

DATED

2024

Lincolnshire County Council (1)

and

[THE SUPPLIER] (2)

CONTRACT

relating to the provision of Independent & Non-Maintained Day and Residential (Special) Schools Services to children and young people with disabilities.

LEGAL SERVICES LINCOLNSHIRE

Together we are stronger

Legal Services Lincolnshire

County Offices

Newland

LN1 1YL

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THIS AGREEMENT is made the day of

2024

BETWEEN

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

and

(2) **[INSERT NAME OF SUPPLIER]** [Registered Company Number: **XXXXXX**] whose registered office is situated at **[]** (the "Supplier")

WHEREAS

- (A) The Customer requires the provision of providers of Independent & Non-Maintained Day and Residential (Special) Schools supplied to CYP's through awarded IPAs in accordance with this Contract. The Supplier has agreed to provide the same where required on the terms and conditions set out below.
- (B) Where the Supplier has been awarded an IPA in accordance with this Contract, it has agreed to provide the Services relating to the IPA in question on the terms and conditions set out below.
- (C) Provided that the Supplier complies with the provisions of any such signed IPA and the terms of this Contract to the satisfaction of the Customer, the Customer shall make payments to the Supplier in accordance with this Contract.

IT IS HEREBY AGREED as follows:

GENERAL PROVISIONS

A1 DEFINITIONS AND INTERPRETATION

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

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

Approval means the prior written consent of the Customer.

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

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

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

Care Quality Commission or CQC means the Care Quality Commission established under the Health and Social Care Act 2008.

Change means any variation to this Contract including to any of the Services and KPIs.

Change Control Procedure means the procedure for changing this Contract as set

out in Clause F3.

Change of Control means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Supplier (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a).

Children in Care (CiC) Care Plan/CiC Plan means the child in need plan and/or child in care plan for any CYP, as drawn up by the Customer that addresses how the CYP shall be looked after, the CYP's needs and requirements and how these needs should be met currently and in the future and encompasses all other relevant documents and plans in accordance with regulation 5 and Schedule 1 of the Care Planning, Placement and Case Review (England) Regulations 2010

Commencement Date means the [INSERT DATE].

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

- (a) if disclosed, could prejudice the other Party's commercial interests and/or
- (b) constitutes a trade secret.

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

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

Consents means:-

- (i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or
- (ii) any necessary consent or agreement from any third party needed either for the performance of the Supplier's obligations under this Contract or for the provision by the Supplier of the Services in accordance with this Contract.

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

Contracting Authority means any contracting authority as defined by Procurement Law.

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

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

Controller takes the meaning given in the UK GDPR.

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

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

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

Customer's Contract Manager means the person identified as such in Part 1 of Schedule 4 (Key Personnel) or any replacement person appointed by the Customer pursuant to Clause B5, being the person responsible for managing the delivery of the Services on behalf of the Customer.

Customer's Representative means the person identified as such in Part 1 of Schedule 4 (Key Personnel) or any replacement person appointed by the Customer pursuant to Clause B5, being the person responsible for managing the overall relationship with the Supplier.

CYP means a child or young person with special educational needs and/or disabilities (SEND) who:

- have the most severe or complex learning difficulties; and/or
- have a significant disability; and/or
- have a significant disability and additional needs – medical, social, emotional, behavioural, and sensory or physical; and/or
- require modification to the curriculum and personalised learning approaches; and/or
- have their needs identified and assessed through the Statutory Assessment process, and the placement agreed through the SEND team; and/or
- may be subject to a tribunal decision on placements taking into account parental views.

CYP Progress Report means a report provided by the Supplier concerning CYP's academic, vocational educational attainment and also CYP's personal, social, emotional development and wellbeing.

Data Protection Legislation means (i) the UK GDPR, (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

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

Default means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in

connection with or in relation to the subject-matter of this Contract or signed IPA.

Department for Education means the UK Government ministerial department responsible for children's services and education, including early years, schools, higher and further educational policy, apprenticeships and wider skills in England.

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

Disaster Recovery and Business Continuity Plan means the business continuity and disaster recovery plan prepared pursuant to Schedule 5 (Disaster Recovery and Business Continuity Plan) as amended from time to time.

DPA means the Data Protection Act 2018.

East Midlands Regional Fee Increase Panel means the regional panel (made up of representatives from Derby City, Derbyshire, Leicester City, Leicestershire Lincolnshire, Northamptonshire, Nottingham City, Nottinghamshire and Rutland Councils) that convenes twice a year to consider fee increase requests by suppliers. On behalf of the Councils, the panel is chaired and administered by the Regional School Development Support Agency (SDSA) in Leicester.

EHC Plan means an education, health and care plan for a CYP who needs more support than is available through special educational needs support. EHC plans identify educational, health and social needs and set out the additional support to meet those needs.

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

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

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

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

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

Fee Increase Pro Forma means the pro forma to be used by the Supplier, which may be revised by the Customer from time to time, to submit a Price increase request which will be considered by the East Midlands School Development Support Agency (twice a year) to assist the Customer to understand Price increase requests;

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any Guidance and/or codes of

practice issued by the Information Commissioner or relevant department of the Crown in relation to such legislation.

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

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

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

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

Free School Meals means the provision of meals in accordance with the statutory benefits available to school aged children from families who receive qualifying benefits and who have been through the relevant registration process as prescribed by the Department of Education.

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

Guidance means any applicable Crown guidance, direction or determination which the Customer and/or the Supplier have a duty to have regard to.

ICT means information and communications technology.

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

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

Individual Placement Agreement ("IPA") means the agreement substantively in the form set out at Schedule 2 (Individual Placement Agreement) to this Contract between the Parties for the supply of specific Services to a CYP provided under and incorporating the terms and conditions of this Contract as identified within but not limited to Clause B1 and any other documents specified to be incorporated.

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

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

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

Key Performance Indicator ('KPI') means the levels to which the Services are to be performed by the Supplier as set out in Schedule 3 (Performance Monitoring).

Key Personnel means those persons identified in Schedule 4 (Key Personnel) for the roles attributed to such personnel.

Key Worker means the member of Staff working for the Supplier who provides support to the CYP.

Law means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bylaw, regulation, order, regulatory policy, mandatory Guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier and/or the Customer (as applicable) is bound to comply.

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

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

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

Month means calendar month.

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

NHS Act 2006 means the National Health Service Act 2006.

Ofsted means the office for standards in education, children services and skills which brings together the duties previously undertaken by the Commission for Social Care Inspectorate (including any successor to its functions).

Parent means the person(s) having parental responsibility for a CYP as defined by the Children Act 1989;

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

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

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

Personal Education Plan/PEP means the document recording a CYP's educational progress and forms part of the CYP's care plan.

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

Personal Data takes the meaning given in the UK GDPR.

Premises means the physical location where the Service is provided by the Supplier in accordance with the Specification.

Price means the charges levied by the Supplier for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract and applicable signed IPA.

Procurement Law means the Public Contract Regulations 2015 (where applicable), or the Procurement Act 2023 and any subordinate legislation made under the Procurement Act from time to time (where applicable) together with any Guidance (where applicable).

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

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

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

Receipt means the physical or electronic arrival of the invoice at the address of the Customer detailed in Clause C2.

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

Regulatory Bodies means those relevant departments of the Crown and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to

regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer and “Regulatory Body” shall be construed accordingly.

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

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

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

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

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

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

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

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

Serious Incident means an incident or accident or near-miss where a CYP, Parent, Legal Guardian, member of staff, or member of the public suffers serious injury, major permanent harm or unexpected death on the Supplier’s Premises or where the actions of the Supplier or the Customer are likely to be of significant public concern or where the incident falls within the list of scenarios identified within the Specification and Schedule 3 (Performance Monitoring).

Services means the services to be supplied by the Supplier as specified and detailed in the Specification and any further specific service requirements as provided for in a relevant CiN Plan/CiC Plan (as applicable) or EHC Plan (as applicable) PEP (as applicable), Individual Education Plan (as applicable) and signed IPA.

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

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

Staff Vetting Procedure means the Customer’s procedures for the vetting of Staff and as advised to the Supplier by the Customer available at <https://www.lincolnshire.gov.uk/employment-policies/criminal-records-policy/1>

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

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

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

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

Supplier's Contract Manager means the person identified as such in part 2 of Schedule 4 (Key Personnel) or any replacement person appointed by the Supplier pursuant to Clause B5, being the person responsible for managing the delivery of the Services on behalf of the Supplier.

Supplier's Representative means the person identified as such in Part 2 of Schedule 4 (Key Personnel) or any replacement person appointed by the Supplier pursuant to Clause B5, being the person responsible for managing the Supplier's overall relationship with the Customer.

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

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

Third Party Premises means any premises used by the Supplier in the provision of the Services which are owned by a third party.

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

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

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

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

UK GDPR means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).

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

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

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to Clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;
- (d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;
- (e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (h) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- (i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-
 - (i) the clauses of this Contract;
 - (ii) Schedule 1 (Specification);
 - (iii) the remaining Schedules to this Contract

A2 CONTRACT PERIOD AND EXTENSION

A2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on [INSERT DATE] unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated.

A3 SUPPLIER'S STATUS

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

A4 CUSTOMER'S OBLIGATIONS

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

A5 NOTICES

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

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

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

(a) For the Customer:-
Lincolnshire County Customer
Address:
Count Offices, Newland, Lincoln, LN1 1YL
For the attention of:
The Placements Team
Email: LCCPlacements@lincolnshire.gov.uk

(b) For the Supplier:-
[Redacted]
[Address: [Redacted]]
For the attention of: [Redacted]
Tel: [Redacted]
Email: [Redacted]

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

A6 MISTAKES IN INFORMATION

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

A7 CONFLICTS OF INTEREST

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

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

have accrued or shall thereafter accrue to the Customer.

A8 VOLUMES

- A8.1 The Supplier acknowledges that no guarantee is given by the Customer in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Customer. Furthermore, the Supplier acknowledges that the Customer does not guarantee it will award the Supplier with an IPA.

SUPPLY OF SERVICES

B1 THE INDIVIDUAL PLACEMENT AGREEMENT (IPA)

- B1.1 The Customer shall complete an IPA in consultation with the Supplier, where necessary. The Customer shall, in the course of this consultation, supply the Supplier with such information about the CYP as obligated within the Specification.
- B1.2 The IPA shall detail the Services to be delivered in accordance with this Contract and what is stated in the CYP's CiN Plan/CiC Plan (as applicable), EHC Plan (as applicable) PEP (as applicable), Individual Education Plan (as applicable) and any other written arrangements agreed by both Parties where applicable for the CYP in question.
- B1.3 The IPA shall detail the expected outcomes to be achieved for the CYP whilst the Supplier provides the Services, in accordance with the CYP's CiN Plan/CiC Plan (as applicable), EHC Plan (as applicable) PEP (as applicable), Individual Education Plan (as applicable) and Specification.
- B1.3A The IPA shall detail the Price that is to be paid in relation to the CYP's placement with the Supplier, following agreement between the Customer and the Supplier.
- B1.4 The Customer shall issue the completed IPA to the Supplier to sign and return to the Customer within five (5) Working Days from receipt. The Customer will then sign both copies and return one signed copy to the Supplier.
- B1.5 The Services shall not commence until the completed IPA is signed by both Parties, unless otherwise agreed by the Customer.
- B1.6 The outcomes, success measures and timescales identified in the IPA shall be reviewed in accordance with the Specification and the individual CYP's CiN Plan/CiC Plan (as applicable) and/or EHC Plan (as applicable) PEP (as applicable), Individual Education Plan (as applicable) in compliance with statutory requirements. Wherever possible, education, social care, health and other reviews shall take place together.
- B1.7 Either Party may reasonably request a review meeting and consider what variations (if any) are required to the relevant IPA (including Price) to be made resulting from changes in the needs of the CYP in question. Where a variation has been agreed by the Parties, the Customer shall complete two (2) copies of the amended IPA which shall contain details of the variation and the date from which the variation shall be deemed to have commenced. The Supplier shall sign and return both copies of the amended IPA to the Customer within five (5) Working Days of receipt. The Customer will then sign both copies and return one signed copy to the Supplier.
- B1.8 If the Supplier proposes to increase the Price in accordance with Clause B1.7, then such increase must be demonstrated by the Supplier as being justified and the Customer shall be entitled to require the Supplier to provide any documents or other information to support the proposed Price increase in accordance with the Fee Increase Request Pro Forma. The provision of such material will not automatically result in the Customer agreeing such increases.

- B1.9 If the Customer proposes to decrease the Price in accordance with Clause B1.7, then such decrease must be demonstrated by the Customer as being justified and the Supplier shall be entitled to reasonably require the Customer to provide any documents or other information to support the proposed Price reduction. The provision of such material will not automatically result in the Supplier agreeing the decrease.
- B1.10 In the event that the discussions detailed within Clause B1.8 and B1.9 (as applicable) do not result in agreement, either Party may initiate the dispute resolution procedure set out at Clause I2.
- B1.11 No variation of the Services and/or the Price shall take effect until the amended IPA is signed by both Parties, unless otherwise agreed by the Customer.
- B1.12 The Customer shall not be liable to make any payment in relation to a variation prior to the agreed commencement date for such variation.
- B1.13 The Supplier shall give the Customer notification as soon as reasonably possible of any matters affecting the maintenance and stability of the Service provided.
- B1.14 The Supplier shall regularly monitor the Service provided to the CYP and give regular feedback to the Customer. If the matters notified under Clause B1.13 continue to have a disruptive influence on the Service provided, a Service review meeting will be held to agree a corrective course of action.
- B1.15 The Supplier and the Customer shall ensure that any corrective course of action is implemented immediately to maintain and provide stability to the Service provided to the CYP.
- B1.16 In the event that it is agreed, in the best interests of the CYP in question that a Replacement Provider should continue the provision of the Services, the Supplier shall liaise with such Replacement Provider and the Customer in order to ensure a smooth and planned transition and continuity of the Services, for the CYP in question.
- B1.17 Subject to Clause H2A.1, in the event that the duration of any signed IPAs surpasses the Contract Period and Services continue following the expiry of this Contract, the IPAs in question shall continue to be in effect and the Supplier shall continue to undertake such Services in accordance with this Contract and the IPA until the expiry or earlier termination of any such IPA.

B2 THE SERVICES

- B2.1 The Supplier shall supply any Services instructed under a signed IPA, during the Contract Period in accordance with the Customer's requirements as set out in the relevant IPA, CiN Plan/CiC Plan (as applicable) and EHC Plan (as applicable), PEP (as applicable), Individual Education Plan (as applicable) the Specification and the provisions of this Contract in consideration of the payment of the Price.
- B2.2 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of this Contract and/or any signed IPA or differs in any way from those requirements, and this is other than as a result of a Default by the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract and/or signed IPA within such reasonable time as may be specified by the Customer.
- B2.3 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- B2.4 The Supplier warrants and shall deliver the Services:-

- (a) in a safe, professional manner and in accordance with Good Industry Practice;
- (b) in accordance with such reasonable instructions as may from time to time be given by the Customer;
- (c) within any timeframes set out by the Customer in accordance with the Specification or any other timeframes which the Customer may reasonably notify to the Supplier; and
- (d) complying with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body.

B2.4A In performing its obligations under or pursuant to this Contract, the Supplier shall ensure that it obtains and maintains throughout the Contract Period and period of any IPA all necessary Consents required to perform its obligations under this Contract and in accordance with the Law.

B2.5 The Supplier shall as may be necessary co-operate, liaise with and co-ordinate its activities with those of any other supplier employed directly or indirectly by the Customer, other Independent & Non-Maintained Day and Residential (Special) Schools as directed by the Customer and the Customer teams identified within the Specification and shall provide the Services in harmony with and at no detriment to such services provided by or on behalf of or to the Customer as detailed within the Specification. If the Supplier defaults in complying or fails to comply with this condition then any costs, expenses, liabilities or damages incurred by the Customer as a consequence thereof, including the reasonable cost to the Customer or the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier by the Customer as a debt.

B2.6 The Supplier shall in performing its obligations in accordance with this Contract cooperate with the Customer in compliance with the requirements of the Public Services (Social Value) Act 2012.

B2A PROVISION OF FOOD TO CYP

B2A.1 In the event that an IPA provides for the Supplier to supply a CYP with Free School Meals during the provision of the Services the Supplier shall ensure that such Free School Meals shall at all times comply with all applicable Laws relating to health and safety, food safety and the provision of school meals including without limitation:-

- (a) Requirements for School Food Regulations 2014 and any amendment thereto applicable at the time;
- (b) Department for Education applicable guidance and any other applicable Regulatory Body guidance and amendment thereto applicable at the time;
- (c) Food Hygiene Regulations 2013 and any amendment thereto applicable at the time; and

B2A.2 In addition to the requirements set out in clause B2A.1, the Supplier shall ensure that such Free School Meals and any other food and/or drinks provided are:-

- (a) provided in accordance with any dietary requirements of the CYP (which includes food and drink free from ingredients that cause allergic reactions and/or intolerances);

- (b) provided and prepared in accordance with relevant Government and Regulatory Body guidance (including the Department for Education and Food Standards Agency) and relevant Laws;
- (c) provided and prepared in accordance with relevant documents and guidance; provided by dietitians;
- (d) are of proper quality, within their stated expiry or use-by date and free from damage and pest infestation/damage, have been stored and transported at the correct temperature and are suitable for consumption by the applicable CYP;
- (e) handled, stored, prepared and cooked appropriately in accordance with current Good Industry Practise to provide good quality nutritious meals and in accordance with all applicable legislation relating to health and safety, food safety;
- (f) kept at the requisite temperature at all times including but not limited to storage prior to preparation, during cooking and at point of service to the applicable CYP.
- (g) if a hot meal, prepared and heated in a safe and correct manner;
- (h) prepared in a clean and suitable environment; and
- (i) provided in accordance with any requirements within the Specification and/or IPA.

B2B ASSISTANCE WITH MEDICATION AND MEDICAL TREATMENTS

B2B.1 If a CYP to whom the Supplier is providing Services in accordance with a respective signed IPA, requires assistance or reminders in taking any medications and/or requires the administering of medical treatments to the extent provided for within the Specification, whilst under the care of the Supplier, the Supplier shall ensure that any Staff assisting the CYP is suitably trained in accordance with the requirements within the Specification, IPA and have been informed as to the details of the medication, treatment and any suitable instructions from the CYP's general practitioner, (where applicable) Carer, (where applicable) Parent(s) and (where applicable) Legal Guardian including but not limited to:

- (a) what the medication is for;
- (b) when it shall be taken;
- (c) the dosage that shall be given;
- (d) how it shall be stored;
- (e) how to record that the medication has been given and taken;
- (f) what the treatment is for;
- (g) how it is administered; and
- (h) how medical equipment is cleaned

B2B.2 The Supplier shall ensure that any Staff providing any assistance with medication and any medical treatments shall be suitably qualified, act in accordance with Quality Standards, Good Industry Practice, the Law, the Specification, the respective signed IPA and terms and conditions of this Contract when providing such assistance.

B2C TRANSPORT

B2C.1 In the event that the Supplier provides transport to the CYP to and from any Premises or otherwise in accordance with the provision of the Service, the Supplier shall ensure

that any such requirements provided for in Specification are satisfied and that any such vehicle used is:-

- (a) fit for the purpose of transporting the CYP, taking into account any specific needs and wishes of the CYP;
- (b) easily accessible by the CYP;
- (c) In compliance with all applicable requirements of the Law, including but not limited to having a valid MOT and insurance allocated, is otherwise road worthy, licensing, insurance, testing, operation, construction, use, fitness, equipment, safety and maintenance;
- (d) regularly serviced, and kept in a fully operational state of repair;
- (e) be of a suitable type, size and design for the provision of the Services;
- (f) in a suitable and fully operational mechanical condition, safe and roadworthy and comply with any applicable Law;
- (g) clean and comfortable; and
- (h) driven by a competent member of Staff, who is fully licensed to drive such vehicle by Law

B2C.2 In the event that a CYP is a wheelchair user, the Supplier shall ensure and must be able to demonstrate that they have ensured the driver of transportation utilised in relation to clause B2C uses appropriate equipment, to ensure that such CYP is safe and comfortable whilst on board such transport and that the driver has been adequately trained in their use.

B2C.3 In the event that such transport is provided by a volunteer driver or a third party, the Supplier shall ensure that such third-party provider has suitable policies and procedures in place and can evidence that any such transport provided for complies with the requirements of this Clause B2C and the Specification.

B2D ACTIVITIES

B2D.1 In the event that the Supplier arranges and/or provides and/or organises holidays/Activities for the CYP within the Premises or outside of the Premises, the Supplier shall ensure such Activities:

- (a) are safe, have been subjected to a risk assessment and have adequate health and safety certification; and
- (b) comply with all applicable requirements of Law; and
- (c) are carried out with adequate and suitable supervision; and
- (d) fit for purpose and suitable for the applicable CYP; and
- (e) comply with the provisions of the Specification and relevant IPA.

B2E SERVICE QUALITY

B2E.1 The Supplier shall ensure it, unless otherwise agreed (subject to the Law) with the Customer in writing:-

- (a) complies, where applicable, with the registration and regulatory compliance requirements and guidance of the Department for Education, Ofsted, CQC and

any other Regulatory Body;

- (b) responds, where applicable, to all requirements and enforcement actions issued from time to time by the Department for Education, CQC or any other Regulatory Body;
- (c) considers and responds to the recommendations arising from any audit, death, Serious Incident report or Patient Safety Incident report;
- (d) complies with the recommendations issued from time to time by a Competent Body;
- (e) complies with the KPIs set out in Schedule 3;
- (f) obtains and maintains registrations as required within the Specification and as required to provide the Services competently during the Contract Period;
- (g) complies with all the Law in respect of the Services including but not limited to:-
 - (i) The Children and Families Act 2014
 - (ii) The Children Act 1989 and 2004
 - (iii) The Adoption and Children Act 2002
 - (iv) Education Act 1996, 2002, 2005 and 2011
 - (v) Health and Social Care Act 2001, 2008 and 2012
 - (vi) Safeguarding of Vulnerable Groups Act 2006
 - (vii) Mental Health Act 1959, 1983 and 2007
 - (viii) Mental Capacity Act 2005
 - (ix) Housing Act 1964, 1980 and 1985
 - (x) The Equality Act 2010
 - (xi) National Health Service Act 2006
 - (xii) Sexual Offences Act 2003
 - (xiii) Police and Justice Act 2006
 - (xiv) SEND Code of Practice 2015;
- (h) complies with all applicable Guidance, and guidance/strategies stipulated by the Customer in respect of Services including but not limited to:-
 - (i) Closing the Gap: Priorities for Essential Change in Mental health, 2014
 - (ii) Promoting the Health and Wellbeing of Looked after Children and Young People, 2015
 - (iii) Future in Mind, 2015
 - (iv) Children and Social Work Act, 2017
 - (v) Working Together to Safeguard Children 2018
 - (vi) Keeping Children Safe in Education, 2015, 2022

B2F CYP INVOLVEMENT

- B2F.1 The Supplier shall engage, liaise and communicate with the CYP, their Carer(s) (where applicable), Parent(s) (where applicable) and/or Legal Guardians (where applicable) in an open and clear manner in accordance with the Law, Good Practice and their human rights.
- B2F.2 As soon as reasonably practicable following any reasonable request from the Customer, the Supplier shall provide evidence to the Customer of the involvement of the CYP, Carer(s), Parent(s) and Legal Guardian(s) where applicable in the development of Services.
- B2F.3 The Supplier shall carry out CYP Progress Reviews in accordance with the Specification (and Carer, Family and Legal Guardian surveys where applicable) and shall carry out any other surveys reasonably required by the Customer in relation to

the Services. The form (if any), frequency and method of reporting such surveys shall comply with the requirements set out in the Specification and/or as agreed between the Parties in writing from time to time.

B2F.4 The Supplier shall review and provide a written report to the Customer on the results of each survey carried out under Clause B2F.3 and identify any actions reasonably required to be taken by the Supplier in response to the surveys. The Supplier shall implement such actions as soon as practicable. If required by the Customer, the Supplier shall publish the outcomes and actions taken in relation to such surveys.

B2G PREMISES

B2G.1 The Supplier shall ensure that the Premises used for the provision of any part of the Service provided for under this Contract:-

- (a) shall be in accordance with the Specification;
- (b) has been subjected to risk assessments and has adequate health and safety certification;
- (c) shall have sufficient space for the provision of the Services required;
- (d) complies with and meets any standards prescribed by Law including, but not exclusive to, health & safety, fire precautions, environmental health and accessibility;
- (e) is fit for the purpose of providing the Services;
- (f) is in a clean and good state of repair and is maintained in good order;
- (g) shall have suitable facilities/equipment to meet the assessed needs of CYPs;
- (h) shall have accessible points of access and egress from the building (where relevant) for use by all CYPs;
- (i) shall, where Services are provided for CYPs that have complex personal care needs, have suitable toileting and changing facilities, including suitable access for those that have a disability; and
- (j) has suitable public liability and any other applicable relevant insurance for the provision of the Services and in accordance with this Contract;
- (k) is in a good state of repair, is watertight and is of sound construction; and
- (l) include any Equipment necessary for the provision of the Services as provided for in Clause B3.

B2G.2 In addition to Clause B2G.1, if in the provision of any Services, the Supplier uses any Third Party Premises, the Supplier shall ensure that it has procured a suitable licence and/or suitable permission to be able to use and provide the Services at the Third Party Premises and shall indemnify and hold the Customer harmless against any claims or proceedings arising out of any use of Third Party Premises by the Supplier in connection with this Contract.

B2G.3 Save as the Customer may otherwise direct, the Supplier is deemed to have inspected the Premises and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract which it deems requires the use of the Premises.

B2G.4 The Supplier shall provide the Customer with reasonable access to any Premises used

for the provision of the Services so as to enable the Customer to undertake audits to ensure that the Premises comply with Clause B2G.

B3 PROVISION AND REMOVAL OF EQUIPMENT

B3.1 The Supplier shall provide and maintain all the Equipment necessary for the supply of the Services.

B3.2 The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition.

B3.3 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:-

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

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

B4 MANNER OF CARRYING OUT THE SERVICES

B4.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and any body as provided for within the Specification. To the extent that the standard of Services has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and in any event, the Supplier shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

B4.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B4.3 The Customer shall conduct a review of performance of this Contract at least annually during the Contract Period. During this review, a performance report shall be agreed.

B5 KEY PERSONNEL

B5.1 Each Party shall appoint the persons named as such in Schedule 4 (Key Personnel) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.

B5.2 The Supplier acknowledges that the Supplier's Key Personnel are essential to the proper provision of the Services to the Customer.

B5.3 The Supplier's Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B5.4 The Supplier shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Supplier's Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier becoming aware of the role becoming vacant.

B5.5 The Customer shall not unreasonably withhold its agreement under Clauses B5.3 or B5.4. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract which could be caused by a change in the Supplier's Key Personnel.

B5.6 The Customer may require the Supplier to remove or procure the removal of any of the Supplier's Key Personnel whom the Customer considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

B5.7 If the Supplier replaces the Key Personnel as a consequence of this Clause B4, the cost of effecting such replacement shall be borne by the Supplier.

B6 SUPPLIER'S STAFF

B6.1 At all times, the Supplier shall ensure that:-

- (a) each of the Staff is suitably qualified, adequately trained (including any specialist-based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged and in accordance with the Specification;
- (b) there is an adequate number of Staff to provide the Services properly;
- (c) where applicable, Staff (save for volunteers) are registered with the appropriate professional regulatory body;
- (d) all of the Staff comply with all of the Customer's policies as notified to it from time to time; and
- (e) all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working;
- (f) Staff are aware of and respect equality and human rights of colleagues and CYPs; and
- (g) it complies with the Law relating to the employment of Staff.

B6.2 The Supplier shall notify its entire Staff about the Supplier's obligations under the terms of this Contract and about any applicable Law.

B6.3 Upon receipt of a complaint against a member of Staff, the Customer may, to the extent reasonably necessary to protect the standards and reputation of the Customer, in consultation with the Supplier, request that the Supplier investigates the complaint and provides the Customer with all requested information in relation to this investigation, in accordance with the Supplier's own internal policy and procedures and Good Industry Practice.

B6.4 In the event of industrial disputes or action by any of the Staff, it remains the Supplier's responsibility to meet the requirements of this Contract. The Supplier shall inform the Customer immediately of impending or actual industrial disputes or action, which may affect the Supplier's ability to deliver the Services and of the Supplier's contingency plans for dealing with such disputes or action.

B6.5 The Supplier shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-

- (a) proper and sufficient continuous professional and personal development, training and instruction; and
- (b) full and detailed appraisal (in terms of performance and on-going education and training),

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

- B6.6 Where applicable under section 1(F)(1) of the NHS Act 2006, the Supplier shall cooperate with and provide support to the Local Education and Training Boards and/or Health Education England to help them secure an effective system for the planning and delivery of education and training.
- B6.7 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to any Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Customer may reasonably request.
- B6.8 The Staff, engaged within the Premises, shall comply with such reasonable rules and requirements as may be in force from time to time for the conduct of personnel at the Premises.
- B6.9 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- B6.10 Before the Supplier engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Supplier shall without limitation:-
- (a) complete the Staff Vetting Procedures (which shall include as applicable Enhanced DBS & Barred List Checks for Enhanced DBS Positions in relation to the Service);
 - (b) ensure that all persons including their Staff who shall have any access to CYP are subject to Enhanced DBS & Barred List Checks prior to starting their duties or having any unsupervised contact with CYP; and those enhanced DBS checked persons shall be re-checked at least every three years; and
 - (c) if appropriate complete such other checks as reasonably required by the Customer.
- B6.11 Subject to Clause B6.10, no person shall commence any duties in relation to a CYP, or have any unsupervised contact with a CYP, until all the necessary checks have been undertaken and the outcomes of those checks are satisfactory.
- B6.12 Where an Enhanced DBS Barred List Check includes disclosure in relation to any person, that person shall not be permitted to provide Services under this Contract or have any contact with a CYP until the Customer has confirmed to the Supplier in writing that it is satisfied that the individual is suitable to provide such Services and/or have contact with children. The Disclosure certificates shall remain on the personnel file and be available for inspection.
- B6.13 The Supplier shall (unless and to the extent agreed otherwise by the Customer in writing) conduct such questioning and investigation as is reasonable regarding any Convictions, where the above required checks reveal a Conviction.

- B6.14 Without prejudice to the provisions of this Clause B6, the Supplier shall not engage or continue to utilise in the provision of the Services involving or which are likely to involve access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, any member of Staff whose Conviction means it would reasonably be regarded as inappropriate for them to be conducting such activity.
- B6.15 If the Supplier fails to comply with Clause B6 and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, then the Customer may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- B6.16 The Supplier shall replace any of the Staff who the Customer reasonably determines have failed to carry out their duties with reasonable skill and care or to the extent necessary to protect a CYP and/or standards and reputations of the Customer. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services at no additional cost to the Customer.
- B6.17 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Customer as the Customer reasonably requests on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.
- B6.18 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.

B7 OFFERS OF EMPLOYMENT

- B7.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

B8 TUPE AND PENSIONS

- B8.1 The Customer and the Supplier agree that where the identity of a contractor (including the Incumbent Supplier) of any service which constitutes or will constitute part of the Services is changed as a result of entering into or pursuant to this Contract then the change may constitute a Relevant Transfer.
- B8.2 The Supplier acknowledges and accepts that under the TUPE Regulations the contracts of employment of the Transferring Employees shall have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Supplier.
- B8.2A The Supplier shall prior to any formal consultation required in accordance with the TUPE Regulations provide to all Transferring Employees basic guidance on their rights under the TUPE regulations and such guidance shall conform to relevant Guidance which includes but is not limited to e.g. BIS Guidance on TUPE 2006 as amended.
- B8.3 In the event that the Supplier enters into any Sub-Contracts in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Clause B8 and shall ensure that each Sub-Contractor complies with such terms. The Supplier shall indemnify the Customer and keep the Customer indemnified in full from and against all direct, indirect, or consequential

liability or Losses awarded against or incurred or paid by the Customer as a result of or in connection with any failure on the part of a Sub-Contractor to comply with such terms.

- B8.4 The Supplier shall be responsible for all emoluments and outgoings in respect of all Relevant Employees employed by the Supplier or any Sub-Contractor, including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date). The Supplier shall indemnify and keep the Customer indemnified and harmless from and against all Losses and other liabilities which the Customer may incur in respect of the same.
- B8.5 The Supplier shall fully and accurately disclose to the Customer (and shall ensure that any relevant Sub-Contractor accurately discloses) any and all information in relation to all personnel engaged in the provision of the Services and all information that the Customer may reasonably request in relation to the Staff within ten (10) Working Days of the Customer's request including the following:-
- (a) a list of employees employed by the Supplier, or any Sub-Contractor; and
 - (b) a list of agency workers, agents and independent contractors engaged by the Supplier; and
 - (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and
 - (d) the age, gender, salary or other remuneration, date of continuous employment commenced and, if different, the commencement date, accrued holiday entitlement, pension details, location, retirement, enhancement rates, and any other factors affecting their redundancy and pension entitlements and any outstanding claims arising from employment of the Staff referred to in Clause B8.5(a); and
 - (e) the terms and conditions of the employment/engagement of the Staff referred to in Clause B8.5(a), their job titles and qualifications; and
 - (f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B8.6 Where the Supplier provides information in accordance with Clause B8.5 and the Supplier or Sub-Contractor makes or becomes aware of any changes or discovers new information the Supplier shall notify the Customer within five (5) Working Days of any such change or discovery.
- B8.7 At the time of providing the disclosed information pursuant to Clauses B8.5 and B8.6, the Supplier shall warrant the completeness and accuracy of all such information. The Supplier authorises the Customer to use any and all information provided under Clause B8 to the Customer as it considers necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

- B8.8 The Customer may use the information it receives from the Supplier pursuant to Clauses B8.5 and B8.6 for the purposes of TUPE in order to ensure an effective handover of all work in progress at the end of the Contract Period or relevant signed IPA. The Supplier shall provide the Replacement Provider with such assistance as it shall reasonably request.
- B8.9 The Supplier shall indemnify and keep indemnified and hold the Customer and the Crown (both for themselves and any Replacement Provider) harmless from and against all Losses which the Customer or the Crown or any Replacement Provider may suffer or incur as a result of or in connection with:-
- (a) the provision of information pursuant to Clause B8; and
 - (b) any claim or demand by any Relevant Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Supplier in respect of any Relevant Employee on or before the end of the Contract Period; and
 - (c) any failure by the Supplier to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Provider to comply with its duties under Regulation 13 of the Regulations; and
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Relevant Employees as defined under TUPE arising from or connected with any failure by the Supplier to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Provider whose name is not included in the list of Relevant Employees as defined under TUPE.
- B8.10 The Supplier shall comply with the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.
- B8.11 The Supplier shall ensure that, in accordance with The Best Value Authorities Staff Transfers (Pensions) Direction 2007, a Transferring Original Employee shall be granted:
- (a) pension rights that are broadly comparable to or better than those he/she has as an employee of the Incumbent Supplier; or
 - (b) continued access to the Local Government Pension Scheme for those employees who at the Transfer Date are members of that pension scheme; and
 - (c) terms and conditions of employment which allow the Transferring Original Employee to enforce the protection afforded under The Best Value Authorities Staff Transfers (Pensions) Direction 2007.
- B8.12 This Clause B8 applies during the Contract Period and indefinitely thereafter.
- B8.13 The Supplier confirms that it shall comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent supplier (including any Replacement Provider). The Supplier warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B8.14 The Supplier shall indemnify and keep the Customer and any Replacement Provider indemnified in full from and against direct, indirect, or consequential liability or Loss awarded against or incurred or paid by the Customer or any Replacement Provider as a result of or in connection with:-

- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-Contractor during any period prior to and including the date of expiry or termination of this Contract; and
- (b) any claim brought against the Customer or any Replacement Provider as a result of the Supplier's failure to comply with any of its obligations under the TUPE Regulations and this Contract.

B8.15 Notwithstanding any provisions of this Contract, for the purposes of Clause B8 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Provider shall be entitled to enforce the benefits conferred to it under this Contract. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Provider shall not be required for such rescission, variation, or termination.

B9 BEST VALUE

B9.1 The Supplier shall provide to the Customer all such assistance, information and documentation as the Customer shall reasonably require for the purpose of compliance with its obligations of Best Value under Part 1 of the Local Government Act 1999.

B10 SERVICE IMPROVEMENT

B10.1 The Supplier shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services with the Customer. Without prejudice to the foregoing, the Supplier shall, at its own cost submit a report to the Customer within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the change.

B10.2 If the Customer wishes to incorporate any improvement identified by the Supplier pursuant to Clause B10.1, the Customer shall send the Supplier a Customer Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Supplier's costs in providing the Services to the Customer are reduced as a result of any business change implemented by the Supplier, a saving as agreed between the Parties shall be passed on to the Customer by way of a consequential and immediate reduction in the Price.

B11 COMPLAINTS

B11.1 The Supplier shall have a complaints procedure in place from the Commencement Date, which includes but shall not be limited to the requirements as set out in the Specification and shall maintain an up to date, comprehensive and detailed written record of all complaints it receives regarding the Services. Such records shall contain all relevant details of the complaint including the following details:-

- (a) the member of Staff or other person to whom the complaint was made and the name and job title of that person;
- (b) the name and address (if known) of the person making the complaint and in what capacity the complaint was made;

- (c) the nature and extent of the default of which complaint was made;
 - (d) the date and time of complaint; and
 - (e) any action taken to remedy the complaint, and if no action is to be taken, the reasons why no action is to be taken.
- B11.2 Where a complaint is received regarding:-
- (a) the standard of Services;
 - (b) the manner in which any Services have been supplied;
 - (c) the manner in which work has been performed;
 - (d) the materials or procedures used by the Supplier; or
 - (e) any other matter connected with the performance of the Supplier's obligations under this Contract,

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

- B11.3 Without prejudice to its other rights and remedies under the Contract, the Customer may, in its sole discretion, uphold the complaint and take further action in accordance with Clause F5.1, Clause H2 (Termination on Default) or H7 (Remediation Plan Process) of this Contract.

B12 INCIDENTS REQUIRING REPORTING

- B12.1 If the Supplier is CQC registered it shall comply with the requirements and arrangements for notification of deaths and other incidents to CQC in accordance with CQC Regulations and if the Supplier is not CQC registered it shall notify Serious Incidents to any Regulatory Body as applicable, in accordance with the Law, the Specification and the provisions of Schedule 3 (Performance Monitoring).

- B12.2. If the Supplier gives a notification to the CQC or any other Regulatory Body under clause B12.1 which directly or indirectly concerns any CYP, the Supplier shall send a copy of it to the Customer within five (5) Working Days.

- B12.3 The Supplier shall notify the Customer immediately (or by next Working Day if this is not possible) of any notifiable incidents referred within the Specification.

- B12.4 The Parties shall comply with the arrangements for reporting, investigating, implementing and sharing the Lessons Learned from Serious Incidents, Patient Safety Incidents and non-CYP safety incidents that are agreed between the Supplier and the Customer.

- B12.5 Subject to the Law, the Customer shall have complete discretion to use the information provided by the Supplier under this clause B.12.

B13 CONSENT

- B13.1 The Supplier shall publish, maintain and operate a CYP consent policy which complies with Good Practice and the Law.

B14 BUSINESS CONTINUITY

- B14.1 The Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems and the supply chain) to the Supplier's

operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Customer to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 5 (Disaster Recovery and Business Continuity Plan).

- B14.2 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Customer shall be entitled to participate in such tests as it may reasonably require.
- B14.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test within ten (10) Working Days of the completion of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- B14.4 In the event of any significant changes to the Disaster Recovery and Business Continuity Plan, the Supplier shall provide such updated plan to the Customer within ten (10) Working Days of the implementation of the change.
- B14.5 The Supplier shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than forty-eight (48) hours.

B15 CO-OPERATION

B15.2. The Supplier shall co-operate fully and liaise appropriately in good faith with:-

- (a) the Customer;
- (b) the CYP;
- (c) the CYP's Parent or Legal Guardian
- (d) any third-party provider who the CYP may be transferred to or from the Supplier;
- (e) any third-party provider which may be providing care to the CYP at the same time as the Supplier's provision of the relevant Services to the CYP; and
- (f) primary, secondary and social care services,
- (g) any education establishment that the CYP may attend after the provision of the Services

in order to:

- (h) ensure that a consistently high standard of care for the CYP is at all times maintained;
- (i) ensure a co-ordinated approach is taken to promoting the quality of CYP care across all pathways spanning more than one provider;
- (j) achieve a continuation of the Services that avoids inconvenience to, or risk to the health and safety of, CYPs, employees of the Customer or members of the public.

PAYMENT AND PRICE

C1 PRICE

C1.1 In consideration of the Supplier's proper performance of its obligations under this Contract and any signed IPA, the Customer shall pay the agreed Price set out in the applicable signed IPA for each CYP in accordance with Clause C2 (Payment).

C2 PAYMENT

C2.1 Where the Supplier submits a valid invoice to the Customer in accordance with the provisions within Clause C1, Clause C2 and the applicable signed IPA, the Customer shall pay each invoice within thirty (30) calendar days of Receipt of a valid undisputed invoice.

C2.2 In respect of any invoice, the Supplier shall ensure that each invoice:-

- (a) clearly displays a valid purchase order number which number must be obtained from the Customer upon request for the provision of Services;
- (b) only contains one purchase order number which relates to the Services requested under the relevant purchase order. For the avoidance of doubt, if an invoice contains more than one purchase order number, it shall be rejected;
- (c) includes the Supplier's name, address, contact details, supplier ID number set out within the purchase order;
- (d) details the Services which the invoice relates to including delivery address and initials of the CYP;
- (e) a unique invoice reference number;
- (f) is electronically typed but no invoice shall be accepted which has been electronically typed and manually altered, e.g. manually corrected or updated;
- (g) is submitted via e-mail to invoices@lincolnshire.gov.uk in PDF or TIF format without security being applied and is sent as a separate file or is sent by post addressed to Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL;
- (h) which is submitted by e-mail shall only consist of an invoice and no other documentation; and
- (i) which is to be accompanied by documentation, is submitted via email to INMFinance@lincolnshire.gov.uk.

C2.3 If the Supplier fails to submit an invoice in accordance with Clause C2.2 no payment shall become due until such time as an invoice has been submitted by the Supplier which conforms in all respects with the requirements set out in Clause C2.2.

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

- (a) payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the Receipt of a valid invoice; and
- (b) the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of Clause C2.4(a).

C2.5 All payments to be made by the Customer under this Contract are stated to be exclusive of VAT.

C2.6 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or

assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause C2.6 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

- C2.7 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money.
- C2.8 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.
- C2.9 Where payment by the Customer of all or any part of any invoice submitted or other claim for payment by the Supplier is disputed, this dispute shall be resolved as follows:-
- (a) Notwithstanding Clause C3, payment by the Customer of all or any part of any Price rendered or other claim for payment by the Supplier shall not signify approval. The Customer reserves the right to verify the Price after the date of payment and subsequently to recover any sums which have been overpaid.
 - (b) If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer either before or after payment then the Customer may call for the Supplier to provide such further documentary or oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Supplier shall promptly provide such evidence in a form satisfactory to the Customer.
 - (c) If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer, the Customer shall not withhold payment of the remainder.
 - (d) If any Price rendered for payment by the Supplier is paid but any part of it is disputed or subject to question by the Customer and such part is subsequently agreed or determined not to have been properly payable, then the Supplier shall forthwith repay such part to the Customer.
- C2.10 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Customer pursuant to this Contract and applicable signed IPA and shall declare and make available for inspection to the Customer all Price components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Customer twelve (12) years from the end of the Contract Year to which the records relate.
- C2.11 Without prejudice to Clause C2.5, for the avoidance of doubt, it shall be the sole responsibility of the Supplier to:-
- (a) assess the VAT rate and tax liability arising out of or in connection with the Contract; and
 - (b) account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Contract to HM Revenue and Customs ("HMRC").
- C2.12 The Customer shall not be liable to the Supplier in any way whatsoever for any error or failure by the Supplier (or the Customer) in relation to VAT, including without limit:-

- (a) where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
- (b) where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such relevant authority) to be incorrect or invalid; and/or
- (c) where the Supplier's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;
- (d) where the Supplier has specified a rate of VAT, or a VAT classification to the Customer (including but not limited to Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Supplier subsequently regards such a rate, or such a classification, as being a mistake on its part. Further, in this scenario C2.12 (d), the Supplier shall be obliged to repay any overpayment by the Customer on demand.

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

C3 RECOVERY OF SUMS DUE

C3.1 Wherever under this Contract and/or any signed IPA any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Contract and/or any signed IPA), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Contract and/or any signed IPA or under any other agreement or contract with the Customer.

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

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

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

C4 ANNUAL REVIEW OF PRICE

C4.1 Either Party may request a review of the Price for any current IPA placement, where the CYP has been provided with the Service from the Supplier in accordance with an applicable IPA for more than twelve (12) calendar months, on an annual basis. Such Price review request can be for any reason except where such need for a review has arisen as a result of changes to the needs of the CYP in question in accordance with Clause B1.7.

C4.2 Where the Supplier proposes a variation of the Price for consideration by the Customer pursuant to Clause C4.1 ('**Annual Price Proposal**') it must be received by the East Midlands School Development Support Agency (SDSA) (co-ordinator of this process on behalf of the East Midlands local authorities) by 31 December each year (the deadlines outlined for the receipt of Price increase requests can be subject to slight change by the SDSA each year and the SDSA will notify Suppliers accordingly). Any

proposals shall be considered by the Customer, in consultation with the East Midlands Regional Fee Increase Panel, and the Supplier shall be notified of the outcome prior to the start of the following financial year and, if a Price variation is agreed, will take effect from 1 April. The proposal must include completion of SDSA's Fee Increase Pro Forma provided by the SDSA and be submitted to the SDSA via the portal (as detailed in the communication from the SDSA). Where a variation of Price has been agreed by the Customer, such variation shall only apply to placements where an applicable IPA has been in place for more than twelve (12) calendar months (calculated as of 1 April of the year the price variation commences).

C4.3 Subject to any contrary agreement between the Parties, the following shall apply in respect of any Annual Price Proposal under Clause C4.2:

C4.3.1 If the Supplier proposes to increase the Price, then such increase must be demonstrated by the Supplier as being justified, to the reasonable satisfaction of the Customer, and the Customer shall be entitled to require the Supplier to provide any documents or other information to support the proposed Price increase in accordance with the Fee Increase Pro Forma. The provision of such material will not automatically result in the Customer agreeing such increase.

C4.3.2 If the Supplier requests a Price revision resulting from unforeseen changes in the Law the Supplier must produce financial records sufficiently detailed to prove the level of impact upon it in accordance with the Fee Increase Pro Forma.

C4.4 If the Customer proposes to decrease the Price, then such decrease must be demonstrated by the Customer as being justified and the Supplier shall be entitled to require the Customer to provide any documents or other information to support the proposed Price reduction. The provision of such material will not automatically result in the Supplier agreeing the decrease.

C4.5 Provided that:

- (a) a notice of an Annual Price Proposal has been served in accordance with Clause C4.2; and
- (b) the applicable requirements of Clause C4.3 have been satisfied; and
- (c) the Parties have agreed to the Annual Price Proposal or any negotiated variation thereof (acting reasonably),

the agreed Annual Price Proposal will take effect from the 1 April following agreement being given (pursuant to Clause C4.2) following agreement of the Annual Price Proposal. The Customer shall complete two (2) copies of the amended IPA which shall contain details of the variation to the Price and the date from which the variation shall be deemed to have commenced. The Supplier shall sign and return both copies of the amended IPA to the Customer within five (5) Working Days of receipt. The Customer will then sign both copies and return one signed copy to the Supplier.

C4.6 In the event that agreement to an Annual Price Proposal is not given, the Supplier may appeal to the appropriate SDSA appeal panel (where applicable) and/or comply with the appropriate SDSA appeal process for a further review.

C4.7 Where the Customer proposes a revision of the Price pursuant to Clause C4.1, the Parties shall meet to discuss and agree any such revision subject C4.3. Once agreed, subject to the approval of such revision by any relevant panel, the revision to the Price shall take effect immediately. If this is not practicable then it shall take effect from the

beginning of the following month. If no agreement can be reached, then it shall be referred to the dispute resolution process under Clause I2

C5 PERFORMANCE MANAGEMENT

- C5.1 The Supplier shall ensure that the Services meet or exceed the KPIs at all times from the Commencement Date.
- C5.2 The Supplier shall provide the Customer with a report detailing its performance in respect of each of the KPIs as the Customer may request from time to time or as the frequency is provided for within the relevant IPA. The Supplier shall provide each report to the Customer no less than five (5) Working Days upon request of such report.
- C5.3 The Customer's Representative and Supplier's Representative shall have meetings (as and when the Customer may request from time to time) to monitor and review the performance of a signed IPA and the Contract, the achievement of the KPIs and the provision of the Services.
- C5.4 Prior to each meeting pursuant to Clause C5.3, the Customer shall notify the Supplier's Representative, and vice versa, of any problems relating to the provision of the Services for discussion at such meetings. At the meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in Clause H7 shall apply. Progress at implementing the plan shall be included in the agenda (if applicable) for the next meeting.
- C5.5 The Customer and the Supplier shall review the KPIs in accordance with Schedule 3 (Performance Monitoring) and make any changes in accordance with the Change Control procedure to reflect the changes in the KPIs.
- C5.6 The Supplier shall attend all such other meetings and provide such reports as may reasonably be required by the Customer including those reports and meetings as set out in Schedule 1 (Specification) and Schedule 3 (Performance Monitoring).

C6 CONTRACT MANAGEMENT

- C6.1 The Supplier shall work with the Customer to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified.
- C6.2 The Supplier shall work with the Customer to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Supplier's management and delivery of it.
- C6.3 The Supplier shall supply information requested relevant to the delivery of the Services to the Customer, using formats and to the timescales specified by the Customer.
- C6.4 The Customer intends, wherever it can, to capture and collate information through its IT system(s). However, the Customer does reserve the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.
- C6.5 Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.
- C6.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within the Contract.
- C6.7 Review meetings as referred to in Clause C5 between the Customer and the Supplier shall also cover, as appropriate, resolving disputes and/or dealing with contractual

breaches in accordance with the terms and conditions of this Contract.

- C6.8 The Customer may undertake spot checks at any time to ensure that the Supplier is complying with its obligations under this Contract and the Supplier shall co-operate fully, at its own cost, with the Customer.
- C6.9 The Supplier shall be responsible for managing and reporting on any Sub-Contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any problems. The Customer shall agree with the Supplier day-to-day relationship management, contact points, communication flows and escalation procedures.
- C6.10 The Supplier shall be expected to continuously improve the quality of the provision of the Services including that delivered by Sub-Contractors.

STATUTORY OBLIGATIONS AND REGULATIONS

D1 PREVENTION OF BRIBERY

D1.1 The Supplier:-

- (a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

D1.2 The Supplier shall:-

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by the Crown in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause D1 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

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

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

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause D1.1(b);
- (b) been listed by the department or agency of the Crown as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in procurement programmes of the Crown or contracts on the grounds of a Prohibited Act; or

- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of Clause D1.1(b).
- D1.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Clause D1, the Supplier must respond promptly and in any event within ten (10) Working Days to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Contract.
- D1.6 The Customer may:-
- (a) terminate this Contract by written notice with immediate effect and recover from the Supplier the amount of any Loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period if the Supplier breaches Clause D1; and
- (b) recover in full from the Supplier any other Losses sustained by the Customer in consequence of any Default of Clause D1.
- D1.7 Any notice of termination under Clause D1.6 must specify:-
- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Customer believes has committed the Prohibited Act; and
- (c) the date on which this Contract shall terminate.
- D1.8 Despite Clause I2 (Disputes), any dispute relating to:-
- (a) the interpretation of Clause D1; or
- (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Customer acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.
- D1.9 Any termination under Clause D1.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.
- D1.10 In exercising its rights or remedies under Clause D1.6, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause D1.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

D2 ANTI-DISCRIMINATION

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

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

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

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it

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

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

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

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

- (a) provide any information requested in the timescale allotted;
- (b) attend any meetings as required and permit the Staff to attend;
- (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
- (d) allow the Supplier and any of the Staff to appear as witness in any ensuing proceedings, and
- (e) cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

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

and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

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

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

D3 ANTI-SLAVERY AND HUMAN TRAFFICKING

D3.1 The Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking Laws and Guidance from time to time in force including but not limited to the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015; and
- (c) include in contracts with its Sub-Contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause D3.1.

D3.2 The Supplier shall notify the Customer as soon as it becomes aware of any actual or suspected breach of clause D3.1.

D3.3 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

D4 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

D4.1 A person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

D5 ENVIRONMENTAL REQUIREMENTS

D5.1 The Supplier shall in the delivery of the Services, perform its obligations under this Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D6 HEALTH AND SAFETY

D6.1 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working at/on the Premises in the performance of its obligations under this Contract.

D6.2 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

D6.3 The Supplier shall notify the Customer immediately in the event of any incident

occurring in the performance of its obligations under this Contract at the Premises where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D6.4 The Supplier shall promptly (within twenty-four (24) hours) notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract.

D6.5 The Supplier shall co-operate with officers of the Customer, or its representatives, investigating any health and safety matter.

D7 SAFEGUARDING

D7.1 The Supplier shall make the necessary arrangements to ensure compliance with the Specification and with all Laws and applicable Guidance relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

D7.2 The Supplier, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

D7.3 The Supplier shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.

D7.4 To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Supplier shall have:-

- (a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents;
- (b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults' welfare;
- (c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults;
- (d) Recruitment and human resources procedures in compliance with Clause B6 in order to safeguard and promote the welfare of children/vulnerable adults;
- (e) Procedures for dealing with allegations of abuse against members of Staff and volunteers;
- (f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
- (g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and procedures that are in accordance with Guidance and locally agreed inter-agency procedures;
- (h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information;
- (i) A culture of listening to and engaging in dialogue with children/vulnerable adults;

and

- (j) Appropriate whistle-blowing procedures.
- D7.5 The Supplier shall immediately notify the Customer of any information it reasonably requests to enable it to be satisfied that the obligations of Clauses B6 and D7 have been met.

PROTECTION OF INFORMATION

E1 DATA PROTECTION

E1.1 The Parties shall act as independent data Controllers in relation to Personal Data arising from the Contract and shall comply with their respective obligations under Data Protection Legislation.

E2 CONFIDENTIAL INFORMATION

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

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

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

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E3 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

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

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

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

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

- (a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
 - (b) to any consultant, professional adviser, contractor, supplier, or other person engaged by the Customer or any person conducting an applicable Crown office gateway review;
 - (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (c) for the purpose of the examination and certification of the Customer's accounts;
 - (d) on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract (Clause F1.8), to a Replacement Provider (Clause H6.2) and for the purpose of the examination and certification of the Customer's accounts; or
 - (e) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Customer has used its resources.
- E2.7 The Customer shall use all reasonable endeavours to ensure that any department of the Crown, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Customer's obligations of confidentiality.
- E2.8 Nothing in this Clause E2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E2.9 Any breach by the Supplier of Clauses E2.1 – E2.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Customer (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.
- E2.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E2.11 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

E3 TRANSPARENCY AND FREEDOM OF INFORMATION

- E3.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time (the "Transparency Information") is not Confidential Information.
- E3.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information

in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- E3.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information.
- E3.4 The Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Supplier. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such Information from publication. The Supplier acknowledges that the Customer would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.
- E3.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- E3.6 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E2.6(c)) and E9) publish such Information. The Supplier shall provide to the Customer within five (5) Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- E3.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- E3.8 The Supplier shall and shall procure that any Sub-Contractors shall:-
- (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- E3.9 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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

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

(a) without consulting the Supplier; or

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

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

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

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

E4 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

E4.1 The Supplier shall not:-

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

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

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

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

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

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

E5 INTELLECTUAL PROPERTY RIGHTS

E5.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):-

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

(b) prepared by or for the Supplier on behalf of the Customer for use, or intended

use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Customer;

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

- E5.2 The Supplier hereby assigns to the Customer, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause E5.1(b). This assignment shall take effect on the date of this Contract or as a present assignment of future rights that shall take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.
- E5.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.
- E5.4 The Customer shall grant to the Supplier a non-exclusive, revocable, free licence for the Contract period to use the IP Materials where it is necessary for the Supplier to supply the Services. The Supplier shall have the right to sub-licence the Supplier's use of the IP Materials. At the end of the Contract Period or early termination thereof the Supplier shall cease to use and shall ensure that any Sub-Contractor ceases to use the IP Materials.
- E5.5 The Supplier shall grant the Customer a non-exclusive, irrevocable, free licence for the Contract Period to use the Supplier's Intellectual Property Rights where it is necessary for the Customer in the provision of the Services. At the end of the Contract Period, the Customer shall cease to use the Supplier's Intellectual Property Rights.
- E5.6 The Supplier shall obtain Approval from the Customer before using any material in relation to the performance of its obligations under the Contract which is or may be subject to any third-party Intellectual Property Rights. The Supplier shall ensure that the third-party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable. That licence or sub-licence shall also include the right for the Customer to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Provider or to any other third-party supplying services to the Customer.
- E5.7 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all Losses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause E5, except where any such claim arises from:-
- (a) items or materials based upon designs supplied by the Customer; or
 - (b) the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Contract.
- E5.8 The Customer shall notify the Supplier in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Supplier.
- E5.9 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:-

- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Customer; and
 - (c) shall not settle or compromise any claim without the Customer's Approval (not to be unreasonably withheld or delayed).
- E5.10 The Customer shall at the request of the Supplier provide the Supplier with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Supplier by a third party for infringement or alleged infringement of any third-party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this Contract. The Supplier shall indemnify the Customer for all Losses incurred in doing so.
- E5.11 The Customer and the Supplier shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Customer or the Supplier in connection with the performance of this Contract.
- E5.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Customer and, at its own expense and subject to the Approval of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- and in the event that the Supplier is unable to comply with Clauses E5.12(a) or (b) within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate this Contract with immediate effect by notice in writing.

E6 AUDIT

- E6.1 The Supplier shall keep and maintain until twelve (12) calendar years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's Representatives such access to those records as may be requested by the Customer in connection with this Contract.
- E6.2 The Customer may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-
- (a) to verify the accuracy of the Price that become due and payable by the Customer to the Supplier in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all suppliers (including Sub-Contractors) of the Services;
 - (b) to review the integrity, confidentiality and security of the Customer Personal Data;

- (c) to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;
 - (d) to review the Supplier's compliance with its obligations under the Contract;
 - (e) to review any records created during the provision of the Services;
 - (f) to review any books of account kept by the Supplier in connection with the provisions of the Services;
 - (g) to carry out the audit and certification of the Customer's accounts;
 - (h) to carry out an examination of the economy efficiency and effectiveness with which the Customer has used its resources; and
 - (i) to verify the accuracy and completeness of any management information delivered or required by this Contract.
- E6.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- E6.4 Subject to the Customer's obligation of confidentiality, the Supplier shall on demand provide the Customer and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-
- (a) all Information requested within the permitted scope of the audit;
 - (b) reasonable access to any premises or sites controlled by the Supplier and to any Equipment (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Staff;
 - (d) access to software owned or licenced to the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services; and
 - (e) accommodation (including desks) at the Supplier's premises as reasonably required to conduct the audit.
- E6.5 The Customer shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.
- E6.6 If an audit identifies that:-
- (a) the Supplier has committed a material Default which is capable of remedy, the Supplier shall correct such Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process;
 - (b) the Customer has overpaid any charges that became due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Supplier shall pay to the Customer the amount overpaid within twenty (20) Working Days. The Customer may deduct the relevant amount from any further payment when due if the Supplier fails to make the payment; and
 - (c) the Customer has underpaid any charges that become due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Customer shall pay to the Supplier the amount of the under-payment less the cost incurred by the Customer of the audit if this was due to a Default by the Supplier

within twenty (20) Working Days.

E7 EXCEPTIONAL AUDITS

E7.1 The Supplier shall permit the Customer and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Supplier in any of the following circumstances:-

- (a) actual or suspected impropriety or Fraud;
- (b) there are reasonable grounds suspect that:-
 - (i) the Supplier is in Default under the Contract; or
 - (ii) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt.

(each an "Exceptional Circumstance").

E7.2 If the Customer notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Clause E6.4 as soon as reasonably practicable after such request and in any event within forty-eight (48) hours of the request having been made.

E8 AUDIT COSTS

E8.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E6.2 to E7.2 unless an audit identifies a material Default by the Supplier in which case the Supplier shall reimburse:-

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

E9 RECORDS AND OPEN BOOK ACCOUNTING

E9.1 The Supplier shall (and shall procure that each Sub-Contractor shall):-

- (a) at all times maintain a full record of particulars of the costs of performing the Services which includes but is not limited to such costs referenced within the Specification;
- (b) upon request by the Customer, provide a written summary of any of the costs referred to in Clause E9.1(a), in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under the Contract;
- (c) provide such facilities as the Customer may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E9.1; and
- (d) provide to the Customer copies of its annual report and accounts within twenty (20) Working Days of publication.

E9.2 Compliance with Clause E9.1 shall require the Supplier to keep (and where

appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:-

- (a) administrative overheads;
- (b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;
- (c) capital and revenue expenditure;
- (d) such items identified within the Specification; and
- (e) such other items as the Customer may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Supplier shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E9.2(a) to E9.2(e) inclusive, available for inspection by the Customer (and its advisers) upon reasonable notice pursuant to Clause E6 and shall provide a copy of these to the Customer as and when requested from time to time.

E9.3 The Supplier shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Law.

E9.4 Without prejudice to Clause E9.3, the Supplier shall ensure that the following are maintained:-

- (a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;
- (b) full records of all maintenance procedures carried out during the Contract Period and
- (c) full records of all staff matters including turnover, pay and disciplinary matters.

and the Supplier shall have the items referred to in clauses E9.4(a) to E9.4(c) available for inspection by the Customer (and its advisers) upon reasonable notice, and shall provide copies of these to the Customer as and when requested from time to time.

E9.5 Upon termination or expiry of the Contract, and in the event that the Customer wishes to enter into an agreement with any Replacement Provider, the Supplier shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Customer to provide information relating to the Supplier's costs of providing the Services (if applicable for the Services).

E9.6 All information referred to in this Clause E9 is subject to the obligations set out in Clauses E2 and E3.

CONTROL OF THE CONTRACT

F1 TRANSFER AND SUB-CONTRACTING

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

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

- F1.3 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable but at least within ten (10) Working Days of the request.
- F1.4 Notwithstanding Clause F1.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract (including any interest which the Supplier may incur under Clause C2.8). Any assignment under this Clause F1.4 shall be subject to:-
- (a) reduction of any sums in respect of which the Customer exercises its right of recovery under Clause C3 (Recovery of Sums Due);
 - (b) all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Customer receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Supplier assigns the right to receive the Price under Clause F1.4, the Supplier shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment at least five (5) Working Days prior to submission of the relevant invoice.
- F1.7 The provisions of Clause C2 (Payment) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.
- F1.8 Subject to Clause F1.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:-
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Contract.
- F1.9 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.
- F1.10 The Customer may disclose to any of its assignees Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Contract. In such circumstances the Customer shall authorise the assignee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.11 Each Party shall at its own cost and expense carry out or use all reasonable

endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

F2 WAIVER

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

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

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

F3 CHANGE CONTROL PROCEDURE

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

CUSTOMER CHANGE

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

- (a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
- (b) would cause any consent to be revoked (or become unobtainable);
- (c) would, if implemented, result in a substantial change in the nature of the Services; and/or
- (d) would materially and adversely affect the Supplier's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

F3.2 The Customer Change Control Notice shall:-

- (a) set out the Change required in sufficient detail to enable the Supplier to calculate and provide an estimate of the variation in costs and or loss in revenue (the "Supplier's Change Control Response"); and
- (b) require the Supplier to provide the Customer within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Customer Change Control Notice with the Supplier's Change Control Response.

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

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

- (b) any impact on the provision of the Services;
 - (c) any amendment required to this Contract as a result of the Change; and
 - (d) any loss of revenue or prospective revenue to the Supplier or Sub-Contractor that results from the Change.
- F3.4 As soon as practicable after the Customer receives the Supplier's Change Control Response, the Parties shall discuss and agree the issues set out in the Supplier's Change Control Response, including:-
- (a) providing evidence that the Supplier has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub-Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and
 - (c) in such discussions the Customer may modify the Customer Change Control Notice, in which case the Supplier shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Customer of any consequential changes to the Supplier's Change Control Response.
- F3.5 If the Parties cannot agree on the contents of the Supplier's Change Control Response, then the dispute shall be determined in accordance with Clause 12 (Dispute).
- F3.6 As soon as practicable after the contents of the Supplier's Change Control Response has been agreed or otherwise determined pursuant to Clause 12 (Dispute), the Customer shall:-
- (a) confirm in writing the Supplier's Change Control Response (as modified); or
 - (b) withdraw the Customer Change Control Notice.
- F3.7 If the Customer does not confirm in writing the Supplier's Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Supplier's Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Customer Change Control Notice shall be deemed to have been withdrawn.
- F3.8 In the event that the Supplier's Change Control Response has been confirmed by the Customer, the relevant Change shall be implemented within seven (7) Working Days of the Customer's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract and the IPA which are necessary to give effect to the Change.

SUPPLIER CHANGE

- F3.9 If the Supplier wishes to introduce a Change, it must serve a Supplier Change Control Notice on the Customer.
- F3.10 The Supplier Change Control Notice must:-
- (a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Customer to evaluate it in full;

- (b) specify the Supplier's reasons for proposing the Change;
 - (c) request the Customer to consult with the Supplier with a view to deciding whether to agree to the Change and, if so, what consequential changes the Customer requires as a result;
 - (d) indicate any implications of the Change(s); and
 - (e) indicate if there are any dates by which a decision by the Customer is critical.
- F3.11 The Customer shall evaluate the Supplier's proposed Change in good faith, taking into account all relevant issues, including whether:-
- (a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - (b) the Change shall interfere with the relationship of the Customer with third parties;
 - (c) the financial strength of the Supplier is sufficient to perform the Change; and
 - (d) the Change materially affects the risks or costs to which the Customer is exposed.
- F3.12 As soon as practicable after receiving the Supplier Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions, the Customer may propose modifications or accept or reject the Supplier Change Control Notice.
- F3.13 If the Customer accepts the Supplier Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Customer's acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract and IPA which are necessary to give effect to the Change.
- F3.14 If the Customer rejects the Supplier Change Control Notice, it shall give its reasons for such a rejection.
- F3.15 The Customer cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

F4 SEVERABILITY

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

F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- F5.1 In the event that the Customer is of the reasonable opinion that there has been a Default of this Contract and/or IPA by the Supplier, then the Customer may, without prejudice to its rights under Clause H2 (Termination on Default) or H7 (Remediation Plan Process), do any of the following:-
- (a) without terminating this Contract and/or IPA, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier shall once more be able to supply all or such part of the Services in accordance with this Contract; and/or

- (b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.
- F5.2 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Customer may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- F6 REMEDIES CUMULATIVE**
- F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- F7 FINANCIAL ASSURANCE**
- F7.1 The Supplier shall immediately disclose to the Customer any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.
- F7.2 The Supplier shall notify the Customer immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.
- F7.3 Only where requested by the Customer, shall the Supplier be obliged to provide any financial information which could include but is not limited to a copy of the Supplier's annual accounts and annual returns.
- F8 ENTIRE AGREEMENT**
- F8.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- F8.2 Each of the Parties acknowledges and agrees that in entering into this Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- F9 COUNTERPARTS**
- F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

LIABILITIES

G1 LIABILITY, INDEMNITY AND INSURANCE

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

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

- (b) Fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations under this Contract in relation to UK GDPR and/or DPA.
- G1.2 Subject to Clauses G1.3 and G1.6, the Supplier shall indemnify the Customer and keep the Customer indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier on the Premises, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, all costs related to civil data protection claims or regulatory fines issued by the Information Commissioner's Offices or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- G1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under this Contract.
- G1.4 Without prejudice to the Customer's rights under this Contract, the Supplier shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-
- (a) public liability insurance to a minimum of five million pounds (£5,000,000);
 - (b) employer's liability insurance to a minimum of ten million pounds (£10,000,000);
 - (c) professional indemnity insurance of five million pounds (£5,000,000);
 - (d) any other insurances as may be required by Law.
- G1.5 The minimum amounts set out in Clause G1.4 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract.
- G1.6 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits, business, revenue or goodwill; and/or
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) indirect or consequential loss or damage.
- G1.7 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.
- G1.8 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause G1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment

of the latest premiums due under those policies.

- G1.9 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of this Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- G1.10 The Supplier shall notify the Customer immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause G1.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

G2 WARRANTIES AND REPRESENTATIONS

G2.1 The Supplier warrants and represents that:-

- (a) it has full capacity, authority and all necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
- (b) in entering into this Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of this Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material adverse effect on its ability to perform its obligations under this Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- (h) in the three (3) calendar years prior to the date of this Contract:-
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

DEFAULT, DISRUPTION AND TERMINATION

H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

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

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) calendar days of its service) or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.

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

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
- (b) a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Supplier's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) calendar days; or
- (f) the Supplier dies or, by reason of illness or incapacity (whether mental or

physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

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

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

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

H2 TERMINATION ON DEFAULT

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

- (a) the Supplier has not remedied the Default to the satisfaction of the Customer in accordance with a Remediation Plan; or
- (b) the Default is not, in the opinion of the Customer, capable of remedy; or
- (c) the Default is a material breach of this Contract.

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

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

H2.3 If:-

- (a) twenty (20) Working Days after service of a Formal Warning Notice the Supplier has failed to demonstrate to the Customer's satisfaction that:-
 - (i) the Persistent Breach specified has not continued; and
 - (ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur; or
- (b) within a three (3) Month period after the date of service of the Formal Warning Notice the Supplier has failed to demonstrate to the satisfaction of the Customer that:-

- (i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and
- (ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur

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

- H2.4 The Customer may terminate this Contract with immediate effect by written notice to the Supplier if it becomes apparent that the Supplier should have been excluded from the procurement process leading to the award of this Contract in accordance with the Procurement Law.
- H2.4A The Customer may terminate this Contract with no less than three (3) Months written notice to the Supplier if this Contract has been subject to substantial modification which requires a new procurement procedure pursuant to Procurement Law.
- H2.5 In the event that through any Default of the Supplier, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clauses C3 (Recovery of Sums Due).

H2A TERMINATION OF IPA

- H2A.1 In the event that the Customer terminates this Contract in accordance with the provisions of Clauses H1 or H2 all signed IPA's will be co-terminus with this Contract.
- H2A.1A Subject to clause H2A.1 an IPA shall end on the expiry date specified within such IPA unless terminated earlier in accordance with clause H2A and this Contract terms and conditions.
- H2A.2 Without prejudice to Clause H2A.1 the Customer may terminate a signed IPA by written notice to the Supplier with immediate effect in the following circumstances:-
 - (a) the Supplier commits a Default and has not remedied the Default to the satisfaction of the Customer in accordance with a Remediation Plan; or
 - (b) the Supplier commits a Default which is not, in the opinion of the Customer, capable of remedy; or
 - (c) the Default of the IPA in question is a material breach of the IPA and/or this Contract; or
 - (d) the CYP dies; or
 - (e) the CYP moves away from the Lincolnshire area; or
 - (f) the CYP no longer wants to receive the Services from the Supplier; or
 - (g) the Customer requires the termination of such relevant IPA due to any safeguarding concerns which arise during the provision of the Services provided

by the Supplier which shall be determined by the Customer in its absolute discretion; or

- (h) the CYP is required to be placed within another educational establishment following agreement with the Supplier. or
- (i) the Customer receives written notification from the Supplier that it can no longer provide the Services to the CYP in accordance with the provisions within the Specification and such request has been accepted by the Customer; or
- (j) where in the reasonable opinion of the Customer, the relevant CYP's needs cannot be met; or
- (k) at the Customer's discretion if a CYP has been provided with the Service from the Supplier in accordance with an applicable IPA for seven (7) days or less; or
- (l) a member of the Supplier's Staff is said to have committed a criminal offence (which allegation has been investigated by the police and other relevant authorities but, for whatever reason, no criminal prosecution is instituted), or the member of Staff is convicted of any criminal offence which in the reasonable opinion of the Customer makes that person unsuitable to be in contact with the CYP; or
- (m) where a risk assessment has concluded that significant risk of harm to the CYP cannot be adequately managed by the Supplier within the duration of the relevant IPA.

H2A.3 The Customer may terminate a signed IPA upon providing the Supplier with written notice in the following circumstances:

- (a) seven (7) days written notice if the CYP has been provided with the Service from the Supplier in accordance with an applicable IPA for more than seven (7) days and less than twelve (12) weeks; or
- (b) fourteen (14) days if the CYP has been provided with the Service from the Supplier in accordance with an applicable IPA for more than twelve (12) weeks and less than twelve (12) calendar months; or
- (c) twenty-eight (28) days if the CYP has been provided with the Service from the Supplier in accordance with an applicable IPA for more than twelve (12) months

the Customer may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension.

H2A.4 The Supplier may terminate a signed IPA upon providing the Customer with twenty-eight (28) days written notice except where the termination would present a risk of harm to the CYP and/or any third party (in which case the Supplier shall consult with the Customer to determine and agree an appropriate course before termination under this clause).

H2A.5 The period of notice stated within clause H2A.3 shall be reduced (where applicable) where the CYP's room is vacated and cleared early (by agreement of the Parties), and the room is capable of being utilised by the Supplier. Any applicable fees/charges shall cease from the date on which the room is capable of being utilised prior to the notice period prescribed in clause H2A.3.

H2A.6 Either Party shall have a right to terminate this Contract by giving twenty-eight (28) days written notice where there are no IPAs in force.

H3 BREAK

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

H4 CONSEQUENCES OF EXPIRY OR TERMINATION OF CONTRACT

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

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

H4.3 On expiry or termination of the Contract or any part thereof:-

- (a) the Supplier shall repay at once to the Customer any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract and/or signed IPA; and
- (b) the Supplier shall cease to use all of the Customer's Intellectual Property Rights and IP Materials and shall return or destroy as the Customer requires all documents, materials (including those in electronic format) incorporating or referring to the same.

H4.4 Save as otherwise expressly provided in this Contract:-

- (a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract and/or any signed IPA prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses C2 (Payment), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti-Discrimination), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E5 (Intellectual Property Rights), E6 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction) or any signed IPA.

H4.5 The Parties shall comply with the provisions set out in Schedule 6 (Exit Strategy).

H4A CONSEQUENCES OF EXPIRY OR TERMINATION OF IPA

H4A.1 Where the Customer terminates an IPA under Clause H2A.2(a)- (c) and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the

duration of that IPA. The Customer shall take all reasonable steps to mitigate such additional expenditure.

- H4A.2 Where any signed IPA is terminated under Clause H2A.1 (a) – (c), no further payments shall be payable by the Customer to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the relevant signed IPA but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under Clause H4A.1.
- H4A.3 Subject to Clause H4A.2, where the Customer terminates a signed IPA under Clause H2A.2 (d) – (m), H2A.3 (a) and H2A.6 the Customer shall pay the Supplier the Price validly incurred for the Service provided by the Supplier in accordance with the provisions within this Contract and relevant signed IPA up until the date upon which the respective IPA terminates.

H5 RECOVERY UPON TERMINATION

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

- (a) immediately return to the Customer all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress; and
- (c) promptly provide all information concerning the provision of the Services including records as referred to in Clause E9 which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of enabling the Customer or the Replacement Provider to provide a continued delivery of the Services.

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

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

H5.4 In relation to any IPAs which are terminated in accordance with Clause H2A.2, the Supplier shall assist the Customer with an orderly transition and provision of such Services with any such Replacement Provider. The provisions of Clause H5.3 shall apply mutatis mutandis to such an IPA.

H6 DISRUPTION

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

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

under this Contract or any signed IPA's.

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

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

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

H7 REMEDIATION PLAN PROCESS

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

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

- (a) submit a draft Remediation Plan to the Customer even if the Supplier disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
- (b) inform the Customer that it does not intend to submit a Remediation Plan in which event the Customer shall be entitled to terminate the Contract, or IPA where applicable, by written notice.

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

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

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

- (a) terminate this Contract or relevant IPA by serving a notice of termination; or
- (b) give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
- (c) escalate any issue arising out of the failure to implement the Remediation Plan to the Supplier's Representative under the dispute resolution procedure set out in Clause I2.

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

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

H8 SUSPENSION AND CONSEQUENCES OF SUSPENSION

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

- (a) the Customer reasonably considers that a breach by the Supplier of any obligation under this Contract or any signed IPA and:-
 - (i) may create an immediate and serious threat to the health or safety of any CYP; or
 - (ii) may result in a material interruption in the provision of any one or more of the Services; or
- (b) Clause H8.1 does not apply, but the Customer, acting reasonably, considers that the circumstances constitute an emergency affecting provision of the Services; or
- (c) the Supplier is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent

(each a "Suspension Event").

H8.2 Where a Suspension Event occurs the Customer:-

- (a) may by written notice to the Supplier and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Supplier demonstrates to the reasonable satisfaction of the Customer that it is able to and shall perform the suspended Services, to the required standard; and
- (b) shall where applicable promptly notify CQC and/or any relevant Regulatory Body of the suspension.

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

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

- (a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause H8.2; and/or
- (b) all or part of the Services which the Supplier continues to deliver during the period of suspension in accordance with Clause H8.3.

H8.5 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to CYPs as a result of the suspension of the Services.

H8.6 The Supplier shall indemnify the Customer in respect of any Losses directly and

reasonably incurred by the Customer in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).

H8.7 Following suspension of any Services the Supplier shall at the reasonable request of the Customer and for a reasonable period:-

- (a) co-operate fully with the Customer and any Replacement Provider of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of CYPs, employees of the Customer or members of the public; and
- (b) at the cost of the Supplier:-
 - (i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Replacement Provider; and
 - (ii) deliver to the Customer all materials, papers, documents and operating manuals owned by the Customer and used by the Supplier in the provision of the suspended Services.

H8.8 As part of its compliance with Clause H8.7 the Supplier may be required by the Customer to agree a transition plan with the Customer and/or any alternative Replacement Provider.

H8.9 If it is determined, pursuant to Clause I (Dispute Resolution), that the Customer acted unreasonably in suspending any of the Services, the Customer shall pay to the Supplier any Losses directly and reasonably incurred by the Supplier in respect of that suspension provided always that the Supplier shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Customer pursuant to this Contract.

H8.10 During any suspension of any Services the Supplier, where applicable, shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the other parts of the Services.

H9 FORCE MAJEURE

H9.1 Subject to the remaining provisions of this Clause H9 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause B14, a Party may claim relief under this Clause H9 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

H9.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H9.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H9 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated but the Supplier has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this

Contract.

- H9.4 Subject to Clause H9.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- H9.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- H9.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clauses H1 and H3; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Contract:
 - (i) the Customer shall not be entitled to withhold and retain any of the Price as compensation to the extent that such failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Price (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- H9.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- H9.8 Relief from liability for the Affected Party under this Clause H9 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H9.7.
- H9.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of three (3) Months or more, either Party may serve notice of termination with immediate effect on the other Party.

DISPUTES AND LAW

I1 GOVERNING LAW AND JURISDICTION

- I1.1 Subject to the provisions of Clause I2, the Customer and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Contract, any signed IPA's and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

I2 DISPUTE RESOLUTION

- 12.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract and/or any signed IPAs within twenty (20) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Customer's Contract Manager and the Supplier's Contract Manager for resolution. If the dispute cannot be resolved by the Contract Managers of the Parties within ten (10) Working Days either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Representatives of each Party for resolution.
- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties' Representatives pursuant to Clause 12.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause 12.5.
- 12.4 The obligations of the Parties under this Contract and/or any signed IPAs shall not cease or be suspended or delayed by reference of a dispute to mediation and the Supplier shall comply fully with the requirements of this Contract and/or any signed IPAs at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
 - (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - (d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.
 - (e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or any signed IPA without the prior written consent of both Parties.

- (g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

STANDARD TEMPLATE

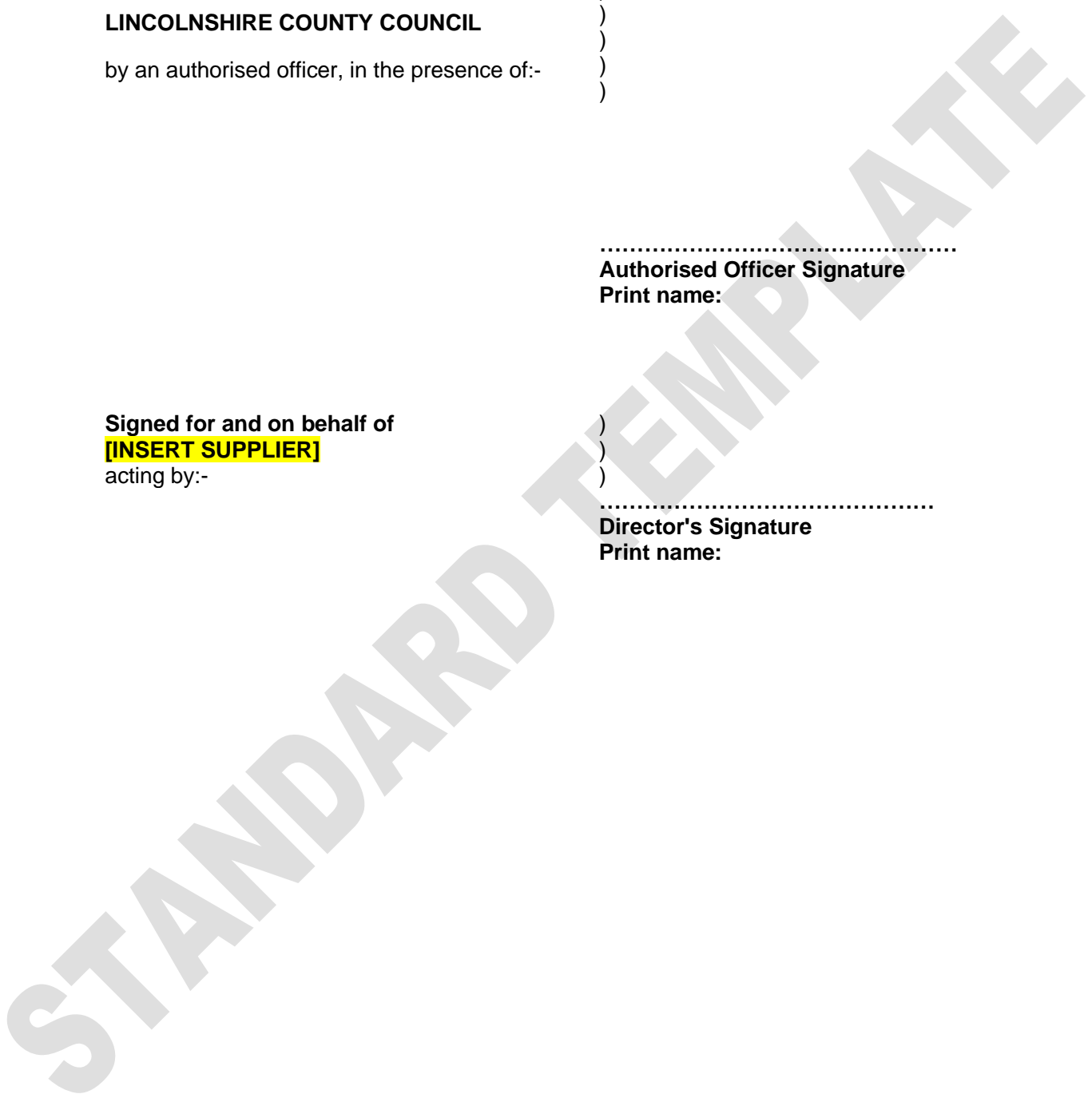
IN WITNESS WHEREOF the hands of the Parties hereto or their duly authorised representatives.

Signed for and on behalf of)
)
LINCOLNSHIRE COUNTY COUNCIL)
)
by an authorised officer, in the presence of:-)
)

.....
Authorised Officer Signature
Print name:

Signed for and on behalf of)
[INSERT SUPPLIER])
acting by:-)

.....
Director's Signature
Print name:



SCHEDULE 1
SERVICE SPECIFICATION

Service Name	Independent Non-Maintained (Special) School Provision
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NB: where there is reference to a 'child' or 'children' or 'pupils' throughout this specification, this refers to any child or young person between the age of 4-25 years, that has an Education and Health Care Plan (EHCP).

1.	Purpose of the Service
	<p>The Customer provides a vast range of services to children and families to help ensure that they are safe, healthy, and well supported, and is committed to securing the highest quality educational provision for all children and young people in the county, including those who require specialist provision to meet their complex Special Educational Needs and Disabilities (SEND).</p> <p>The High Needs Strategy for Lincolnshire sets out the Customer's aspiration to make sure that children and young people with SEND in Lincolnshire are supported to achieve their full potential both in school and in life. The Customer will strive to ensure that children and their parents/carers have access to the right support, at the right time and in the right setting so that Lincolnshire children can achieve their goals and thrive academically.</p> <p>This specification is underpinned by the contractual requirement of the Supplier to comply with the SEND Code of Practice 2015, the Education (Independent School Standards) (England) Regulations 2014 and, where appropriate, with the Children's Homes (England) Regulations 2015 including the Quality Standards 2015.</p> <p>Independent Non-Maintained (Special) Schools, which may offer day or residential placements, are expected to provide a high-quality curriculum delivered through innovative care and teaching practices. Suppliers should demonstrate a commitment to continuous improvement through the school's and, where applicable, the residential care home's internal quality assurance procedures. The delivery of the Service will be consistent with the school's function, as approved by the Regulatory Body (e.g. Ofsted or the Independent School Standards).</p>
2.	Aim and Objectives of the Service
2.1.	<p><u>Aim</u></p> <p>To provide high quality specialist education to eligible Lincolnshire children in independent non-maintained (special) schools, that will meet the needs of children, keep them safe, and support them to flourish and to reach their full potential.</p>
2.2.	<p><u>Objectives</u></p> <ul style="list-style-type: none"> • To provide high-quality education for Lincolnshire children with SEND. • To ensure that effective systems are in place to assess, track and monitor children progress and to work with the Customer in setting aspirational targets for all children, in consultation with parents/carers and children, reviewing progress against these targets termly. • To support the Customer to undertake the annual review of the EHCP and implement and/or contribute to any changes. • To contribute to other relevant multi-agency assessments and reviews of a child's needs e.g. Social Care reviews and to work alongside other partners and commissioned services, as appropriate to effectively meet the needs of the individual child.

	<ul style="list-style-type: none"> • Where the provision has a residential element to it or where the child requires medical assistance through the school day, ensure that each child will have those specific care, medical and health needs met within the school placement by appropriately trained and experienced staff. • To work with the Customer to identify and support robust exit planning from the service to ensure that children are fully supported on their transition into either further education, back into mainstream provision or to exit education completely and enter employment or further training. • To be flexible and responsive in all aspects of delivery, advice and support, maximising the effective use of excellent practices, resources, training and expertise.
3.	<p>Outcomes</p>
	<p>The Customer's vision is <i>"Putting Children First – everyone working together for all children, young people and families to be happy, healthy, safe and the best they can be."</i></p> <p>The principles through which the vision is delivered are:</p> <ul style="list-style-type: none"> • Early Help: Strong protective universal services accessible to all with a range of early help available so children have the best start in life and families have extra help when they need it; • Safeguarding: A shared responsibility to ensure children are safe at home, school and in their community; • Aspiration: Children are able to thrive and cope with life challenges; • Learning and Achievement: All children being the best they can be with targeted interventions to close the gap so vulnerable children achieve as well as their peers; • Best Use of Resources: Integrated commissioning with a focus on best value, improved outcomes and community engagement. <p>The Supplier shall follow the vision and principles of the Customer in delivering the Service. The Supplier shall work with partners to achieve the outcomes below for children and their families.</p> <p>Outcomes</p> <ul style="list-style-type: none"> • Children are educated in safe, high quality and nurturing educational settings. • Children have their individual needs met. • Children attend and achieve in education that is appropriate to their needs, they have high aspirations and are supported to maximise their future life chances. • Children make good health and lifestyle choices.
4.	<p>The Service</p>
4.1.	<p><u>User Group and Eligibility for the Service</u></p> <p>4.1.1. Service users shall be children up to the age of 25, with Special Educational Needs and/or Disabilities, as set out in their EHCP.</p> <p>4.1.2. Each child will have specific needs that the Supplier must consider; these needs will be explained in the individual placement referral form but may include for example children with severe or complex learning difficulties, significant disability/physical needs, social and emotional mental health needs and sensory impairment.</p>
4.2.	<p><u>Access to the Service</u></p> <p>4.2.1. All placements shall be commissioned through a mini-tender procurement process.</p>

	<p>4.2.2. Suppliers that have been accepted onto the Council's Open Select List for INM(S)S will receive an individual placement referral form from the Customer setting out the needs of the child for whom a placement is required.</p> <p>4.2.3. The Supplier must decide if they can offer a placement that meets the child's needs and respond to the referral by submitting their bid in accordance with the mini-tender process. The Supplier should also notify the Customer if they are unable to offer a placement and the reason why.</p> <p>4.2.4. In some cases, it may be appropriate for prospective Suppliers to undertake a further assessment to consider whether a placement offer can be made. When this occurs, the Supplier will liaise with the Customer to make the necessary arrangements and will respond to the referral with a preliminary offer, subject to that assessment.</p> <p>4.2.5. If no suitable bids are received a wider market search may be conducted with other suppliers.</p> <p>4.2.6. Once the deadline for submission has passed, bids shall be evaluated according to the weightings specified in the child's placement profile and all bidders will then be informed of the outcome.</p> <p>4.2.7. In exceptional circumstances, placements may be made with a Supplier following a tribunal decision, at the request of parent(s)/carer(s).</p> <p>4.2.8. The Customer and the successful Supplier will work together to plan the admission to the setting. The subsequent Agreement between the successful Supplier and the Customer will be set out in the Individual Placement Agreement (IPA).</p> <p>4.2.9. The Supplier shall liaise with the Customer to arrange a smooth transition for the child from their current setting to the Supplier's and suitable arrangements will be made for the child to welcome and settle them into their new placement.</p> <p>4.2.10. If the placement has a residential element included, the Customer and the successful Supplier will work together to plan the admission to the home in compliance with the Care Planning Placement and Case Review (England) Regulations 2010 and the Customer's internal procedures.</p> <p>4.2.11. The Supplier shall liaise with the Customer to arrange for their home's Registered Manager, to visit the child in their current place of residence and their school before admission to the home, followed by at least one introductory visit to the home, and where applicable the school, whenever the timescales of the referral process allow.</p> <p>4.2.12. Arrangements must be made for the Registered Manager and/or the allocated key worker to be present to welcome the child and settle them at the time that they move into the home.</p> <p>4.2.13. During the introductory visit(s), the child should be familiarised with the school and, where applicable, the home and their own personal space within it, the communal areas and surrounding community. They should also be introduced to all staff and other children living at the home.</p>
4.3.	<p><u>Service Detail</u></p> <p>4.3.1. The Supplier shall provide high quality, compliant, independent non-maintained (special) education provision with an excellent standard of care and professionalism, meeting all the standards set out by the SEND Code of Practice 2015 and relevant regulatory bodies (e.g. Ofsted/ Independent School Standards).</p>

- 4.3.2. The Supplier will adopt a respectful, strengths-based approach to educating the child in line with their EHCP and IPA. The learning should be creative, stimulating and fun, supporting the child to make expected levels of progress, providing individualised learning or personalised learning approaches where appropriate.
- 4.3.3. The Supplier will also enhance the development of other key skills for the child, such as communication skills, daily living and problem-solving skills and provide age/stage-appropriate contexts and creative experiences. The Supplier will also provide the child with opportunities to acquire and practise their skills in a variety of different settings.
- 4.3.4. Teaching staff will have detailed knowledge and experience of national curriculum requirements and be able to adapt the content for their pupils to maximise access to each subject area and reducing the impact of barriers to learning which may arise from the child's needs.
- 4.3.5. The Supplier will deliver education, judged to be at least consistently good, with an increasing level of outstanding teaching, according to the school's rigorous self-evaluation processes and subject to an annual independent assessment sourced by the Supplier.
- 4.3.6. The Supplier will take account of the aptitudes, abilities and interests of the individual child and work to the SEND reforms detailed in the Children and Families Act 2014 and the SEND Code of Practice 2015. Targets and expectations should always be stretching and aspiring, seeking to add value to child's experiences and outcomes.
- 4.3.7. The Supplier will actively seek the views and voice of the child, and this will be built into any relevant plans- this will be integral to improving provision. The Supplier will listen to what children want from their school and engage children in decisions and choices relating to school life. This may take the form of a school council or through other forums engaging the voice of children attending the school. Children's views should be sought in developing the school curriculum, organisation, recruitment and how resources are deployed.
- 4.3.8. The Supplier will work collaboratively with all key workers (such as SEND caseworkers, health services, the Virtual School etc.) to assist with the implementation of the child's EHCP and shall also contribute to the Customer's Graduated Approach to meeting the needs of children with special educational needs. The Supplier will also support with any other relevant plans in relation to the child such as their Children in Care Care Plan or Pathway Plan.
- 4.3.9. The Supplier will have robust systems in place to monitor how the child's needs are evolving, in partnership with others as appropriate, addressing any changes in their needs and will use this to inform the Customer's monitoring tools, such as the V-SEND toolkit. The Supplier will provide termly written progress reports and support in the annual review process of the EHCP.
- 4.3.10. The Supplier will regularly monitor pupil's attendance and inform the Customer and parent(s)/carer(s) of their attendance rate. Where the attendance rate drops below 95%, without a clear reason or rationale, the Supplier must inform the Customer.
- 4.3.11. Where the placement has a residential element to it, the Supplier is responsible for ensuring that the child has access to health services including general practice, dental care and optical care; that they receive a balanced diet and take part in regular exercise; and that as they grow older, they have access to health information that enables them to make informed lifestyle choices. The Supplier must advise the Customer of any difficulty in accessing health services on behalf of a child in placement without delay and must have robust systems in place to access local services, including emergency services.

	4.3.12. The Supplier will facilitate children's attendance and participation at local consultation, engagement, participation and advocacy forums.
4.4.	<p><u>Service User Exit/Transition from the Service</u></p> <p>4.4.1. Children and young people will be supported to transition from the Service by both the Customer and the Supplier as per their EHCP or care plan. This may be to another Supplier if education needs change or as transition to a higher Key Stage, to alternative education provision, return to mainstream education or to exit education entirely once they reach the appropriate age.</p> <p>4.4.2. The Supplier shall not withdraw the service from a child or young person, either temporarily or permanently, for any reason, without the prior agreement of the Customer. Evictions or exclusions from residential provision should only occur in exceptional circumstances and should follow an agreed collaborative policy, as per the contract terms and conditions. Where a placement has irrevocably broken down, the Supplier and Customer shall work together to continue to provide support to the child until alternative suitable provision can be identified and accessed.</p>
4.5.	<p><u>Key Interdependencies or Partnerships with other Services</u></p> <p>4.5.1. The Supplier shall work with key stakeholders identified in the individual's EHCP and/or care plan to achieve the best outcomes for children in placement, and work collaboratively with the Customer's Social Care and Commissioning team to ensure that they continue to provide good quality, robust and compliant placements.</p> <p>4.5.2. A wide range of other professionals may be involved in the care of the child and this may include, but is not exhaustive to GPs, other health service providers, other relevant services commissioned by the Customer, voluntary organisations, the Customer's Children's and Adults Social Care teams, other Customer's children's services and adult services (where appropriate) such as the Virtual School.</p>
4.6.	<p><u>Location of Service and Hours of Operation</u></p> <p><u>Location of Service</u></p> <p>4.6.1. The Customer will aim to place children in Lincolnshire (or on the neighbouring boundaries) wherever possible and appropriate, so that a holistic support package can be created for those children and young people in their own communities and as close as possible to their existing support networks.</p> <p>4.6.2. Where a residential school placement needs to be outside of Lincolnshire due to the needs of the child or young person, the Customer will work with the Supplier to identify appropriate support locally as required.</p> <p><u>Hours of Operation</u></p> <p>4.6.3. The service will operate during local term times for day placements and as set out in the IPA for any residential element to the placement. The number of direct hours of support will be based on need as detailed in the IPA, and all support packages shall be reviewed by the Supplier and the Customer within two weeks of the placement commencing and then on an on-going basis as required.</p>
4.7.	<u>Staffing</u>

	<p>4.7.1. The Supplier shall provide, employ or have access to appropriate staffing resources to deliver the services defined in this Specification and to meet the needs of the individual children, as per their IPAs.</p> <p>4.7.2. The Supplier must ensure that there is a suitably qualified, registered, and competent teacher is available to provide supervision and guidance to teaching staff at all times and exercise curriculum and management oversight for all teaching staff working directly with children.</p> <p>4.7.3. The Supplier must ensure that its staff have the necessary professional qualifications, skills, and experience to deliver the service, and that regular supervision and appraisal takes place. A formal recorded supervision should take place monthly.</p> <p>4.7.4. The Supplier's arrangements for covering staff absences are factored into the core staffing capacity and the home is not reliant on staff working over-time (in residential provision), or the use of agency staff other than for exceptional and unplanned staff shortages.</p> <p>4.7.5. The Supplier will ensure staff are adequately trained and experienced to manage specialised aids and approaches effectively and administer medical treatment as required.</p>
<p>4.8.</p>	<p><u>Resources</u></p> <p><u>Resources to be provided by the Customer</u></p> <p>4.8.1. In addition to resources identified within the contractual terms and conditions, the Customer shall supply the following resources to support the Supplier to fulfil the requirements of the Service:</p> <ul style="list-style-type: none"> • ensure that a written referral, with all relevant information available at that time, is provided to the Supplier. • provide a copy of the child's EHCP and, where appropriate, the child's Children in Care Care Plan <p>4.8.2. The Customer will supply all relevant information prior to the commencement of the placement where the placement is made on a planned basis or within seven days where the placement is made in an emergency.</p> <p>4.8.3. The Customer will ensure each child has an identified SEND caseworker. This worker will:</p> <ul style="list-style-type: none"> • Contact the Supplier within 7 days of admission to the setting and thereafter at a minimum of termly intervals for the first year and reviewed thereafter. • Work with the Supplier to schedule EHCP annual reviews and other relevant meetings well in advance. • Be the single point of contact for the Supplier for all matters pertaining to the progress of the child within the Placement. <p>4.8.4. Where the child in placement is a child in care and is living at the setting for 52 weeks a year, the Customer will ensure the child has a suitably trained Social Worker. This worker will:</p> <ul style="list-style-type: none"> • Visit the young person within 7 days of admission to accommodation and thereafter at a minimum of 6 weekly intervals for the first year and reviewed thereafter (whilst open to a Social Worker).

- Notify the Supplier of all Children in Care review dates, where applicable, and other relevant meetings well in advance.
- Make a referral to the leaving care service as and where appropriate to the age and needs of the young person.

Resources to be provided by the Supplier

- 4.8.5. Although statutory responsibility for the child and for monitoring their individual progress ultimately rests with the Customer, the Supplier will be responsible for the day-to-day monitoring of the child's well-being and progress as defined in the child's EHCP and, where appropriate Children in Care Care plan. Together with the Customer, the Supplier will also be responsible for the upkeep of such documentation and will be able to demonstrate robust audit and review processes around all documentation concerning the child.
- 4.8.6. The Supplier shall ensure that where transport is used in provision of the Services, it is appropriate to the needs of the child/young person, adheres to all the legal and insurance requirements and all drivers hold a valid driving licence and Disclosure and Barring Service clearance are required.
- 4.8.7. The Supplier shall ensure that Free School Meals are provided for children with an entitlement, including the ability to meet dietary requirements and/or diets specific to a certain religion or culture.

STANDARD TEMPLATE

SCHEDULE 2
INDIVIDUAL PLACEMENT AGREEMENT

The Terms and Conditions between Lincolnshire County Council and [] dated [] (the "Contract") are incorporated into the IPA and the Supplier shall provide any services under this IPA in accordance with the Contract.

Child's Name:	
Date IPA Issued:	
Initial IPA/Variation* (<i>*delete as appropriate</i>)	

1. PARTIES TO THE IPA

1.1 The Purchaser

Name of Authority:	Lincolnshire County Council		
Address:	County Offices Newland Lincoln		
Postcode:	LN1 1YL		
Telephone:	01522 552222	Fax:	01522 553257

1.2 The Supplier

Name of Organisation: (Registered Legal Entity)			
Registered Company Number / Registered Charity Number:			
Registered Supplier business address: (as per legal entity details above)			
Postcode:			
Email:			
Telephone		Fax:	

NB: This IPA will supersede all other agreements signed in respect of the placement of the Child.

2. CHILD/YOUNG PERSON'S DETAILS

Family Name:	
First Name:	
Known As (if applicable):	

Date of Birth:		Gender:	Male <input type="checkbox"/>	Female <input type="checkbox"/>	Other <input type="checkbox"/>
Disability:		SEN:			
Other Legal Status/Action					

3. PLACEMENT DETAILS

The named Child may not be moved to another Placement by the Supplier within or outside of the organisation without the prior written approval of Lincolnshire County Council.

3.1 Start date	
-----------------------	--

3.2 Education Provision

Type of Provision:	Day only <input type="checkbox"/>	38 Termly Boarding <input type="checkbox"/>
Type of Support (as detailed in EHCP):	1:1 <input type="checkbox"/>	2:1 <input type="checkbox"/>
	Other Support Review Date (if required)	
Name & Address of Provision:		
	Postcode:	
Telephone:		Mobile:
E-mail:		
Regulated: Ofsted <input type="checkbox"/> ISI <input type="checkbox"/>	DfE Registered: <input type="checkbox"/>	DfE Registered Number:
Specify all age ranges provided by the school		Specify all Key Stages provided by the school
Name of Head Teacher:		

3.3 The Child/Young Person will be boarding at the following setting (if residential)

Name of Provision:			
Address of Provision:			Postcode:
		Postcode:	
Telephone:		Mobile:	
E-mail:			
Name of Registered Manager:			

Ofsted (Unique) Reference Number:	
CQC Reference Number: <i>(if applicable)</i>	

3.4 Expected duration of placement			
Expected duration:		End Date: (If fixed term)	
Placement / IPA review date <i>(responsibility of the Supplier and LCC key workers SEND and/or Social Care):</i>			

4. KEY CONTACTS FOR THE CHILD

4.1 For the purpose of this IPA the named officers of the Purchasers are as follows:

ALLOCATED SOCIAL WORKER / SOCIAL CARE CONTACT:			
Name:			
Team Name:			
Based at:			
Telephone:		Mobile:	
E-mail:			

ALLOCATED SEND CASEWORKER CONTACT:			
Name:			
Team Name:			
Based at:			
Telephone:		Mobile:	
E-mail:			

HEALTH CONTACT:			
Name:			
Team Name:			
Based at:			
Telephone:		Mobile:	
E-mail:			

COMMISSIONING OFFICER CONTACT:			
Name:			
Team Name:			
Based at:			

Telephone:		Mobile:	
E-mail:			

4.2 For the purpose of this IPA the named officer (s) of the Supplier are as follows:

SUPPLIER CONTACT – CARE

Name:			
Based at:			
Telephone:		Mobile:	
E-mail:		Fax:	

SUPPLIER CONTACT – EDUCATION

Name:			
Based at:			
Telephone:		Mobile:	
E-mail:		Fax:	

SUPPLIER CONTACT – CONTRACTS

Name:			
Based at:			
Telephone:		Mobile:	
E-mail:		Fax:	

SUPPLIER CONTACT – FINANCE

Name:			
Based at:			
Telephone:		Mobile:	
E-mail:		Fax:	

5. THE PRICE

5.1 Services to be provided and Fees

Prior written approval of Lincolnshire County Council must be obtained for any change of provision during the duration of the placement

The Purchaser shall pay the Supplier the following sums for the provision of Services:

£	Education costs per annum
£	Residential costs per annum

5.2 Additional Services (if required)		
£	Description and detail of additional service	
Total Cost:	£	per annum

6. INVOICING

6.1 INVOICES - Details of where invoices for the agreed Placement fees to be sent			
Name & Address	Lincolnshire County Council Serco Lincs Invoices PO Box 7811 Corby		
Postcode:	NN17 9HF		
Telephone:		Fax:	
Email:	invoices@lincolnshire.gov.uk		
Where the Supplier submits a valid invoice to the Customer in accordance with the provisions within Clause C1, Clause C2 of the terms and conditions, and the applicable signed IPA, the Customer shall pay each invoice within twenty-eight (28) calendar days of Receipt of a valid invoice.			

7. SIGNATORIES TO AGREEMENT/APPROVAL FOR FUNDING:

The Supplier and Purchaser agree to the Placement in the named provision for the named Child in accordance with the details set out above. For the purposes of this Individual Placement Agreement, the IPA Commencement Date is the date of actual admission of the Child to the Home/School, or the date on which the retention period or Variation starts. This condition and the Contract in its entirety are not affected or altered in any way by the actual date of signature of this IPA. Any placements made will be subject to the terms and conditions set out in contract between Lincolnshire County Council and with contract reference. By agreeing to provide the services required under the IPA, both parties accept the terms and conditions of contract with reference.

7.1 PURCHASER:

NAME:		
POSITION:	Head of Service	Assistant Director
SIGNATURE:		
DATE:		

7.2 SUPPLIER:	
NAME:	
POSITION:	
SIGNATURE:	
DATE:	

STANDARD TEMPLATE

SCHEDULE 3
PERFORMANCE MONITORING

1.	Contract Management and Performance Monitoring
1.1.	<p><u>Statement of Intent</u></p> <p>The Customer and the Supplier shall develop and maintain an open and constructive relationship and ensure that robust contract management is undertaken to demonstrate that the service is being delivered in accordance with the contract and is achieving best value and improved outcomes for children and their families.</p>
1.2.	<p><u>Responsibilities of the Customer</u></p> <p>1.2.1. A Contract Management Toolkit shall be utilised to allow for a robust contract management process which shall comprise of:</p> <ul style="list-style-type: none"> • Joint Evaluation Toolkit (JET) • Supplier Self-Declaration Contract Assurance Form • Supplier Annual Contract Performance Report Template • Service Observation Visit Template <p>1.2.2. The Customer shall assign a Contract Manager who shall:</p> <ul style="list-style-type: none"> • Establish the Contract Board which shall comprise of as a minimum the Customer's Contract Manager, the Customer's Service Manager representative(s) and Supplier representative(s) with the appropriate authority. • Arrange and chair Contract Management Meetings (CMMs). Meetings shall be scheduled a year in advance on a rolling basis and may be in person or virtually. • Alongside the Supplier utilise the Contract Management Toolkit to support the CMM process. The Customer's Contract Manager shall provide the Supplier with a copy of the Contract Management Toolkit and accompanying guidance notes. • Arrange and undertake Service Observation Visits.
1.3.	<p><u>Responsibilities of the Supplier</u></p> <p>1.3.1. The Supplier shall ensure that they:</p> <ul style="list-style-type: none"> • Always co-operate with Customer's processes for contract management as reasonably requested by the Customer • Complete contract reporting within agreed timescale • Have in place a quality assurance system which is used to track, continuously review and improve the standards of service delivery; this shall include but not limited to: <ul style="list-style-type: none"> ○ regularly seeking and responding to the views of children and their families to ensure their voices are at the forefront of all elements of the Service

	<ul style="list-style-type: none"> ○ undertaking an annual service review of performance and child and family satisfaction ○ tracking performance to ensure agreed outcomes for children and their families are being delivered ○ ensuring appropriate changes are promptly made where Service delivery is not meeting need or where local priorities develop ○ self-evaluating contacts/sessions/activities. 								
1.4.	<p><u>The Joint Evaluation Toolkit (JET)</u></p> <p>1.4.1. The JET adopts a balanced scorecard approach to managing service delivery and the performance and risks of Service delivery; evaluating the quality of the Service provided against the associated costs to assist the Customer to determine if the Service is providing best value for money and improving outcomes for children.</p> <p>1.4.2. The JET is used to record Contract Management Meetings (CMMs) and is a user-friendly word document which shall be completed by the Customer's Contract Manager and Supplier. The Customer's Contract Manager shall review the information provided by the Supplier.</p> <p>1.4.3. At the end of CMMs the Customer's Contract Manager shall provide an overall contract performance rating based on one of the following judgements:</p> <table border="1" data-bbox="284 1005 1465 1359"> <thead> <tr> <th data-bbox="284 1005 606 1066">Inadequate</th> <th data-bbox="606 1005 890 1066">Requires Improvement</th> <th data-bbox="890 1005 1174 1066">Good</th> <th data-bbox="1174 1005 1465 1066">Outstanding</th> </tr> </thead> <tbody> <tr> <td data-bbox="284 1066 606 1359">All KPIs are under target with no clear strategies for improvement and/or Contract Assurance requirements have not been met and/or a safeguarding risk to the Contract has been identified.</td> <td data-bbox="606 1066 890 1359">The majority of KPIs are under target with no clear strategies for improvement.</td> <td data-bbox="890 1066 1174 1359">The majority of KPIs are at least on target and where minor or negligible weaknesses are identified the Customer is aware of the issues and good actions are identified for improvement.</td> <td data-bbox="1174 1066 1465 1359">All KPIs are on or above target with no weaknesses or actions identified for improvement. The Service clearly demonstrates it is driving forward development and innovation.</td> </tr> </tbody> </table> <p>1.4.4. In addition, the Customer's Contract Manager shall risk rate the contract on a Red, Amber, Green (RAG) rating, which shall also be reviewed on a monthly basis. These rating shall be entered onto the Customer's corporate contracts register and shall be used to inform the Customer's Children's Services Directorate Leadership Team (DLT) or Corporate Leadership Team (CLT) on current service performance.</p>	Inadequate	Requires Improvement	Good	Outstanding	All KPIs are under target with no clear strategies for improvement and/or Contract Assurance requirements have not been met and/or a safeguarding risk to the Contract has been identified.	The majority of KPIs are under target with no clear strategies for improvement.	The majority of KPIs are at least on target and where minor or negligible weaknesses are identified the Customer is aware of the issues and good actions are identified for improvement.	All KPIs are on or above target with no weaknesses or actions identified for improvement. The Service clearly demonstrates it is driving forward development and innovation.
Inadequate	Requires Improvement	Good	Outstanding						
All KPIs are under target with no clear strategies for improvement and/or Contract Assurance requirements have not been met and/or a safeguarding risk to the Contract has been identified.	The majority of KPIs are under target with no clear strategies for improvement.	The majority of KPIs are at least on target and where minor or negligible weaknesses are identified the Customer is aware of the issues and good actions are identified for improvement.	All KPIs are on or above target with no weaknesses or actions identified for improvement. The Service clearly demonstrates it is driving forward development and innovation.						
1.5.	<p><u>Key Performance Indicators (KPIs)</u></p> <p>1.5.1. Detailed below are the minimum indicative KPIs required for the Service. The Customer shall work collaboratively with the Supplier during the Service implementation period to agree additional KPIs. Some KPIs and measures are highlighted in pink which means that these are mandatory and apply to the majority of Children's Services contracts/agreements.</p> <p>1.5.2. The final JET for the Service shall be finalised and agreed in partnership with the Supplier at the first CMM.</p> <p>1.5.3. The KPIs shall be reviewed annually as part of the Contract Management process and may be subject to change as local needs change and local and/or national</p>								

priorities develop. Any changes to KPIs shall be agreed with the Customer and the Supplier as part of the Contract Management process.

1.5.4. The Customer may request additional performance information as and when required.

A. Compliance with the Contract is demonstrated through service delivery

A1) The supplier safeguards and promotes the welfare of children and young people in the delivery of all aspects of the service

Measure(s)		Target/Tolerance/Action
Type	Description	
Compliance	Staff are trained to the appropriate level of safeguarding requirements.	Target: 100% Tolerance: 0%
Compliance	Number of safeguarding concerns reported to the supplier.	Target: 0 Tolerance: 0
Compliance	Evidence that any safeguarding concerns are managed appropriately.	Yes/No
Compliance	Evidence that any lessons learnt from any safeguarding concerns have been embedded into the service.	Yes/No
Compliance	Supplier can demonstrate recruitment of staff is in line with Safer Recruitment guidelines and can provide sufficient evidence to demonstrate this and can demonstrate methods of staff retention.	Compliant
Compliance	Supplier can confirm a Single Central Record is in place and is maintained continuously	Yes/No
Compliance	Supplier has not been the subject of a full Local Authority Child Protection enquiry* within the last 5 years <i>* If the Supplier has been involved, also include Investigating Local Authority</i>	Yes/No
Compliance	Evidence of completion of an Annual Self-Review of Safeguarding Arrangements in line with Section 11 of Children Act 1989.	Yes/No
Compliance	Supplier can demonstrate knowledge of the national Prevent duty as part of the statutory guidance issued under Section 29 of the Counter Terrorism and Security Act 2015. As a minimum it is recommended that the Supplier's Safeguarding Lead complete the free Home Office e-learning on Prevent www.elearning.prevent.homeoffice.gov.uk and share both the learning and the Prevent duty guidance with appropriate staff which can be found at www.gov.uk/government/publications/prevent-duty-guidance	Yes/No
Compliance	Latest Ofsted/ISI Inspection can be evidenced as sufficient assurance	Yes/No
Compliance	Supplier has a policy/procedure for dealing with unauthorised absences	Yes/No
Compliance	Supplier has an adequate system for controlling and recording visitor access to children and the Supplier premises.	Yes/No
Compliance	Where there is a residential element provided alongside an education placement, the Provider can	Yes/No

	confirm Regulation 44 reports are provided monthly (where applicable)	
Compliance	Where there is a residential element provided alongside an education placement, evidence that if a Lincolnshire child goes missing that the local Protocol has been followed, missing episodes are reported to the Customer and children are offered a return interview.	Yes/No
A2) The supplier has a workforce that is appropriately trained to meet the needs of service users		
Measure(s)		Target/Tolerance/Action
Type	Description	Action
Compliance	Up to date workforce training plan is shared with the Contract Manager (Annually).	Yes/No
Compliance	Supplier can demonstrate delivery against the workforce training plan. Minimum mandatory training to include: <ul style="list-style-type: none"> • Safeguarding • Behaviour Management • Fire Safety • Food Hygiene • Medication • Information Governance (GDPR) • First Aid • Health and Safety 	Yes/No
Compliance	Evidence that all staff receive appropriate supervision/appraisal.	Yes/No
Compliance	Evidence that all staff have received the following mandatory training <ul style="list-style-type: none"> • Safeguarding • Behaviour Management • Fire Safety • Food Hygiene • Medication • Information Governance (GDPR) • First Aid • Health and Safety 	Yes/No
Compliance	Supplier to source an annual, independent quality review of teaching and curriculum.	Evidence submitted
Compliance	Supplier to confirm number of qualified and Non-Qualified Teachers, LSA's and SENCO on site	Evidence submitted
Compliance	Where residential placement is provided alongside education – the number of care staff appropriately qualified to NVQ3 (minimum)	Evidence submitted
Compliance	Where residential placement is provided alongside education – the number of care staff appropriately qualified to NVQ5	Evidence submitted
Compliance	Supplier's observation of teaching and learning assessment process feeds into identifying staff training and development needs	Yes/No
A3) The supplier manages staff absences/vacancies appropriately, ensuring that any disruption to the service is kept to a minimum		
Measure(s)		Target/Tolerance/Action
Type	Description	Action

Compliance	Total number of days lost due to sickness (YTD cumulative).	Lower is better
Compliance	% of contract time lost due to sickness (YTD cumulative).	Lower is better Tolerance: 5%
Compliance	Vacant posts are reported through contract management.	Yes/No
Compliance	Total number of days posts are vacant during the year (YTD cumulative).	Lower is better Tolerance: 10%
Compliance	Evidence provided of actions to mitigate impact of staff sickness absence/ vacancies.	Yes/No
Compliance	Total number of staff formally disciplined: <ul style="list-style-type: none"> Reason Period absent Outcome 	Lower is better
Compliance	Supplier can demonstrate staffing levels (number & FTE): <ul style="list-style-type: none"> Management, delivery & support staff Agency staff Staff turnover and reasons for leaving 	Compliant
A4) The supplier actively identifies risks and ensures these are mitigated		
Measure(s)		Target/Tolerance/Action
Type	Description	
Compliance	The supplier demonstrates compliance in line with the Supplier Self-declaration Contract Assurance form (Annually).	Yes/No
Compliance	Risks are reported upon by exception.	Yes/No
Compliance	Regulatory body inspection reports have been shared (where applicable) and reporting by exception on any changes to regulatory body inspections.	Yes/No
Compliance	Any changes in regulatory ratings are notified to the Customer as soon as possible.	Yes/No
Compliance	Evidence of policies and procedures for behaviour management including restrictive physical interventions and sanctions: <ul style="list-style-type: none"> Guidance on restriction and restraint of liberty and not deprivation of liberty Staff trained to deal with these issues Clear model of behaviour management used Recording system in place for incidents 	Yes/No
Compliance	The Supplier has a documented policy/procedure for the safe transport of children, including staff and vehicle checks where own transport is used.	Yes/No
A5) The supplier complies with open book accounting principles and provides a full breakdown of how funding is being utilised to deliver the service		
Measure(s)		Target/Tolerance/Action
Type	Description	
Compliance	Actual spend is in line with the agreed budget and any variance is within tolerance.	Yes/No Tolerance: 5%
Compliance	Any under/overspends are identified and any actions in relation to under/overspends are agreed through Contract Management.	Yes/No
Compliance	Supplier can demonstrate financial stability and will provide reports to the agreed schedule, including, as a minimum, a breakdown of:	Yes/No

	<ul style="list-style-type: none"> • Direct staffing costs • Indirect staffing costs. • Non-staffing costs via the completion of a cost calculator for CYP placements	
Compliance	Assets purchased with contract funding have been identified and recorded.	Yes /No
B. The objectives of the service are being met as set out in the agreed Service Specification		
Measure(s)		Target/Tolerance/Action
Type	Description	Action
Impact	<p>The Supplier has a model in place to measure how user outcomes have been achieved:</p> <ul style="list-style-type: none"> • Model to measure progression of outcome is in place, such as Valuing SEND toolkit. • Desired outcome is identified at start of engagement through seeking the views of the child/young person/parent/carer and evaluated at the point of transition • Analysis of outcome destination is reported on and evaluated • Supplier ensures they remain at the core of all service provision. • Supplier contributes to annual EHCP review 	Yes/No
Compliance	The Supplier reports annually on an independent analysis of its curriculum delivery and actions to implement any recommendations.	Evidence provided
Impact	<p>Supplier can demonstrate capacity of placement:</p> <ul style="list-style-type: none"> • Total capacity • Current occupancy level • Percentage of total • Placement turnover in previous 12 months (new/placements ended with breakdowns and exclusions reported by exception) 	Evidence provided
Impact	<p>Supplier can evidence a sample of records for last two accidents/restraints:</p> <ul style="list-style-type: none"> • Recorded outcome of the incident • Monitoring of trends for incidents • Improvements made where relevant • Evidence of staff de-briefings 	Yes/No
Impact	Supplier will work on exit and transition planning with the Customer, where appropriate and ensure this is included in the child's plan.	Evidence provided
Compliance	The Supplier reports on all examination results for Customer placements annually by September each year	Yes/No
Impact	<p>The Supplier will produce an annual School Development and Home Development Plan (where applicable) which:</p> <ul style="list-style-type: none"> • Is regularly reviewed • Outlines the future of the school/home highlighting any planned changes in the operation or resources of the service 	Yes/No

	<ul style="list-style-type: none"> Identifies who is responsible for carrying out the change and by when, and any progress to date 	
Compliance	Evidence that EHCP reviews have been contributed to.	Evidence provided
C. Service user feedback, outcomes and impact are effectively measured, reported and acted upon.		
C1) The supplier regularly collates and acts upon stakeholder feedback		
Measure(s)		Target/Tolerance/Action
Type	Description	
Quality	Evidence of 'You Said, We Did' examples that demonstrate: <ul style="list-style-type: none"> what matters to CYP and families has been listened to and acted upon. positive impact of actions taken and next steps. 	Yes/No
C2) The deals with any issues promptly and ensures these are acted upon		
Measure(s)		Target/Tolerance/Action
Type	Description	
Quality	Total number of formal complaints received: <ul style="list-style-type: none"> children / young people staff inc foster carers stakeholders. 	Target: 0
Quality	Number of formal complaints upheld (including partially).	Target: 0
Quality	% of formal complaints resolved in in line with the Supplier's Complaints Policy.	Target: 100% Tolerance: 5%
Quality	Evidence that learning from complaints is acted upon and improvements made.	Yes/No
Compliance	Children/stakeholders understand how to make a complaint, and all relevant policies and procedures are written in a child friendly format.	Yes/No
Compliance	Lower-level issues are recorded and responded to.	Yes/No
C3) The supplier completes an annual review of contract performance		
Measure(s)		Target/Tolerance/Action
Type	Description	
Impact	Annual report of the year's performance and stakeholder feedback completed in line with Customer's Annual Report Template and shared with Contract Manager.	Yes/No
C4) The Suppliers demonstrate that outcomes for children and young people are being achieved as set out in the agreed IPA. <i>This section will be completed on an individual basis prior to the CMM.</i>		
Measure(s)		Target/Tolerance/Action
Type	Description	
Impact		

**SCHEDULE 4
KEY PERSONNEL**

PART 1

Customer's Key Personnel

Name	Job Title
[TBC]	Customer's Representative
[TBC]	Customer's Contract Manager

PART 2

Supplier's Key Personnel

Name	Job Title
[TBC]	Supplier's Representative
[TBC]	Supplier's Contract Manager

SCHEDULE 5

DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1. CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

1.1 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan includes:-

- (a) details of how the Supplier shall implement the Disaster Recovery and Business Continuity Plan;
- (b) details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Customer (as notified by the Customer from time to time);
- (c) details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;
- (d) identification of all reasonably possible failures of or disruptions to the Services;
- (e) In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be "dual sourced" so as to eliminate or minimise single points of failure and business continuity maintenance;
- (f) identification of all potential disaster recovery scenarios;
- (g) provision of appropriate levels of spares, maintenance equipment and test equipment;
- (h) responsibilities of the Sub-Contractors in the event of a Disaster;
- (i) KPIs that the Supplier shall have to comply with in the event of a Disaster; and
- (j) Customer obligations and dependencies.

1.2 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:

- (a) identification of Service priorities in the event of a Disaster;
- (b) risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, Key Personnel, Premises, key resources and key Sub-Contractors and/or suppliers;
- (c) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;
- (d) a communications strategy for Staff, the media and key internal and external stakeholders;
- (e) identification of key internal and external interdependencies;

- (f) identification of essential resources and Equipment needed during a Disaster;
- (g) a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Supplier to provide the Services; and
- (h) procedures for reverting to normal Service delivery.

2. REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN

The Disaster Recovery and Business Continuity Plan shall be reviewed by both Parties where requested by either Party.

SCHEDULE 6
EXIT STRATEGY REQUIREMENTS

1. Without prejudice to the provisions set out in the Contract upon notification of this Contract terminating, howsoever caused, or twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Supplier shall, at no cost to the Customer, provide such cooperation, information and assistance to the Customer as may be reasonably required by the Customer to transfer and to enable a smooth migration of the Services being supplied by the Supplier including enabling the Customer and/or a Replacement Provider to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract.
2. The Supplier and the Customer shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Customer or a Replacement Provider.
3. The Supplier agrees that if it is requested by the Customer, it shall use all reasonable endeavours to assign or novate any then existing contracts which the Supplier has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Customer or to any Replacement Provider.
4. The Supplier shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "Applicable Period") in relation to the Services except with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:
 - (a) incur any expenditure or enter into any commitments other than in the ordinary course of trading;
 - (b) dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, Intellectual Property Rights (excluding those assets which the Customer is the full legal and beneficial owner of) other than stock in the ordinary course of trading;
 - (c) materially vary the terms of any contracts with any provider of goods and/or services already entered into;
 - (d) enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;
 - (e) enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
 - (f) grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;
 - (g) permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
 - (h) in any way depart from the ordinary course of its day-to-day business either as

regards the nature or scope or the manner of conducting the same;

- (i) pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
- (j) release, waive or modify any warranty or guarantee given by any supplier of goods or services;
- (k) cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Supplier and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with the DPA or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
- (l) terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Customer to such termination save where, in the reasonable opinion of the Supplier, termination is justified for cause due to the actions of any such of the Relevant Employees;
- (m) alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar individuals within the Supplier's workforce or as is required by law (for the avoidance of doubt, the Supplier shall provide upon request by the Customer evidence that any such wage or salary award is in line with those offered generally for similar individuals);
- (n) relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed; or
- (o) make any other alterations to the structure or composition of the Relevant Employees which are intended to, or which may preclude the application of the Regulations upon the resumption of service by the Customer or Replacement Provider.