2.

Service Contract: the contract for services dated [] made between the Landlord and the Tenant relating to the provision of services by the Tenant and the operation of the facilities at the Property.

Service Costs: the proper and reasonable expenditure incurred by the Landlord in providing the Services.

Service Media: all media for the supply or removal of Utilities and all structures, machinery and equipment ancillary to those media.

Services: the services set out in clause 0

Signs: signs, fascia, awnings, placards, boards, posters and advertisements.

Tenant Damage: damage or destruction caused (with the intention of causing damage) by an act or omission of the Tenant or any Authorised Person.

Tenant's Proportion: 33 $\frac{1}{3}$ %

Term: the Contractual Term.

Termination Date: the date on which the Term ends (however it ends).

Third Party Rights: the matters set out in Schedule 40.

Transaction: is:

any dealing with this lease or the devolution or transmission of or parting with possession of any interest in it;

the creation of any underlease or other interest out of this lease or out of any interest or underlease derived from it and any dealing, devolution or transmission of or parting with possession of any such interest or underlease; or

the making of any other arrangement for the occupation of the Property.

Uninsured Risks: any of the risks specified in the definition of Insured Risks where such risks are not insured against at the date of the relevant damage or destruction because:

of an exclusion imposed by the insurers; or

insurance for such risks was not available in the London insurance market on reasonable terms acceptable to the Landlord at the time the insurance policy was entered into;

and **Uninsured Risk** means any one of the Uninsured Risks.

Utilities: electricity, gas, water, sewage, air-conditioning, heating, energy, telecommunications, data and all other services and utilities.

Utility Costs: all costs in connection with the supply or removal of Utilities to or from the Property (or a fair proportion of the total cost if any of those costs are payable in respect of the Property together with any other property).

VAT: value added tax or any equivalent tax chargeable in the UK.

A reference to this **lease**, except a reference to the date of this lease or to the grant of this lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental or collateral to it.

The Schedules form part of this lease and shall have effect as if set out in full in the body of this lease. Any reference to **this lease** includes the Schedules.

Unless the context otherwise requires, references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this lease and references to paragraphs are to paragraphs of the relevant Schedule.

Clause, Schedule and paragraph headings shall not affect the interpretation of this lease.

A reference to:

the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease;

the **Tenant** includes a reference to its successors in title and assigns; [and]

a **guarantor** [is a reference to any guarantor **OR** includes a reference to the Guarantor and to any other guarantor] of the tenant covenants of this lease including a guarantor who has entered into an authorised guarantee agreement.

In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

The expressions **authorised guarantee agreement**, **landlord covenant** and **tenant covenant** each has the meaning given to it by the LTCA 1995.

Any obligation on the Tenant not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

References to:

the consent of the Landlord are to the consent of the Landlord given in accordance with clause 0;

the approval of the Landlord are to the approval of the Landlord given in accordance with clause 0.

Unless the context otherwise requires, references to the **Property** the **Common Parts** and the **Building** are to the whole and any part of them.

Unless the context otherwise requires, any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

For the purposes of the definition of **Insolvency Event**:

where any of the paragraphs in that definition apply in relation to:

a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively), that paragraph shall apply subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended); and

a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000), that paragraph shall apply subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended); and

Insolvency Event includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction.

A reference to **writing** or **written** excludes fax and email.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.

Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.

Grant

[At the request of the Guarantor, the **OR** The] Landlord lets the Property to the Tenant:

for the Contractual Term;

with full title guarantee;

together with the Rights;

excepting and reserving the Reservations; and

subject to the Third Party Rights.

The grant in clause 0 is made with the Tenant paying as rent to the Landlord:

the Annual Rent;

all interest payable under this lease; and
all other sums payable under this lease; and
all VAT chargeable on the other rents set out in this clause 0.

Tenant covenants

The Tenant covenants with the Landlord to observe and perform the tenant covenants of this lease during the Term or (if earlier) until the Tenant is released from the tenant covenants of this lease by virtue of the LTCA 1995.

Payment of Annual Rent

The Tenant must pay the Annual Rent by four equal instalments in advance on or before the Rent Payment Dates except that:

the Tenant must pay the first instalment of Annual Rent on the Rent Commencement Date; and

that first instalment of Annual Rent shall be the proportion of the Annual Rent calculated on a daily basis for the period from and including the Rent Commencement Date to and including the day before the next Rent Payment Date after the Rent Commencement Date.

Payment method

The Tenant must pay the Annual Rent and all other sums payable under this lease by:

electronic means from an account held in the name of the Tenant to the account notified from time to time to the Tenant by the Landlord; or

any other method that the Landlord reasonably requires from time to time and notifies to the Tenant.

No set-off

The Tenant must pay the Annual Rent and all other sums payable under this lease in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

Interest

If any of the Annual Rent or any other sum payable by the Tenant under this lease has not been paid within five working days of its due date (whether it has been formally demanded or not), the Tenant must pay to the Landlord interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on that amount on a daily basis for the period beginning on and including its due date to and including the date of payment.

If the Landlord does not demand or accept any of the Annual Rent or any other sum due from, or tendered by, the Tenant under this lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this lease, then, when that amount is accepted by the Landlord, the Tenant must pay to the Landlord interest on that amount at the Interest Rate. Such interest shall accrue on that amount on a daily basis for the period beginning on and including its due date to and including the date it is accepted by the Landlord.

Rates and Taxes

The Tenant must pay all Rates and Taxes.

The Tenant must not make any proposal to alter the rateable value of the Property (or that value as it appears on any draft rating list) without the approval of the Landlord.

If, after the Termination Date, the Landlord loses rating relief (or any similar relief or exemption) because it has been allowed to the Tenant, the Tenant must pay the Landlord an amount equal to the relief or exemption that the Landlord has lost.

Utilities

The Tenant must pay all Utility Costs.

The Tenant must comply with all laws and with any recommendations of the relevant suppliers relating to the supply and removal of Utilities to or from the Property.

Common items

The Tenant must pay to the Landlord on demand a fair proportion of all costs payable by the Landlord for the maintenance, repair, lighting, cleaning and renewal of all Service Media, structures and other items not on or in the Property but used or capable of being used by the Property in common with other land.

Costs

The Tenant must pay on demand and on a full indemnity basis the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses (incurred both during and after the Termination Date) in connection with, or in contemplation of, any of the following:

the enforcement of the tenant covenants of this lease;

servicing any notice or taking any proceedings in connection with this lease under section 146 or 147 of the LPA 1925 (notwithstanding that forfeiture is avoided otherwise than by relief granted by the court);

servicing any notice in connection with this lease under section 17 of the LTCA 1995;

the preparation and service of a schedule of dilapidations in connection with this lease; or

any consent or approval applied for under this lease, whether or not it is granted (unless the consent or approval is unreasonably withheld by the Landlord).

Prohibition of dealings

The Tenant must not:

assign, underlet, charge, part with or share possession or occupation of this lease or the whole or part of the Property; or

assign, part with or share any of the benefits or burdens of this lease, or in any interest derived from it, whether by a virtual assignment or other similar arrangement; or

hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry or by reason only of joint legal ownership).

Repair

The Tenant must:

keep the Property in good repair and condition;

ensure that any Service Media forming part of the Property is kept in good working order;

keep the Property clean, tidy and clear of rubbish; and

replace as soon as possible with glass of similar appearance and of similar or better quality any glass forming part of the Property that becomes cracked or broken.

Decoration

The Tenant must:

decorate the exterior and interior of the Property as often as is reasonably necessary and also in the last three months before the Termination Date;

carry out all decoration (including all appropriate preparatory work) in a good and proper manner using good quality materials that are appropriate to the Property and the Permitted Use; and

carry out:

any decoration of the exterior of the Property required at any time during the Term (including in the last three months before the Termination Date); and

the decoration of the interior of the Property required in the last three months before the Termination Date;

to the reasonable satisfaction of the Landlord and using materials, designs and colours approved by the Landlord (acting reasonably).

Alterations

Except as permitted by clause 0 the Tenant must not make any:

- external or structural alteration or addition to the Property; or
- opening in any boundary of the Property.

Subject to clause 0, the Tenant must not make any internal non-structural alteration to the Property without the consent of the Landlord (such consent not to be unreasonably withheld or delayed).

Subject to clause 0, the Tenant may carry out minor alterations that consist of making minor perforations in any boundary of the Property or in the structural elements of the Property provided that:

- those alterations are reasonably required in connection with any works permitted under this clause 0;
- those alterations do not adversely impact on the structural integrity of the Property; and
- the Tenant obtains the consent of the Landlord (such consent not to be unreasonably withheld or delayed).

Subject to clause 0, the Tenant must not install any Service Media at the Property nor alter the route of any Service Media at the Property without the consent of the Landlord (such consent not to be unreasonably withheld or delayed).

The Tenant must not carry out any alteration to the Property which would, or may reasonably be expected to, have an adverse effect on the asset rating in any Energy Performance Certificate for the Property.

Signs

The Tenant must not:

- display any Signs inside the Property that are visible from the outside; or
- attach any Signs to the exterior of the Property;

except, with the consent of the Landlord (such consent not to be unreasonably withheld or delayed), Signs of a design, size and number and in positions that are appropriate to the nature and location of the Property and to the Permitted Use.

The Tenant must allow the Landlord to fix to and keep at the Property:

- during the 6 month period before the Termination Date, any re-letting board as the Landlord reasonably requires except where there is a genuine prospect of the Tenant renewing this lease and the Tenant is genuinely and actively pursuing that renewal; and

at any time during the Term, any sale board as the Landlord reasonably requires.

Window cleaning

As often as reasonably necessary, the Tenant must clean the internal and external surfaces of any:

windows; and

other glass;

at the Property.

Returning the Property to the Landlord

The Tenant must return the Property to the Landlord on the Termination Date with vacant possession and in the repair and condition required by this lease.

Subject to clause 0, the Tenant must by the Termination Date:

remove:

any tenant's fixtures from the Property;

any alterations to the Property undertaken by or for any tenant; and

any Signs erected by the Tenant at the Property; and

make good any damage caused to the Property by the removal of those items and alterations.

If the Landlord gives notice to the Tenant no later than two months before the Termination Date specifying which of the tenant's fixtures, alterations and other matters set out in clause 0 and clause 0 shall not be removed pursuant to clause 0, the Tenant must not remove the specified tenant's fixtures, alterations or other matters pursuant to that clause.

On or before the Termination Date, the Tenant must remove from the Property all chattels belonging to or used by it.

The Tenant:

irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items fixed to the Property by the Tenant and left by the Tenant for more than ten working days after the Termination Date; and

must indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

The Landlord shall not be liable to the Tenant by reason of that storage or disposal.

Use

The Tenant must not use the Property for any purpose other than the Permitted Use.

The Tenant is to permit the Other Tenant to have occasional use of the external grounds with the Landlord determining what constitutes "occasional use" if there is a dispute between the Tenant and the Other Tenant which cannot be resolved between them.

The Tenant must not:

- use the Property for any illegal purposes nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord or any property that neighbours the Property;
- use the Property as a betting shop or an amusement arcade or otherwise for the purposes of gaming or gambling;
- hold any auction at the Property;
- allow any noise, music, flashing lights, fumes or smells to emanate from the Property so as to cause a nuisance or annoyance to any property that neighbours the Property;
- overload any part of the Property nor overload or block any Service Media at or serving the Property;
- store, sell or display any offensive, dangerous, illegal, explosive or highly flammable items at the Property;
- (except as permitted by clause 0) interfere with any Service Media at the Property;
- keep any pets or any other animal, bird, fish, reptile or insect at the Property (except guide dogs or other animals used as aids provided they are not kept at the Property overnight or left unattended); or
- allow any person to sleep at or reside on the Property.

Exercise of the Rights

The Tenant must exercise the Rights:

- only in connection with the Tenant's use of the Property for the Permitted Use; and
- in compliance with all laws relating to the Tenant's use of the Property, the Building and any other neighbouring or adjoining property pursuant to the Rights.

Allow entry

Subject to clause 0, the Tenant must allow all those entitled to exercise any right to enter the Property to enter the Property:

- except in the case of an emergency (when no notice shall be required), after having given reasonable notice (which need not be in writing) to the Tenant;
- at any reasonable time (whether or not during usual business hours); and

with their workers, contractors, agents and professional advisers.

The Tenant must allow any person authorised by the terms of a Third Party Right to enter the Property in accordance with that Third Party Right.

Keyholders and emergency contact details

The Tenant must provide to the Landlord in writing the names, addresses, email addresses and telephone numbers of at least [two] people who each:

hold a full set of keys for the Property;

hold all the access codes for the Tenant's security systems (if any) at the Property;
and

may be contacted in case of emergency at any time outside the Tenant's usual business hours.

Compliance with laws

The Tenant must comply with all laws relating to:

the Property and the occupation and use of the Property by the Tenant;

the use or operation of all Service Media and any other machinery and equipment at or serving the Property whether or not used or operated;

any works carried out at the Property; and

all materials kept at or disposed of from the Property.

Within five working days of receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant must:

send a copy of the relevant document to the Landlord; and

take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require.

The Tenant must not:

apply for any planning permission for the Property without the Landlord's consent (such consent not to be unreasonably withheld where the application relates to works permitted under this lease); or

implement any planning permission for the Property without the Landlord's consent (such consent not to be unreasonably withheld).

Unless the Landlord otherwise notifies the Tenant, before the Termination Date the Tenant must carry out and complete any works stipulated to be carried out to the Property (whether before or after the Termination Date) as a condition of any planning permission for the Property that is implemented before the Termination Date by the Tenant, any undertenant or any other occupier of the Property.

The Tenant must:

- comply with its obligations under the CDM Regulations;
- maintain the health and safety file for the Property in accordance with the CDM Regulations;
- give that health and safety file to the Landlord at the Termination Date;
- procure, and give to the Landlord at the Termination Date, irrevocable, non-exclusive, non-terminable, royalty-free licence(s) for the Landlord to copy and make full use of that health and safety file for any purpose relating to the Property. Those licence(s) must carry the right to grant sub-licences and be transferable to third parties without the consent of the grantor; and
- supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.

As soon as the Tenant becomes aware of any defect in the Property, the Tenant must give the Landlord notice of it.

The Tenant must indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property by reason of any failure of the Tenant to comply with any of the tenant covenants in this lease.

The Tenant must keep:

- the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are required under all relevant laws or required by the insurers of the Property [or recommended by them] or reasonably required by the Landlord; and
- that machinery, equipment and alarms properly maintained and available for inspection.

Energy Performance Certificates

The Tenant must:

- co-operate with the Landlord so far as is reasonably necessary to allow the Landlord to obtain an Energy Performance Certificate and Recommendation Report for the Property [including providing the Landlord with copies of any plans or other information held by the Tenant that would assist in obtaining an Energy Performance Certificate and Recommendation Report]; and
- allow such access to any Energy Assessor appointed by the Landlord as is reasonably necessary to inspect the Property for the purposes of preparing an Energy Performance Certificate and Recommendation Report for the Property.

The Tenant must not commission an Energy Performance Certificate for the Property unless required to do so by the EPC Regulations.

Where the Tenant is required by the EPC Regulations to commission an Energy Performance Certificate for the Property, the Tenant must at the request of the Landlord either:

commission an Energy Performance Certificate from an Energy Assessor approved by the Landlord; or

pay the costs of the Landlord of commissioning an Energy Performance Certificate for the Property.

The Tenant must deliver to the Landlord a copy of any Energy Performance Certificate and Recommendation Report for the Property that is obtained or commissioned by the Tenant or any other occupier of the Property.

Third Party Rights

The Tenant must:

comply with the obligations on the Landlord relating to the Third Party Rights to the extent that those obligations relate to the Property; and

not do anything that may interfere with any Third Party Right.

Registration of this lease

The Tenant must:

apply to register this lease at HM Land Registry promptly following the grant of this lease;

ensure that any requisitions raised by HM Land Registry in connection with its application to register this lease at HM Land Registry are responded to promptly and properly; and

send the Landlord official copies of its title within one month of completion of the registration.

The Tenant must not:

apply to HM Land Registry to designate this lease as an exempt information document for the purposes of the Land Registration Rules 2003;

object to an application by the Landlord to HM Land Registry to designate this lease as such an exempt information document; or

apply for an official copy of any exempt information document version of this lease.

Closure of registered title

The Tenant must make an application to HM Land Registry to close the registered title of this lease promptly (and in any event within one month) following the Termination Date.

The Tenant must:

ensure that any requisitions raised by HM Land Registry in connection with its application to HM Land Registry pursuant to clause 0 are responded to promptly and properly; and

keep the Landlord informed of the progress and completion of that application.

Encroachments and preservation of rights

The Tenant must not permit any encroachment over the Property or permit any easements or other rights to be acquired over the Property.

If any encroachment over the Property is made or attempted or any action is taken by which an easement or other right may be acquired over the Property, the Tenant must:

immediately inform the Landlord and give the Landlord notice of that encroachment or action; and

at the request and cost of the Landlord, adopt such measures as may be reasonably required or deemed proper for preventing any such encroachment or the acquisition of any such easement or other right.

The Tenant must preserve all rights of light and other easements enjoyed by the Property.

The Tenant must not prejudice the acquisition of any right of light or other easement for the benefit of the Property by obstructing any window or opening or giving any acknowledgement that the right is enjoyed with the consent of any third party or by any other act or default of the Tenant.

If any person takes or threatens to take any action to obstruct or interfere with any easement or other right enjoyed by the Property or any such easement in the course of acquisition, the Tenant must:

immediately inform the Landlord and give the Landlord notice of that action; and

at the request and cost of the Landlord, adopt such measures as may be reasonably required or deemed proper for preventing or securing the removal of the obstruction or the interference.

[Replacement guarantor

Subject to clause 0, if:

an Insolvency Event occurs in relation to a guarantor; or

any guarantor (being an individual) dies or becomes incapable of managing their affairs;

the Tenant must, if the Landlord so requests, procure that a person of standing acceptable to the Landlord, within [NUMBER] working days of that request enters into

a replacement or additional guarantee and indemnity of the tenant covenants of this lease in the same form as that entered into by that guarantor.

clause 0 shall not apply in the case of a person who is a guarantor by reason of having entered into an authorised guarantee agreement.]

Procure guarantor consent

For so long as any guarantor remains liable to the Landlord, the Tenant must, if the Landlord so requests, procure that that guarantor does all or any of the following:

- joins in any consent or approval required under this lease; and
- consents to any variation of the tenant covenants of this lease.

Indemnity

The Tenant must keep the Landlord indemnified against all liabilities, expenses, costs (including, but not limited to, any solicitors' or other professionals' costs and expenses), claims, damages and losses (including, but not limited to, any diminution in the value of the Landlord's interest in the Property and loss of amenity of the Property) suffered or incurred by the Landlord arising out of or in connection with:

- any breach of any tenant covenants in this lease;
- any use or occupation of the Property or the carrying out of any works permitted or required to be carried out under this lease; or
- any act or omission of the Tenant or any Authorised Person.

Landlord covenants

The Landlord covenants with the Tenant to observe and perform the landlord covenants of this lease during the Term.

Quiet enjoyment

The Landlord covenants with the Tenant that the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this lease.

Exercise of right of entry

In exercising any right of entry on to the Property pursuant to paragraph 1.2 of Schedule 3, the Landlord must:

- except in case of emergency, give reasonable notice of its intention to exercise that right to the Tenant;
- where reasonably required by the Tenant, exercise that right only if accompanied by a representative of the Tenant;

cause as little damage as possible to the Property and to any property belonging to or used by the Tenant;

cause as little inconvenience as reasonably possible to the Tenant; and

promptly make good any physical damage caused to the Property by reason of the Landlord exercising that right.

[Guarantor covenants

The Guarantor covenants with the Landlord on the terms set out in Schedule 7.]

Re-entry and forfeiture

The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:

the whole or any part of the Rents is unpaid 21 days after becoming payable (whether it has been formally demanded or not);

any breach of any condition of, or tenant covenant in, this lease; or

an Insolvency Event.

If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.

Section 62 of the LPA 1925

The grant of this lease does not create by implication any easements or other rights for the benefit of the Property or the Tenant and the operation of section 62 of the LPA 1925 is excluded.

Exclusion of sections 24 to 28 of the LTA 1954

The parties:

confirm that:

the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this lease, [not less than 14 days] before this lease was entered into;

[the Tenant **OR** [DECLARANT'S NAME] who was duly authorised by the Tenant to do so] made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and

there is no agreement for lease to which this lease gives effect; and

agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease.

[The parties confirm that:

the Landlord served a notice on the Guarantor, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy to be entered into by the Guarantor pursuant to paragraph 4.1 of Schedule 7, [not less than 14 days] before [this lease **OR** [DETAILS OF AGREEMENT FOR LEASE]] was entered into; and

[the Guarantor **OR** [DECLARANT'S NAME], who was duly authorised by the Guarantor to do so,] made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.]

Compensation on vacating

Any right of the Tenant (or anyone deriving title under the Tenant) to claim compensation from the Landlord on leaving the Property under the LTA 1954 is excluded (except to the extent that the legislation prevents that right being excluded).

No restriction on Landlord's use

Nothing in this lease shall impose or be deemed to impose any restriction on the use by the Landlord of the Building or any other neighbouring or adjoining property.

Limitation of liability

The Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease unless the Landlord knows it has failed to perform the covenant (or reasonably should know this) and has not remedied that failure within a reasonable time.

Mutual option to break

Either the Landlord or the Tenant may terminate this lease by serving a Break Notice on the other party at least 6 months before the relevant Break Date.

A Break Notice served by the Tenant shall be of no effect if at the Break Date stated in the Break Notice:

the Tenant has not paid by way of cleared funds any part of the Annual Rent (plus any VAT) which was due to have been paid; or

the Tenant has not vacated the Property and returned the Property to the Landlord free from any occupier or third party right to occupation or possession; or

there is a subsisting material breach of any of the tenant covenants of this lease relating to the state of repair and condition of the Property.

Subject to clause 0, following service of a Break Notice this lease shall terminate on the relevant Break Date.

Termination of this lease on the Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this lease.

If this lease terminates in accordance with clause 0, then, within ten working days of the relevant Break Date, the Landlord must refund to the Tenant the proportion (calculated on a daily basis) of any Annual Rent (and any VAT paid in respect of it) paid in advance by the Tenant for the period from but excluding the relevant Break Date up to but excluding the next Rent Payment Date.

Service Contract

In the event that the Service Contract is terminated, then this lease shall terminate immediately without prejudice to any prior breaches.

Breach of repair and maintenance obligation

The Landlord may enter the Property to inspect its condition and state of repair and give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property.

Following the service of a notice pursuant to clause 0, the Landlord may enter the Property and carry out the required works if the Tenant:

has not begun any works required to remedy any breach specified in that notice within two months of the notice or, if works are required as a matter of emergency, immediately; or

is not carrying out the required works with all due speed.

The costs incurred by the Landlord in carrying out any works pursuant to clause 0 (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable on demand.

Any action taken by the Landlord pursuant to this clause 0 shall be without prejudice to the Landlord's other rights (including those under clause 0).

Notices

Except where this lease specifically states that a notice need not be in writing, any notice given under or in connection with this lease shall be in writing and given:

by hand:

if the party is a company incorporated in the United Kingdom, at that party's registered office address;

if the party is a company not incorporated in the United Kingdom, at that party's principal place of business in the United Kingdom; or

in any other case, at that party's last known place of abode or business in the United Kingdom;

by pre-paid first-class post or other next working day delivery service:

if the party is a company incorporated in the United Kingdom, at that party's registered office address;

if the party is a company not incorporated in the United Kingdom, at that party's principal place of business in the United Kingdom; or

in any other case, at that party's last known place of abode or business in the United Kingdom.

If a notice complies with the criteria in clause 0, whether or not this lease requires that notice to be in writing, it shall be deemed to have been received if:

delivered by hand, at the time the notice is left at the proper address;

sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.

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

Section 196 of the LPA 1925 shall otherwise apply to notices in writing given under this lease.

Consents and approvals

Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed unless:

it is given in writing and signed by the Landlord or a person duly authorised on its behalf; and

it expressly states that the Landlord waives the requirement for a deed in that particular case.

If a waiver is given pursuant to clause 0, it shall not affect the requirement for a deed for any other consent.

Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord unless:

the approval is being given in a case of emergency; or

this lease expressly states that the approval need not be in writing.

If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not:

imply that any consent or approval required from a third party has been obtained; or obviate the need to obtain any consent or approval from a third party.

Where the Tenant requires the consent or approval of any mortgagee to any act or omission under this lease, then (subject to clause 0) at the cost of the Tenant the Landlord must use reasonable endeavours to obtain that consent or approval.

VAT

All sums payable by either party under or in connection with this lease are exclusive of any VAT that may be chargeable.

A party to this lease must pay VAT in respect of all taxable supplies made to that party in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.

Every obligation on either party, under or in connection with this lease, to pay any sum by way of a refund or indemnity, includes an obligation to pay an amount equal to any VAT incurred on that sum by the receiving party (except to the extent that the receiving party obtains credit for such VAT).

Joint and several liability

Where a party comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of that party arising under this lease. The party to whom those obligations and liabilities are owed may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

Entire agreement

This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

Nothing in this lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this lease.

Nothing in this clause shall limit or exclude any liability for fraud.

Contracts (Rights of Third Parties) Act 1999

This lease does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease.

Governing Law

This lease and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this lease or its subject matter or formation.

Landlord as Local Authority

The Landlord enters into this lease solely in its capacity as a landowner in respect of the Property and not in any other capacity. Nothing in this lease shall restrict the Landlord's powers or rights as a local authority, local planning authority or statutory body to perform any of its statutory functions.

Services

The Landlord shall provide the following services throughout the Term:

- maintaining and repairing the Common Parts and landlord's fixture and conduits serving the Building;
- heating and lighting the Common Parts and the Property;
- the supply of hot and cold water and other appropriate services to the Property;
- maintenance and repair of the roof structure of the Building; and
- maintenance of any security alarms within the Building.

The Landlord will not be liable to the Tenant in respect of any loss or damage caused by any failure interruption or delay in the provision of the services in clause 54.1 arising from any cause or circumstances beyond the control of the Landlord including mechanical breakdown failure malfunction shortages of fuel or materials or labour disputes or any necessary maintenance repair replacement renewal servicing inspection or testing of the systems used to provide those services.

The Tenant is to pay to the Landlord as additional rent the Tenant's Proportion of Service Costs with an interim yearly sum as determined by the Landlord (acting reasonably) to be paid on the date hereof and thereafter on each anniversary of the Lease.

For each period of twelve months ending on 31 March in each year of the Term, the Landlord is to prepare and to provide the Tenant with a copy of a statement showing the total Service Costs and the proportion of them payable by the Tenant.

Any balance due from the Tenant as between the amount calculated in the statement referred to in clause 54.4 and the advance payment paid by the Tenant pursuant to clause 54.3 shall be paid by the Tenant within 21 days of receiving a written demand by the Landlord and where the Tenant has paid in excess of the sum calculated pursuant to the statement then appropriate credit or refund shall be arranged by the Landlord to the Tenant.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Property

The Childrens Nursery on the Second Floor of the Building shown edged red on Plan 1 and the external grounds shown edged red on Plan 2

including:

- all alterations, improvements and additions made to those premises during the Term;
- landlord's fixtures and conduits serving only those premises at any time during the Term;
- suspended ceilings and raised floor systems;
- all internal surfaces of the walls, ceilings and floor slabs;
- the whole of any non-structural or non-load bearing walls and columns wholly within the Premises;
- the inner half, severed vertically, of any non-structural or non-load bearing walls and columns dividing the Premises from any other parts of the Building;
- all windows, window frames, doors, door frames (including internal doors) and the glass within them; and
- the external decking play area panel fencing (including the boundary fencing) steps and garden shed; but

excluding:

- the foundations, structure, load bearing walls, beams and columns, ceiling and floor slabs and the roof of the Building;
- any landlord's fixtures and conduits serving both those premises and other parts of the Building; and
- the airspace between the ceiling slabs and the suspended ceilings and the floor slab and the raised floors.

Rights

In common with the Landlord and any other person authorised by the Landlord, the Landlord grants to the Tenant the following easements (for the benefit of the Property) and the following other rights:

The right to support and protection for the Property from the Building to the extent that the Building provides support and protection to the Property at the date of this lease.

The right to use the Common Parts for access to and from the Property and, in the case of emergency only, fire escape routes through the Building whether or not forming part of the Common Parts.

The right to use the Service Media which serve the Property and/or which may serve other premises, subject to the Tenant using them in a reasonable and proper manner in accordance with any reasonable written regulations imposed from time to time by the Landlord

Subject to not less than 14 days written notice to the Landlord (except in the event of an emergency) the right to enter onto the remainder of the Building in order to lay repair maintain or connect into or install Service Media.

insofar only as the Landlord has such right title and interest to grant, a right of way on foot only over the area coloured green on Plan 1.

Reservations

Subject to paragraph 2 and paragraph 3 of this Schedule, the Landlord excepts and reserves from this lease the following easements (for the benefit of the Building) and the following other rights:

Rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the Term.

Subject to the Landlord complying with clause 0, the right to enter the Property for any other purpose mentioned in or connected with:

 this lease;

 the Reservations; or

 the Landlord's interest in the Property, or the Building or any neighbouring or adjoining property in which the Landlord acquires an interest during the Term.

The right to:

 use and connect into Service Media at the Property which are in existence at the date of this lease or which are installed or constructed during the Term;

 install and construct Service Media at the Property to serve the Building or any neighbouring or adjoining property in which the Landlord acquires an interest during the Term; and

 re-route and replace any Service Media referred to in this paragraph.

At any time during the Term, the full and free right to build, rebuild, alter or develop the Building or any neighbouring or adjoining property in which the Landlord acquires an interest during the Term as the Landlord may think fit.

The Reservations:

Are excepted and reserved notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property provided that they do not materially adversely affect the use and enjoyment of the Property for the Permitted Use.

May be exercised by:

 the Landlord;

 anyone else who is or becomes entitled to exercise them; and

 anyone authorised by the Landlord.

Are excepted and reserved to the extent possible for the benefit of any neighbouring or adjoining property in which the Landlord acquires an interest during the Term.

No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisers, shall be liable to the Tenant or to any undertenant or other

occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of the Reservations except for:

Physical damage to the Property.

Any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

Third Party Rights

All easements and other rights, covenants and restrictions affecting the Property set out or referred to in the register entries of DN436212 as at the date of this lease.

Rent review

Definitions

Definitions

The following definitions apply in this Schedule 5.

Assumptions: the assumptions set out in Part 2 of this Schedule 5.

Disregards: the disregards set out in Part 3 of this Schedule 5.

Hypothetical Lease: the lease described in Part 4 of this Schedule 5.

Open Market Rent: the best annual rent (exclusive of VAT) at which the Property could reasonably be expected to be let:

in the open market;

at the Review Date; and

applying the Assumptions and Disregards.

Review Date: [5th anniversary].

Shortfall Payment Date: the date which is ten working days from and including the date that the revised Annual Rent is agreed or determined.

Assumptions

The matters to be assumed are:

The Property is available to let in the open market:

on the terms of the Hypothetical Lease;

by a willing landlord to a willing tenant;

with vacant possession; and

without a fine or a premium.

The willing tenant has had the benefit of any rent-free or other concession or contribution which would be offered in the open market at the Review Date in relation to fitting-out works at the Property.

The Property may lawfully be used, and is in a physical state to enable it to be lawfully used, by the willing tenant (or any potential undertenant or assignee of the willing tenant) for any use permitted by this lease.

The Tenant and the Landlord (except where the Landlord is in material and persistent breach) have fully complied with their obligations in this lease.

If the Property or any means of access to it or any Service Media serving the Property has been destroyed or damaged, it has been fully restored.

No work has been carried out on the Property [(including any Previous Lease Alterations)] that has diminished its rental value other than work carried out in compliance with clause 0.

Any fixtures, fittings, machinery or equipment supplied to the Property by the Landlord that have been removed by or at the request of the Tenant, or any undertenant or their respective predecessors in title (otherwise than to comply with any law) remain at the Property.

The willing tenant and its potential assignees and undertenants shall not be disadvantaged by any actual or potential exercise of an option to tax under Part 1 of Schedule 10 to the Value Added Tax Act 1994 in relation to the Property.

Disregards

The matters to be disregarded are:

Any effect on rent of the fact that the Tenant or any authorised undertenant has been in occupation of the Property.

Any goodwill attached to the Property by reason of any business carried out there by the Tenant or by any authorised undertenant or by any of their predecessors in business.

Any effect on rent attributable to any physical improvement to the Property carried out before or after the date of this lease (including any physical improvement to any Service Media servicing the Property), by or at the expense of the Tenant or any authorised undertenant with all necessary consents, approvals and authorisations and not pursuant to an obligation to the Landlord (other than an obligation to comply with any law).

[Any effect on the rent attributable to any Previous Lease Alterations.]

Any effect on rent of any obligation on the Tenant to fit-out the Property or to reinstate the Property to the condition or design it was in before any alterations or improvements were carried out.

Any statutory restriction on rents or the right to recover them.

Hypothetical Lease

A lease:

Of the whole of the Property.

For a term equal to the unexpired residue of the Contractual Term at the Review Date or a term of 10 years commencing on the Review Date, if longer.

With rent review dates every 5 years from the Review Date.

Otherwise on the terms of this lease (other than the amount of the Annual Rent, and the provision in this lease for a rent-free period).

Review of the Annual Rent

Review

The Annual Rent shall be reviewed on the Review Date to equal:

the amount agreed between the Landlord and Tenant at any time (whether or not that amount is the Open Market Rent); or

in the absence of such agreement, the greater of:

the Annual Rent payable immediately before the Review Date (or which would then be payable but for any abatement, suspension, concession or reduction of the Annual Rent or restriction on the right to collect it); and

the Open Market Rent agreed or determined pursuant to this Schedule 5.

The Landlord and Tenant may agree the revised Annual Rent at any time before it is determined by the Expert.

As soon as practicable after the amount of the revised Annual Rent has been agreed or determined, a memorandum recording the amount shall be signed by or on behalf of the Landlord, the Tenant and the guarantor. The parties shall each bear their own costs in connection with the memorandum.

Determination by the Expert

If the Landlord and Tenant have not agreed the revised Annual Rent by the date three months before the Review Date, then either party may at any time refer the revised Annual Rent for determination by the Expert in accordance with this paragraph 2 of this Part of this Schedule. The Expert can be appointed in accordance with the terms of this lease irrespective of whether the Landlord and Tenant have tried to first reach an agreement on the revised Annual Rent.

The Landlord and Tenant shall agree on the appointment of an Expert and shall agree with the Expert the terms of their appointment.

If the Landlord and Tenant are unable to agree on an Expert or the terms of their appointment within 21 working days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the President to appoint an Expert and agree with the Expert the terms of appointment.

The Expert shall be required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of 90 working days of the matter being referred to the Expert.

If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause, then:

either party may apply to the President to discharge the Expert and to appoint a replacement Expert with the required expertise; and

this paragraph 3 of this Part of this Schedule shall apply to the new Expert as if they were the first Expert appointed.

The parties are entitled to make submissions to the Expert and must provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter referred to the Expert under this lease. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.

The Landlord and Tenant must bear their own costs in relation to the reference to the Expert.

The Landlord and Tenant must bear the Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) equally or in such other proportions as the Expert shall direct.

If either the Landlord or the Tenant does not pay its part of the Expert's fees and expenses within ten working days of demand by the Expert, then:

the other party may pay instead; and

the amount so paid shall be a debt of the party that should have paid and shall be due and payable on demand to the party that made the payment pursuant to paragraph 2.10(a) of this Part of this Schedule.

The Landlord and Tenant must act reasonably and co-operate to give effect to the provisions of this paragraph and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

Late review of Annual Rent

If the revised Annual Rent has not been agreed or determined on or before the relevant Review Date, the Tenant must:

continue to pay the Annual Rent at the rate payable immediately before that Review Date; and

on or before the Shortfall Payment Date, pay:

the shortfall (if any) between the amount of Annual Rent that the Tenant has paid for the period from and including that Review Date and the amount of Annual Rent for that period that would have been payable had the

revised Annual Rent been agreed or determined on or before that Review Date; and

interest at the Interest Rate on that shortfall. That interest shall be calculated on a daily basis by reference to the Rent Payment Dates on which parts of the shortfall would have been payable if the revised Annual Rent had been agreed or determined on or before that Review Date and the Shortfall Payment Date (or, if the Tenant pays the shortfall earlier than the Shortfall Payment Date, the date of that payment).

Time not of the essence

Time is not of the essence for the purposes of this Schedule 50.

Guarantor

If at any time there is a guarantor, the guarantor shall not have any right to participate in the review of the Annual Rent but will be bound by the revised Annual Rent.

Insurance

Landlord's obligation to insure

Subject to paragraph 1.2 and paragraph 1.3 of this Schedule, the Landlord must keep the Property insured against loss or damage by the Insured Risks for the Reinstatement Cost.

The Landlord shall not be obliged to insure:

- the Excluded Insurance Items or repair any damage to or destruction of the Excluded Insurance Items. References to the Property in this Schedule 6 shall exclude the Excluded Insurance Items;

- any alterations to the Property that form part of the Property unless:

- those alterations are permitted or required under this lease;

- those alterations have been completed in accordance with this lease and (where applicable) in accordance with the terms of any consent or approval given under this lease; and

- the Tenant has notified the Landlord of the amount for which those alterations should be insured and provided evidence of that amount that is satisfactory to the Landlord (acting reasonably); or

- the Property when the insurance is vitiated by any act or omission of the Tenant or any Authorised Person.

The Landlord's obligation to insure is subject to any limitations, excesses and conditions that may be imposed by the insurers.

Landlord to provide insurance details

In relation to any insurance effected by the Landlord under this Schedule 60, the Landlord must:

- at the request of the Tenant (such request not to be made more frequently than once a year) supply the Tenant with:

- full details of the insurance policy;

- evidence of payment of the current year's premiums; and

- details of any commission paid to the Landlord by the Landlord's insurer;

- procure that the Tenant is informed of any change in the scope, level or terms of cover as soon as reasonably practicable after the Landlord or its agents becoming aware of the change.

Tenant's obligations

The Tenant must pay to the Landlord on demand:

- the Tenant's Proportion of the Insurance Rent;

any amount that is deducted or disallowed by the insurers pursuant to any excess provision in the insurance policy; and

any costs that the Landlord incurs in obtaining a valuation of the Property for insurance purposes.

The Tenant must:

immediately inform the Landlord if any matter occurs in relation to the Tenant or the Property that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property and must also give the Landlord notice of that matter;

not do or omit to do anything as a result of which:

any insurance policy for the Property may become void or voidable or otherwise prejudiced;

the payment of any policy money may be withheld; or

any increased or additional insurance premium may become payable (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium (including any IPT due on that amount));

comply at all times with the requirements and recommendations of the insurers relating to the Property where written details of those requirements or recommendations have first been given to the Tenant;

give the Landlord immediate notice of the occurrence of:

any damage or loss relating to the Property arising from an Insured Risk or an Uninsured Risk; or

any other event that might affect any insurance policy relating to the Property;

except for the Excluded Insurance Items, not effect any insurance of the Property but, if the Tenant becomes entitled to the benefit of any insurance proceeds in respect of the Property, pay those proceeds or cause them to be paid to the Landlord; and

pay the Landlord an amount equal to any insurance money that the insurers of the Property refuse to pay in relation to the Property by reason of any act or omission of the Tenant or any Authorised Person.

Rent suspension

Subject to paragraph 4.2 and paragraph 4.3 of this Schedule, if any Property Damage by an Insured Risk or an Uninsured Risk occurs, payment of the Annual Rent (or a fair proportion of it according to the nature and extent of that Property Damage) shall be suspended until the earlier of:

the date on which the Property has been reinstated so that it is fit for occupation and use; and

the date which is three years from and including the date on which that Property Damage occurred.

The Annual Rent shall not be suspended under paragraph 4.1 of this Schedule if the Property Damage is caused by:

an Insured Risk and:

the policy of insurance in relation to the Property has been vitiated in whole or in part as a result of any act or omission of the Tenant or any Authorised Person; and

the Tenant has not complied with paragraph 3.2(f) of this Schedule; or

an Uninsured Risk and the Property Damage was Tenant Damage.

[If the rent suspension period specified in paragraph 4.1 of this Schedule commences before the Rent Commencement Date:

that rent suspension period shall be extended by the number of days from and including the date on which the rent suspension period commenced to but excluding the Rent Commencement Date or, if only a proportion of the Annual Rent due would have been suspended under paragraph 4.1 of this Schedule, an equivalent proportion of that number of days; and

the Rent Commencement Date shall then be the day after the expiry of the rent suspension period (as extended under paragraph 4.3(a) of this Schedule).]

Landlord's obligation to reinstate following damage or destruction by an Insured Risk

Following any damage to or destruction of the Property by an Insured Risk, the Landlord must:

use reasonable endeavours to obtain all necessary planning and other consents to enable the Landlord to reinstate the Property; and

reinstate the Property except that the Landlord shall not be obliged to:

reinstate unless all necessary planning and other consents are obtained;

reinstate unless the Tenant has paid the sums due under paragraph 3.1(b) and paragraph 3.2(f) of this Schedule;

provide accommodation or facilities identical in layout or design so long as accommodation reasonably equivalent to that previously at the Property; or

reinstate after a notice to terminate has been served pursuant to this Schedule 6

If the Landlord is obliged to reinstate the Property pursuant to paragraph 5.1(b) of this Schedule, the Landlord must:

use all insurance money received (other than for loss of rent) and all sums received under paragraph 3.1(b) and paragraph 3.2(f) of this Schedule for the purposes of that reinstatement; and

make up any shortfall out of its own funds.

Termination if reinstatement impossible or impractical following Property Damage by an Insured Risk

Following Property Damage by an Insured Risk, if the Landlord (acting reasonably) considers that it is impossible or impractical to reinstate the Property, the Landlord may terminate this lease by giving notice to the Tenant within six months from and including the date on which that Property Damage occurred.

Property Damage by an Uninsured Risk

If the Annual Rent (or a fair proportion of it) is suspended under paragraph 4.1 of this Schedule due to Property Damage by an Uninsured Risk, then, within 12 months from and including the date on which that Property Damage occurred, the Landlord must either:

- terminate this lease by giving notice to the Tenant; or
- notify the Tenant that it intends to reinstate the Property at its own cost.

If the Landlord notifies the Tenant under paragraph 7.1(b) that it intends to reinstate the Property, then the Landlord must use:

- reasonable endeavours to obtain all necessary planning and other consents to enable the Landlord to reinstate the Property; and
- its own monies to reinstate the Property but the Landlord shall not be obliged to:
 - reinstate unless all necessary planning and other consents are obtained;
 - provide accommodation or facilities identical in layout or design so long as accommodation reasonably equivalent to that previously at the Property; or
 - reinstate after a notice to terminate has been served pursuant to this Schedule 6.

If paragraph 7.1 applies but the Landlord has not served a notice under either paragraph 7.1(a) or paragraph 7.1(b) by the date which is 12 months from and including the date on which the relevant Property Damage occurred, the Tenant may at any time thereafter terminate this lease by giving notice to the Landlord provided that such notice is served before the Property is made fit for occupation and use.

Termination if reinstatement not complete by expiry of rent suspension

If Property Damage by an Insured Risk or an Uninsured Risk (where the Landlord elected to reinstate under paragraph 7.1(b) of this Schedule) occurs and the Property has not been reinstated so as to make it fit for occupation and use by the date which is three years after the date on which that Property Damage occurred, either party may at any time thereafter terminate this lease by giving notice to the other provided that:

- such notice is served before the Property has been reinstated so as to make it fit for occupation and use; and

where the Tenant serves the notice, the failure to reinstate so that the Property is fit for occupation and use is not caused by a breach of the Tenant's obligations under clause 0 or this Schedule 6

Consequences of termination

If either party gives a notice to terminate this lease in accordance with this Schedule 6:

this lease shall terminate with immediate effect from the date of the notice;

none of the parties shall have any further rights or obligations under this lease except for the rights of any party in respect of any earlier breach of this lease; and

any proceeds of the insurance for the Property shall belong to the Landlord.

Tenant Damage

If any damage to or destruction of the Property by an Uninsured Risk is caused by Tenant Damage, the Landlord shall not be obliged to reinstate the Property but if the Landlord chooses to do so, the Tenant must pay on demand all costs incurred by the Landlord in reinstating.

Guarantee and indemnity

Guarantee and indemnity

The Guarantor guarantees to the Landlord that the Tenant shall:

pay the Rents and observe and perform the tenant covenants of this lease and that if the Tenant fails to pay any of those Rents or to observe or perform any of those tenant covenants, the Guarantor shall pay or observe and perform them; and

observe and perform any obligations the Tenant enters into in an authorised guarantee agreement made in respect of this lease (the **AGA**) and that, if the Tenant fails to do so, the Guarantor shall observe and perform those obligations.

The Guarantor covenants with the Landlord as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under paragraph 1.1 of this Schedule to indemnify and keep indemnified the Landlord against any failure by the Tenant:

to pay any of the Rents or any failure to observe or perform any of the tenant covenants of this lease; or

to observe or perform any of the obligations the Tenant enters into in the AGA.

Guarantor's liability

The liability of the Guarantor under paragraph 1.1(a) and paragraph 0 of this Schedule shall continue until the Termination Date, or until the Tenant is released from the tenant covenants of this lease by virtue of the LTCA 1995, if earlier.

The liability of the Guarantor shall not be reduced, discharged or otherwise adversely affected by:

any time or indulgence granted by the Landlord to the Tenant;

any delay or forbearance by the Landlord in enforcing the payment of any of the rents or the observance or performance of any of the tenant covenants of this lease (or the Tenant's obligations under the AGA) or in making any demand in respect of any of them;

any refusal by the Landlord to accept any rent or other payment due under this lease where the Landlord believes that the acceptance of such rent or payment may prejudice its ability to re-enter the Property;

the Landlord exercising any right or remedy against the Tenant for any failure to pay the Rents or to observe or perform the tenant covenants of this lease (or the Tenant's obligations under the AGA);

the Landlord taking any action or refraining from taking any action in connection with any other security held by the Landlord in respect of the Tenant's liability to pay the Rents or observe and perform the tenant covenants of the lease (or

the Tenant's obligations under the AGA) including the release of any such security;

a release or compromise of the liability of any one of the persons who is the Guarantor, or the grant of any time or concession to any one of them;

any legal limitation or disability on the Tenant or any invalidity or irregularity of any of the tenant covenants of the lease (or the Tenant's obligations under the AGA) or any unenforceability of any of them against the Tenant;

the Tenant being dissolved, or being struck off the register of companies or otherwise ceasing to exist, or, if the Tenant is an individual, by the Tenant dying or becoming incapable of managing its affairs;

without prejudice to paragraph 4 of this Schedule, the disclaimer of the Tenant's liability under this lease or the forfeiture of this lease;

the surrender of the lease in respect of part only of the Property, except that the Guarantor shall not be under any liability in relation to the surrendered part in respect of any period after the surrender; or

any other act or omission except an express written release by deed of the Guarantor by the Landlord.

Any sum payable by the Guarantor must be paid without any set-off or counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) against the Landlord or the Tenant.

Variations and supplemental documents

The Guarantor must, at the request of the Landlord, join in and give its consent to the terms of any consent, approval, variation or other document that may be entered into by the Tenant in connection with this lease (or the AGA).

The Guarantor shall not be released by any variation of the rents reserved by, or the tenant covenants in, this lease (or the Tenant's obligations under the AGA) whether or not:

- the variation is material or prejudicial to the Guarantor;
- the variation is made in any document; or
- the Guarantor has consented, in writing or otherwise, to the variation.

The liability of the Guarantor shall apply to the rents reserved by and the tenant covenants in this lease (and the Tenant's obligations under the AGA) as varied except to the extent that the liability of the Guarantor is affected by section 18 of the LTCA 1995.

Guarantor to take a new lease or make payment

If this lease is forfeited or the liability of the Tenant under this lease is disclaimed and the Landlord gives the Guarantor notice not later than six months after the forfeiture or the Landlord having received notice of the disclaimer, the Guarantor must enter into a new lease of the Property on the terms set out in paragraph 4.2 of this Schedule.

The rights and obligations under the new lease shall take effect beginning on the date of the forfeiture or disclaimer and the new lease shall:

be granted subject to the right of any person to have this lease vested in them by the court and to the terms on which any such order may be made and subject to the rights of any third party existing at the date of the grant;

be for a term that expires on the same date as the end of the Contractual Term of this lease had there been no forfeiture or disclaimer;

reserve as an initial annual rent an amount equal to the Annual Rent payable under this lease at the date of the forfeiture or disclaimer or which would be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it (subject to paragraph 5 of this Schedule) and which is subject to review on the same terms and dates provided by this lease;

be excluded from sections 24 to 28 of the LTA 1954; and

otherwise be on the same terms as this lease (as varied if there has been any variation).

The Guarantor must pay the Landlord's solicitors' costs and disbursements (on a full indemnity basis) and any VAT in respect of them in relation to the new lease and must execute and deliver to the Landlord a counterpart of the new lease within one month of service of the Landlord's notice.

The grant of a new lease and its acceptance by the Guarantor shall be without prejudice to any other rights that the Landlord may have against the Guarantor or against any other person or in respect of any other security that the Landlord may have in connection with this lease.

The Landlord may, instead of giving the Guarantor notice pursuant to paragraph 4.1 of this Schedule but in the same circumstances and within the same time limit, require the Guarantor to pay an amount equal to six months' Annual Rent and the Guarantor must pay that amount on demand.

Rent at the date of forfeiture or disclaimer

If at the date of the forfeiture or disclaimer there is a rent review pending under this lease, then the initial annual rent to be reserved by the new lease shall be subject to review on the date on which the term of the new lease commences on the same terms as those that apply to a review of the Annual Rent under this lease, such review date to be included in the new lease.

If paragraph 5.1 of this Schedule applies, then the review for which it provides shall be in addition to any rent reviews that are required under paragraph 4.2(c) of this Schedule.

Payments in gross and restrictions on the Guarantor

Any payment or dividend that the Landlord receives from the Tenant (or its estate) or any other person in connection with any insolvency proceedings or arrangement involving the

Tenant shall be taken and applied as a payment in gross and shall not prejudice the right of the Landlord to recover from the Guarantor to the full extent of the obligations that are the subject of this guarantee and indemnity.

The Guarantor must not claim in competition with the Landlord in any insolvency proceedings or arrangement of the Tenant in respect of any payment made by the Guarantor pursuant to this guarantee and indemnity. If it otherwise receives any money in such proceedings or arrangement, it must hold that money on trust for the Landlord to the extent of its liability to the Landlord.

The Guarantor must not, without the consent of the Landlord, exercise any right or remedy that it may have (whether against the Tenant or any other person) in respect of any amount paid or other obligation performed by the Guarantor under this guarantee and indemnity unless and until all the obligations of the Guarantor under this guarantee and indemnity have been fully performed.

Other securities

The Guarantor warrants that it has not taken and covenants that it shall not take any security from or over the assets of the Tenant in respect of any liability of the Tenant to the Guarantor. If it does take or hold any such security it shall hold it for the benefit of the Landlord.

This guarantee and indemnity is in addition to and independent of any other security that the Landlord may from time to time hold from the Guarantor or the Tenant or any other person in respect of the liability of the Tenant to pay the Rents and to observe and perform the tenant covenants of this lease. It shall not merge in or be affected by any other security.

The Guarantor shall not be entitled to claim or participate in any other security held by the Landlord in respect of the liability of the Tenant to pay the Rents or to observe and perform the tenant covenants of this lease.

Executed as a deed by affixing the common seal of **the Council of the Borough of Torbay** in the presence of:

Proper Officer & Authorised Signatory:

Seal No:

Signed as a deed by [NAME OF **Tenant**] in the presence of:

.....

[SIGNATURE OF **Tenant**]

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

OR

Executed as deed by [NAME OF **Tenant**] acting by [NAME OF FIRST DIRECTOR], a director, and [NAME OF SECOND DIRECTOR/SECRETARY], [a director OR its secretary]

.....

[SIGNATURE OF FIRST DIRECTOR]

Director

.....

[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]

Director OR Secretary

OR

Executed as deed by [NAME OF **Tenant**] acting by [NAME OF DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

Director

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Signed as a deed by [NAME OF **Guarantor**] in the presence of:

.....

[SIGNATURE OF **Guarantor**]

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION]
OF WITNESS]

OR

Executed as deed by [NAME OF
Guarantor] acting by [NAME OF FIRST
DIRECTOR], a director, and [NAME OF
SECOND DIRECTOR/SECRETARY], [a
director OR its secretary]

.....

[SIGNATURE OF FIRST DIRECTOR]

Director

.....

[SIGNATURE OF SECOND DIRECTOR
OR SECRETARY]

Director OR Secretary

OR

Executed as deed by [NAME OF
Guarantor] acting by [NAME OF
DIRECTOR] a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

Director

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION]
OF WITNESS]