



Agreement for the provision of Services

Agreement for the provision of LOCUM DOCTOR AGENCY SERVICES

CP16/11/475

HOLT MEDICAL RECRUITMENT LIMITED

February 2024

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Contents

Part 1 – General Provisions	5
1. Definitions and Interpretations	5
2. Term	12
3. Supplier's Status (Principal).....	12
4. Authority's Obligations	12
5. Entire Agreement.....	12
6. Scope of Agreement.....	13
7. Notices.....	13
8. Mistakes in Information	14
9. Conflicts of Interest.....	14
10. Fraud.....	15
Part 2 – The Provision of the Services	16
11. The Services	16
12. Manner of Carrying Out the Services	16
13. Standard of Work.....	17
14. Customer Satisfaction Survey	18
15. Key Personnel.....	19
16. Supplier's Staff	19
17. Jersey Living Wage	21
18. Inspection of Premises	21
19. Licence to occupy Authority's Premises	21
20. Authority Property.....	22
21. Sub-Contracting for the delivery of the Services	23
22. Offers of Employment.....	23
Part 3 – Payment and Price	24
23. Price	24
24. Payment and Tax	24
25. Recovery of Sums Due	24
26. Price adjustment on Extension	25
27. Euro.....	25
28. Change of Law	25
Part 4 - Statutory Obligations, Codes of Practice and Regulations	27
29. Prevention of Corruption	27
30. Discrimination.....	27
31. Rights of Third Parties	27
32. Health and Safety	28
33. Criminal Records Check	28
34. Data Protection	29
35. Cyber Essentials Scheme / Information Security Management System	29
36. Confidentiality.....	30
37. Freedom of Information	32
38. Security of Confidential Information	33

39. Publicity, Media and Official Enquiries 33

40. Security..... 34

41. Intellectual Property Rights..... 34

42. Audit..... 36

43. Assignment and Sub-contracting..... 37

44. Waiver 37

45. Variation of the Services..... 37

46. Severability 38

47. Remedies in the event of inadequate performance 38

48. Remedies Cumulative 39

49. Monitoring of Performance..... 40

50. Possible Extension of Term 40

51. Novation 40

Part 7 – Liabilities 41

52. Indemnity and Insurance 41

53. Professional Indemnity 42

54. Warranties and Representations 43

Part 8 – Default, Disruption and Termination..... 44

55. Termination on change of control and insolvency 44

56. Termination on Default 45

57. Break..... 45

58. Consequences of Termination 45

59. Disruption..... 46

60. Recovery upon Termination 47

61. Force Majeure 47

62. Business Continuity..... 48

63. Third Party Rights 49

64. Governing Law..... 50

65. Dispute Resolution 50

Schedule 1 – Services & Service Levels 52

Schedule 2 – Particular Conditions 55

Schedule 3 – Fee & Payment Information 56

Schedule 4 – Monitoring & Performance 58

Schedule 5 – Timelines / Project Plan / Scope of Work..... 60

Schedule 6 – Key Personnel 61

Schedule 7 – Invitation to Tender & Supplier’s Reponse..... 62

Schedule 8 – Data Protection..... 63

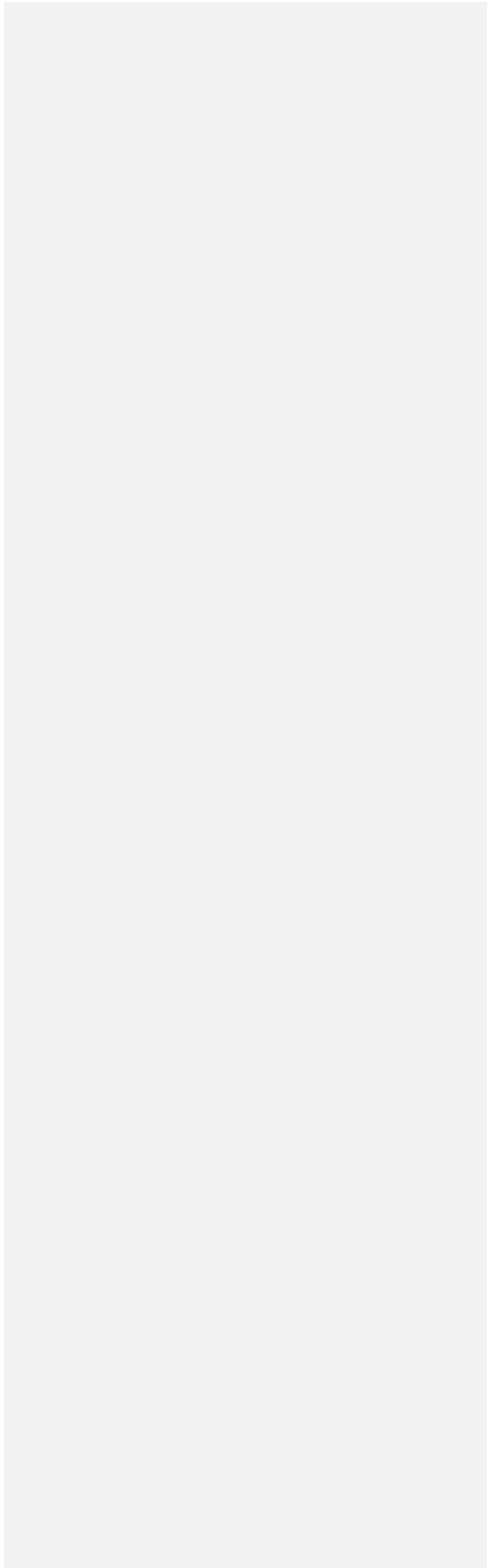
Schedule 9 – Cyber Essentials Scheme Requirements 69

Schedule 10 – Change Control Template..... 69

Schedule 11 – Commercially Sensitive Information Schedule 72

Schedule 12 – Social Value Schedule (Optional)..... 85

Schedule 13 – Dispute Resolution Procedure 86



THIS AGREEMENT is made on [01st October 2023]

BETWEEN

- (1) **The Government of Jersey (acting through the Minister for Health and Social Care)** or where the context requires, any administration of the States of Jersey of 19-21 Broad Street, St Helier, Jersey JE2 3RR (the "**Authority**");

AND

- (2) **Holt Medical Recruitment Limited** (company registered number 06832618) whose registered office is at **5th Floor 4 Coleman Street, London, United Kingdom, EC2R 5AR** (the "**Supplier**"),

each a "**Party**" and together the "**Parties**".

RECITALS

- (A) The Authority [recite summary Ministerial Decision, as appropriate].
- (B) The Authority and the Supplier have agreed that the Supplier shall provide and the Authority shall co-operate with it in providing the Services in the manner and upon the terms set out in this Agreement.

AGREEMENT

Part 1 – General Provisions

1. Definitions and Interpretations

- 1.1. In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"**2018 Law**" means the Data Protection (Jersey) Law 2018;

"**Agreement**" means this agreement between the Authority and the Supplier consisting of (a) these clauses and any attached Schedules, (b) the Invitation to Tender, (c) the Supplier's Tender and (d)

any other documents (or parts thereof) that are incorporated into or referred to in any of the above listed documents;

“Approval” and **“Approved”** means the written consent of the Contract Manager;

“Authority Background IPRs” means all Intellectual Property Rights in the Authority Materials;

“Authority Materials” means all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier;

“Authority Property” means any property, other than real property, issued or made available to the Supplier by the Authority in connection with the Agreement;

“Beneficiary” means any or all of:

- a. the States of Jersey and all agencies thereof; and
- b. any statutory successor to any of the above;

and **“Beneficiaries”** shall be construed accordingly;

“Business Continuity Plan” means, where the Authority exercises its rights under clause 62.2, the business continuity plan that is provided by the Supplier and approved by the Authority in accordance with clause 62.2 (as such business continuity plan may be updated in accordance with clause 62.2 from time to time);

“Commencement Date” means that date specified as such in Part A of Schedule 1;

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Supplier to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means Schedule 11 containing a list of the Commercially Sensitive Information;

“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 which relates to the business, affairs, properties,

assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and special category data within the meaning of the 2018 Law and the Commercially Sensitive Information;

"Contract Manager" means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf;

"Default" means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other;

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts);

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Schedule 13, including the infographics appended thereto;

"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 the Agreement;

"Expiry Date" means that date specified in paragraph 2.2 of Schedule 1;

"Extension" means any extension of the duration of the Agreement agreed in accordance with clause 50;

"FOIL" means the Freedom of Information (Jersey) Law 2011 and any subordinate legislation made under this Law from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

"Force Majeure Event" has the meaning given to it in clause 61.1;

"Foreground IPRs" means all Intellectual Property Rights in the Deliverables, other than Supplier Background IPRs;

"General Change in Law" means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Information" has the meaning given under Article 1 of the Freedom of Information (Jersey) Law 2011;

"Initial Term" or **"Term"** means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the agreement in accordance with clause 2.1 of the Agreement;

"Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the Channel Islands or the United Kingdom) and the right to sue for passing off;

"Invitation to Tender" means an invitation for Suppliers to bid for the Services required by the Authority;

"Key Personnel" means those persons named in Schedule 6 as being key personnel;

"Law" means any applicable enactment, sub-ordinate legislation within the meaning of Article 10 of the Interpretation (Jersey) Law 1954 passed by the States of Jersey and confirmed by Her Majesty in Council and any provision of any regulations, Order, rules, scheme or other instrument passed or made in Jersey under the authority or any Order in Council or under any such Law as aforesaid, by-laws, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply or the equivalent enactment in England where the context otherwise requires;

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or

application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Mandatory Policies" means the mandatory Authority policies that are listed in Schedule 2, as such list of policies (and the policies themselves) may be updated or supplemented by the Authority from time to time;

"Monitoring Schedule" means the Schedule 4 containing details of the monitoring arrangements;

"Month" means calendar month;

"Named Employee" has the meaning given to it in clause 33.1;

"Party" means a party to the Agreement and **"Parties"** shall be construed accordingly;

"Premises" means the location where the Services are to be performed, as specified in paragraph 5.1 of the Services Schedule;

"Price" means the price exclusive of any applicable Tax, payable to the Supplier by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Supplier of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 23;

"Pricing Schedule" means the Schedule 3 containing details of the Price;

"Quality Standards" means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Supplier would reasonably and ordinarily be expected to comply as supplemented by the Specification;

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

"Replacement Supplier" means any third party Supplier appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the

Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third Party;

"Requests for Information" shall have the meaning set out in FOIL or any apparent request for information under the FOIL;

"Schedule" means a schedule attached to the Agreement;

"Service Data" means [complete as necessary];

"Services" means the services to be provided as specified in the Services Schedule;

"Services Schedule" means Part A of Schedule 1 hereto containing details of the Services;

"Specification" means the description of the Services to be provided under the Agreement and attached as the Services Schedule;

"Specific Change in Law" means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services;

"Staff" means all persons employed by the Supplier to perform the Agreement together with the Supplier's officers, contractors, suppliers, agents and sub-contractors used in the performance of the Agreement;

"Supplier" means the person, firm or company that is Party to the Contract with the Authority as set out above;

"Supplier Background IPRs" means all Intellectual Property Rights that are owned by or licensed to the Supplier and which are or have been developed independently of the Agreement in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable the Authority to receive and use the Services;

"Supplier's Representative" means the individual authorised to act on behalf of the Supplier for the purposes of the Agreement;

“**Tax**” means Value Added Tax (VAT) / Goods and services Tax (GST) to the extent that either is applicable;

“**Tender**” means the Supplier’s response to the Invitation to Tender (as subsequently clarified in Schedule 7 hereto);

“**Users**” means a reasonably representative sample of those users who consume or benefit from the Services;

“**Variation**” has the meaning given to it in clause 45.1; and

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in Jersey.

1.2. In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references 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) references 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 assignees or transferees;
- (g) references to the Supplier or Supplier shall be a reference to the Supplier and vice versa and shall have the same meaning as Supplier;
- (h) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

- (i) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2. Term

- 2.1. The Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date (or at the end of any Extension made in accordance with clause 50), unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

3. Supplier's Status (Principal)

- 3.1. In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Authority.
- 3.2. Accordingly:
 - (a) the Supplier shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Supplier is acting as the agent of the Authority; and
 - (b) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Supplier that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Authority, the Authority's employees, officers, contractors or agents.

4. Authority's Obligations

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

5. Entire Agreement

- 5.1. The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and

undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

5.2. In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Supplier's Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence (listed in descending order of precedence):

- (1) the body of the Agreement;
- (2) the Schedules;
- (3) the Invitation to Tender;
- (4) the Supplier's Tender; and
- (5) any other document referred to in the Agreement.

Unless expressly agreed in writing by the Authority, a document varied pursuant to clause 45 shall not take higher precedence than specified here.

5.3. The Agreement 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.

6. Scope of Agreement

6.1. Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Supplier.

6.2. Except to the extent expressly stated otherwise in the Specification, the Supplier acknowledges that:

6.2.1. it is not being appointed as an exclusive provider of the Services (or of any similar services); and

6.2.2. the Authority does not guarantee that any particular volume of Services will be instructed from the Supplier.

7. Notices

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

7.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, signed for post or by the recorded delivery service) or by electronic mail. Such letters or electronic mail shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

7.3. For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Authority:

Address: 19-21 Broad Street, St Helier, Jersey JE2 3RR

Email: p.armstrong@health.gov.je

For the attention of: Patrick Armstrong (Chief Medical Officer)

(b) For the Supplier:

Address: 4th Floor, Belle Vue Square, Broughton Road, Skipton, BO23 1FJ

Email: contracts@holtDoctors.co.uk

For the attention of: [REDACTED] (Managing Director)

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

8. Mistakes in Information

8.1. The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Supplier in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

9. Conflicts of Interest

9.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the Authority under the provisions of the Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

9.2. The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

10. Fraud

10.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Supplier (including its shareholders, members, directors) and/or any of the Supplier's suppliers, in connection with the receipt of monies from the Authority. The Supplier shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Part 2 – The Provision of the Services

11. The Services

- 11.1.** The Supplier shall provide the Services during the Term in accordance with the Authority's requirements as set out in the Specification and the terms of the Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Supplier, at any other premises where any part of the Services is being performed.
- 11.2.** The Supplier shall at all times deliver the Services and perform its obligations and responsibilities under this Agreement in accordance with the Law.
- 11.3.** If the Authority informs the Supplier that the Authority considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of Default or negligence on the part of the Authority, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.
- 11.4.** Subject to the Authority providing Approval in accordance with clause 12.3 within a reasonable period, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- 11.5.** Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Supplier shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Supplier's delay in the performance of its obligations under the Agreement and which delay the Supplier has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Supplier's obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 12.3 within a reasonable period.
- 11.6.** If it is required to do so under the terms of Schedule 1, the Supplier shall deliver to the Authority a guarantee, bond or other form of security in a form that is acceptable (and granted by a third party that is acceptable) to the Authority, on or prior to the Commencement Date.

12. Manner of Carrying Out the Services

- 12.1.** The Supplier shall perform the Services in accordance with the service levels and standards set out in Schedule 1, Part B.

- 12.2.** The Supplier shall provide and, unless otherwise agreed, install all the Equipment necessary for the provision of the Services.
- 12.3.** The Supplier shall make no delivery of Equipment nor commence any work on the Authority's Premises without obtaining the Authority's prior Approval.
- 12.4.** All Equipment brought onto the Authority's Premises shall be at the Supplier's own risk. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Supplier.
- 12.5.** The Supplier shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.
- 12.6.** All Equipment shall be at the risk of the Supplier and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the negligence or Default of the Authority.
- 12.7.** The Authority shall have the power at any time during the performance of the Services to order in writing that the Supplier:
- 12.7.1.** remove from the Authority's Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement; and
- 12.7.2.** if the Authority has ordered the Supplier to remove any item of Equipment in accordance with clause 12.7 (a) above, to replace such item with a suitable substitute item of Equipment.
- 12.8.** On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to provide the services in order to leave the Authority's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Supplier is solely responsible for making good any damage to the Authority's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any of the Supplier's Staff.
- 12.9.** Access to the Authority's Premises shall not be exclusive to the Supplier but shall be limited to such Staff Suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Supplier shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.

13. Standard of Work

- 13.1. The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Supplier shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Agreement with reasonable care and skill and in accordance with Good Industry Practice.
- 13.2. The Supplier warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 13.3. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.
- 13.4. The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Supplier's compliance with the Agreement.

14. **Customer Satisfaction Survey**

- 14.1. The Supplier shall undertake (or procure the undertaking of) a customer satisfaction survey ("**Customer Satisfaction Survey**") the purpose of which shall include (but not limited to) assessing the level of satisfaction among Users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services.
- 14.2. The Customer Satisfaction Survey shall be undertaken by means of distributing to Users of the Services a questionnaire (or other survey method as agreed between the Parties) in a form to be agreed with the Authority (acting reasonably).
- 14.3. The content of the questionnaire (or other material to be used for any other survey method) referred to in clause 14.2 and the method of undertaking the Customer Satisfaction Survey shall comply with all Law.
- 14.4. The Authority shall provide reasonable assistance and information to the Supplier to enable the Supplier to undertake the Customer Satisfaction Survey.
- 14.5. Within one month of each Customer Satisfaction Survey, the Supplier shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details

(including copies of all returned questionnaires and/or any other survey material used by the Supplier) as the Authority shall reasonably require.

15. Key Personnel

- 15.1. Key Personnel shall not be released from providing the Services without the agreement of the Authority, except by reason of long-term sickness, termination of employment and other extenuating circumstances.
- 15.2. Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 15.3. The Authority shall not unreasonably withhold its agreement under clause 15.1 or clause 15.2. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

16. Supplier's Staff

- 16.1. The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:
 - 16.1.1. any member of the Staff; and/or
 - 16.1.2. any person employed or engaged by a sub-contractor, agent, contractor or supplier of the Supplier,

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

- 16.2. If and when directed by the Authority, the Supplier shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably desire.
- 16.3. The Supplier's Staff, engaged within the boundaries of any of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements)

as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

- 16.4.** The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.
- 16.5.** The Supplier shall bear the cost of any notice, instruction or decision of the Authority under this clause.
- 16.6.** Where the Supplier or any Staff are liable to be taxed or to pay national insurance contributions in the UK relating to payment received under the Agreement, the Supplier shall:
 - 16.6.1.** ensure all Staff are (and will remain throughout the period they are employed or engaged in providing the Services) employed or engaged directly with the Supplier or its relevant sub-contractor under a contract of employment under which their income is taxed in full under pay as you earn;
 - 16.6.2.** ensure the Staff do not (and will not at any time during the period they are employed or engaged in providing the Services) provide their services to the Supplier or its sub-contractors through an intermediary to which the provisions of Chapters 8 and/or 10 of Part 2 of the Income Tax (Earning and Pensions) Act 2003 (and/or any other legislation or regulations dealing with the tax and national insurance contributions treatment of workers whose services are provided via intermediaries from time to time) apply (an "IR35 Intermediary"); and
 - 16.6.3.** in connection with the performance of the Services under this Agreement, not operate as an IR35 Intermediary and the Supplier is not (and will not become prior to the date that it ceases to perform the Services) a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003;
 - 16.6.4.** comply with the Income Tax (Earnings and Pensions) Act 2003 (including IR35) and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 and national insurance contributions; and
 - 16.6.5.** indemnify the Authority on demand against (and pay to the Authority on demand an amount equal to) any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment, fine, penalty or claim arising from or made during or after the Term in connection with the provision of the Services by the Supplier or any of the Staff.

17. Jersey Living Wage

- 17.1.** The Supplier will ensure that all relevant Staff employed or engaged by the Supplier (or by its sub-contractors) are paid an equivalent hourly wage which is equal to or exceeds the Jersey Living Wage.
- 17.2.** The Supplier will provide to the Authority such information concerning the Jersey Living Wage and the performance of its obligations under clause 17 as the Authority may reasonably require and within the deadlines it reasonably imposes.

18. Inspection of Premises

- 18.1.** Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the Premises and all relevant information before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.
- 18.2.** The Authority shall, at the request of the Supplier, grant such access as may be reasonable for the purpose referred to in clause 18.1.

19. Licence to occupy Authority's Premises

- 19.1.** Any land or Premises (including temporary buildings) made available to the Supplier by the Authority in connection with the Agreement, shall be made available to the Supplier free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Agreement. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.
- 19.2.** The Supplier shall not use the Authority's Premises for any purpose or activity other than the provision of the Services.
- 19.3.** Should the Supplier require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 19.4.**
- 19.5.** The Supplier shall (and shall ensure that the Staff) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the

Supplier or the Staff, other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

19.6. The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Supplier or any of the Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

20. Authority Property

20.1. Where the Authority for the purpose of the Agreement issues Authority Property free of charge to the Supplier such property shall be and remain the property of the Authority. The Supplier shall not in any circumstances have a lien on the Authority Property and the Supplier shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

20.2. Any Authority Property made available or otherwise received by the Supplier shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.

20.3. The Supplier shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.

20.4. The Supplier shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) of the Agreement and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Supplier or any of the SupplierStaff shall be made good at the Supplier's expense. Without prejudice to any other rights of the Authority, the Supplier shall deliver up Authority Property whether processed or not to the Authority on demand.

20.5. The Supplier shall ensure the security of all Authority Property, whilst in the Supplier's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Authority's reasonable security requirements as required from time to time.

20.6. The Supplier shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Supplier is able to demonstrate that such loss or damage was caused by the negligence or Default of the Authority. The Supplier's liability set out in this clause shall be

reduced to the extent that such loss or damage was contributed to by the negligence or Default of the Authority. The Supplier shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

21. Sub-Contracting for the delivery of the Services

21.1. Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

22. Offers of Employment

22.1. For the duration of the Agreement and for a period of 12 months thereafter the Supplier shall not employ or offer employment to any of the Authority's officers, employees, agents or contractors who have been associated with the procurement and/or the contract management of the Services without the Authority's prior Approval.

Part 3 – Payment and Price

23. Price

- 23.1. In consideration of the performance of the Supplier's obligations under the Agreement by the Supplier, the Authority shall pay the Price in accordance with clause 24.
- 23.2. In the event that the cost to the Supplier of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 28 shall apply.
- 23.3. The Parties agree that Value Added Tax shall not be chargeable and that any additional tax liability (in respect of any other jurisdiction) shall be met by the Supplier.

24. Payment and Tax

- 24.1. The Authority shall pay the undisputed sums due to the Supplier in cleared funds within 30 days of receipt and agreement of valid invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.
- 24.2. Each invoice shall contain the relevant purchase order number issued by the Authority, all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice. The Authority reserves the right not to pay if the relevant purchase order number is not on the invoice.
- 24.3. Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 24.4. The Authority may reduce payment in respect of any Services which the Supplier has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 24.5. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement under clause 56.3 for failure to pay undisputed charges.

25. Recovery of Sums Due

- 25.1. Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with the Authority.

25.2. Any overpayment by the Authority to the Supplier, whether of the Price or of tax, shall be a sum of money recoverable by the Authority from the Supplier.

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

26. Price adjustment on Extension

26.1. Subject to clause 24.4 the Price shall remain fixed for the Initial Term.

26.2. In the event of a possible Extension, the Authority reserves the right to review any charges payable to the Supplier for the provision of services beyond the Initial Term.

26.3. If the Authority approaches the Supplier in accordance with clause 50 concerning an Extension, the Authority must agree the charges to be payable to the Supplier for the provision of any services during the Extension, at least 3 months prior to the end of the Initial Term.

26.4. Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Jersey Retail Price Index (RPI) (or another such index as notified to the Supplier in writing) between the Commencement Date and the date 3 months before the end of the Initial Term.

27. Euro

27.1. Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier at nil charge to the Authority.

27.2. The Authority shall provide all reasonable assistance to facilitate compliance by the Supplier under clause 27.1.

28. Change of Law

28.1. The Supplier shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Supplier as the result of:

28.1.1. a General Change in Law; or

28.1.2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

- 28.2.** If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 28.1) or during any extension made pursuant to clause 26, the Supplier shall notify the Authority of the likely effects of that change, including:
- 28.2.1.** whether any change is required to the Services, the Price or the Agreement; and
 - 28.2.2.** whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 28.3.** As soon as practicable after any notification in accordance with clause 28.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
- 28.3.1.** providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
 - 28.3.2.** demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
 - 28.3.3.** giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 28.3.4.** demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 28.4.** Any increase in the Price or relief from the Supplier's obligations agreed by the Parties pursuant to this clause 28 shall be implemented in accordance with clause 45.

Part 4 - Statutory Obligations, Codes of Practice and Regulations

29. Prevention of Corruption

- 29.1.** The Supplier shall not offer or give, or agree to give, to any employee, agent, officer, contractor or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Supplier is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Corruption (Jersey) Law 2006.
- 29.2.** The Supplier warrants that it has not paid commission nor has agreed to pay any commission to any employee or representative of the Authority by the Supplier or on the Supplier's behalf.
- 29.3.** Where the Supplier or Supplierany Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clauses 29.1 or 29.2 in relation to this or any other contract with the Authority, the Authority has the right to:
- 29.3.1.** terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination; and
 - 29.3.2.** recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

30. Discrimination

- 30.1.** The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, Human Rights (Jersey) Law 2000 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 30.2.** The Supplier shall take all reasonable steps to secure the observance of clause 30.1 by all Staff.

31. Rights of Third Parties

31.1. No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Supplier) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this clause 31. This clause does not affect any right or remedy of any person which exists or is available otherwise.

32. Health and Safety

32.1. The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Supplier in the performance of the Agreement.

32.2. While on the Authority's Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

32.3. The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of the Agreement on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

32.4. The Supplier shall comply with the requirements of the Health and Safety at Work (Jersey) Law 1989 and to the extent applicable, the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

32.5. The Supplier shall ensure that its health and safety policy statement (if applicable) is made available to the Authority on request.

33. Criminal Records Check

33.1. The Supplier shall procure that in respect of all potential Staff or persons performing any of the Services (each a "**Named Employee**") before a Named Employee begins to attend any Authority premises to perform any of the Services:

33.1.1. each Named Employee is appropriately vetted in accordance with the relevant applicable legal and regulatory standards and obligations that apply to the Supplier;

33.1.2. where appropriate and necessary for compliance with those standards and obligations, a check will be made by the Supplier of the most extensive available kind made pursuant to Part V of the Police Act 1997 in respect of each Named Employee. Where required, the check for each

Named Employee shall include a search of the list(s) held pursuant to the Safeguarding of Vulnerable Groups Act 2006 (“**SVGA**”):

- a. in respect of children where the performance of the Services may involve contact with children; and/or
- b. in respect of adults where the performance of the Services may involve a regulated activity in relation to adults within the meaning of the SVGA.

33.2. The Supplier shall ensure that only appropriately vetted “fit persons” shall be engaged as Staff, and the Authority may make all reasonable enquiries of the Supplier to satisfy itself of compliance with all related policies and procedures.

33.3. Should the Supplier be minded to employ a new member of Staff where such individual's background check indicates such individual has previously had a conviction regarding matters of a violent or sexual nature or involving unlawfully supplying controlled drugs / commercial drug dealing or trafficking, the Supplier shall promptly discuss the nature of the conviction and the reason for proposed employment with the Authority.

33.4. The Supplier shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff, receives a conviction for any of the foregoing matters, or whose previous convictions for any of the foregoing matters become known to the Supplier (or any employee of a sub-contractor involved in the provision of the Services).

33.5. The Parties shall at all times ensure compliance with the reporting and compliance requirements of the Regulation of Care (Standards and Requirement) (Jersey) Regulations 2018 and shall cooperate where necessary to ensure such compliance.

34. Data Protection

34.1. The Parties shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with the 2018 Law or any applicable equivalent legislation in the contractors jurisdiction (if outside Jersey) and Schedule 8 of this Agreement.

34.2. The provisions of this clause and Schedule 8 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

35. Cyber Essentials Scheme / Information Security Management System

35.1. The Supplier acknowledges that the Authority is required to reduce the levels of cyber security risk in its supply chain, the Authority seeks the Supplier's compliance where appropriate to Cyber Essentials Security/Information Security System model or alternative accreditation such as ISO 27001 (please see the relevant links at Schedule 9).

35.2. If requested to do so by the Authority at any time, the Supplier will, within 15 Working Days, develop (and obtain the Authority's written Approval of) a Security Management Plan and an Information Security Management System. After Authority Approval the Security Management Plan and Information Security Management System will apply during the Term of this Agreement. Both plans will comply with the Authority's security policy and protect all aspects and processes associated with the delivery of the Services.

35.3. The Supplier will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

35.4. If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Supplier will help the Authority to mitigate any losses and restore the Services to operating efficiency as soon as possible. Responsibility for costs will be at the:

35.4.1. Supplier's expense if the Malicious Software originates from the Supplier software or the Service Data while the Service Data was under the control of the Supplier, unless the Supplier can demonstrate that it was already present, not quarantined or identified by the Authority when provided; or

35.4.2. Authority's expense if the Malicious Software originates from the Authority software or the Service Data, while the Service Data was under the Authority's control

36. Confidentiality

36.1. Each Party:

36.1.1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

36.1.2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

36.2. The Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:

(a) is given only to such of the Staff and professional advisors or contractors engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

(b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or contractors otherwise than for the purposes of the Agreement.

36.3. Where it is considered necessary in the opinion of the Authority, the Supplier shall ensure that Staff or such professional advisors or contractors sign a confidentiality undertaking before commencing work in connection with the Agreement. The Supplier shall ensure that Staff or its professional advisors or contractors are aware of the Supplier's confidentiality obligations under the Agreement.

36.4. The Supplier shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

36.5. The provisions of clauses 36.1 to 36.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIL pursuant to clause 37.

36.6. Nothing in this clause shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:
 - a. the examination and certification of the Authority's accounts; or
 - b. any examination pursuant to the Public Finances (Jersey) Law 2019 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (b) disclosing any Confidential Information obtained from the Supplier:

- a. to any Government of Jersey department or any administration of the Government of Jersey. All Government of Jersey departments or any administration of the Government of Jersey receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Government of Jersey departments or any administration of the Government of Jersey on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Government of Jersey department or any administration of the Government of Jersey; or
- b. to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

36.7. Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

37. Freedom of Information

37.1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIL and shall assist and cooperate with the Authority (at the Supplier's expense) to enable the Authority to comply with information disclosure requirements (if necessary).

37.2. The Supplier shall and shall procure that its sub-contractors shall:

37.2.1. transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

37.2.2. provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

37.2.3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Article 13 of the FOIL or any subordinate legislation made under the Law.

37.3. The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- 37.3.1. is exempt from disclosure in accordance with the provisions of the FOIL; or
- 37.3.2. is to be disclosed in response to a Request for Information; and
- 37.3.3. in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.

37.4. The Supplier acknowledges that the Authority may, acting in accordance with the FOIL be obliged under FOIL to disclose Information:

- 37.4.1. without consulting with the Supplier, or
- 37.4.2. following consultation with the Supplier and having taken its views into account.

37.5. The Supplier shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure for the Term of this Agreement or as otherwise agreed and shall permit the Authority to inspect such records (including but not limited to audit records of disposed information) as requested from time to time.

37.6. The Supplier acknowledges that the Commercially Sensitive Information Schedule and any other lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 37.4.

38. Security of Confidential Information

38.1. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of this Agreement, the Supplier undertakes to use, upon an ongoing basis, software with the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

38.2. The Supplier will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under clause 36. The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

39. Publicity, Media and Official Enquiries

39.1. Without prejudice to the Authority's obligations under the FOIL, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.

39.2. Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 39.1 by all their officers, employees, agents, professional advisors and contractors. The Supplier shall take all reasonable steps to ensure the observance of the provisions of clause 39.1 by its sub-contractors.

39.3. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

39.4. Without prejudice to clause 39.1, the Supplier shall not publish any literature, deliver any lecture, or make any communication to the press relating to the business of the Authority or on any matter with which the Authority may be concerned unless it has previously and on each occasion obtained the prior written permission of the Contract Manager. The copyright in any publication or report by the Supplier relating to the business of the Authority or to any matter with which the Authority may be concerned shall belong to the Authority absolutely and beneficially, unless otherwise agreed in writing in any particular case.

40. Security

40.1. The Authority shall be responsible for maintaining the security of the Authority Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Authority while on the Authority Premises, and shall procure that all of its employees, agents, officers, contractors and sub-contractors shall likewise comply with such requirements.

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

41. Intellectual Property Rights

41.1. The Supplier and its licensors shall retain ownership of all Supplier Background IPRs. The Authority and its licensors shall retain ownership of all Authority Background IPRs and the Authority shall own all Foreground IPRs.

41.2. The Supplier grants the Authority, or shall procure the direct grant to the Authority of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy, modify and

sub-licence the Supplier Background IPRs for the purpose of receiving and using the Services and the Deliverables in its business and operations.

- 41.3.** The Supplier assigns to the Authority, with full title guarantee and free from all third-party rights, the Foreground IPRs, together with the right to sue for and recover damages or other relief in respect of infringement of the Foreground IPRs.
- 41.4.** The Supplier shall obtain the Authority's prior written approval before using any material in any Deliverables and/or in relation to the performance of the A which is or may be subject to any third party Intellectual Property Rights. The Supplier shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Beneficiaries, any replacement supplier or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.
- 41.5.** The Authority grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Foreground IPRs and the Authority Background IPRs for the term of the Agreement for the purpose of providing the Services to the Authority in accordance with the Agreement.
- 41.6.** The Supplier shall, promptly at the Authority's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Agreement, including all rights, title and interest in and to the Foreground IPRs.
- 41.7.** The Supplier shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled. Such waivers shall be in favour of the Authority and its licensees, sub-licensees, assignees and successors in title to the Deliverables.
- 41.8.** The Supplier warrants that the receipt, use and onward supply of the Services by the Authority and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 41.9.** The Supplier shall not be in breach of the warranty at clause 41.8, and the Authority shall have no claim under the indemnity at clause 41.10, to the extent the infringement arises from:

- 41.9.1.** any modification of the Deliverables, Supplier Background IPRs, Foreground IPRs or Services, other than by or on behalf of the Supplier or in accordance with the Supplier's instructions or approvals; or
- 41.9.2.** compliance with the Authority's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Authority if it knows or suspects that compliance with such specification or instruction may result in infringement.
- 41.10.** The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim brought against the Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.
- 41.11.** At the termination of the Agreement the Supplier shall immediately return to the Authority all materials, work or records held, including any back-up media.
- 41.12.** The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

42. Audit

- 42.1.** The Supplier shall keep and maintain until twelve years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Agreement, shall co-operate fully with the Authority or the Authority's representatives in respect of any reasonable requests and shall respond in a timely manner to any questions raised.

Part 6 – Control of the Agreement

43. Assignment and Sub-contracting

- 43.1.** The Supplier shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Agreement.
- 43.2.** The Supplier shall be responsible for the acts and omissions of its sub-contractors and all Staff as though they are its own.
- 43.3.** Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Authority within 2 Working Days of issue.
- 43.4.** The Supplier shall not use the services of self-employed individuals without prior Approval.

44. Waiver

- 44.1.** The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise 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 the Agreement.
- 44.2.** 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 the provisions of clause 7.
- 44.3.** A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

45. Variation of the Services

- 45.1.** The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".
- 45.2.** Any such Variation shall be communicated in writing by the Contract Manager to the Supplier's Representative in accordance with the notice provisions of clause 7. All Variations shall be in the form of an addendum to the Agreement, the form of which is set out in Schedule 10 hereto (Change Control Template).

45.3. In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Authority and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 63.

45.4. The Supplier shall provide such information as may be reasonably required to enable such varied price to be calculated.

45.5. Subject to clause 45.2 above, any amendment to the Agreement shall only be valid if made in writing and signed by the Parties hereto.

46. Severability

46.1. If any provision of the Agreement 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 the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

46.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

47. Remedies in the event of inadequate performance

47.1. Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 56 of the Agreement.

47.2. In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Supplier, or the Supplier's performance of its obligations under the Agreement has failed to meet the requirement set out in the Services Schedule, then the Authority may, without prejudice to its rights under clause 56 of the Agreement, do any of the following:

47.2.1. make such deduction from the Price to be paid to the Supplier as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Supplier shall have failed to provide or performed inadequately;

- 47.2.2.** without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will be able to perform such part of the Services in accordance with the Agreement;
- 47.2.3.** without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- 47.2.4.** terminate, in accordance with clause 56, the whole of the Agreement.
- 47.3.** The Authority may charge to the Supplier any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Supplier for such part of the relevant Services.
- 47.4.** If the Supplier fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.
- 47.5.** In the event that:
- 47.5.1.** the Supplier fails to comply with clause 47.4 above and the failure, is materially adverse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or
- 47.5.2.** the Supplier persistently fails to comply with clause 47.4 above, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 47.6.** The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Supplier.
- 48. Remedies Cumulative**
- 48.1.** Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement 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.

49. Monitoring of Performance

49.1. The Supplier shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Supplier may be required to produce under the Agreement.

50. Possible Extension of Term

50.1. Not used

51. Novation

51.1. The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute (a "Transferee") provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Agreement.

51.2. The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Agreement by the Supplier. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

Part 7 – Liabilities

52. Indemnity and Insurance

52.1. Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Article 21 of the Supply of Goods and Services (Jersey) Law 2009.

52.2. The Supplier shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of (a) any death or personal injury, (b) loss of or damage to property, (c) financial loss arising from any advice given or omitted to be given by the Supplier, and/or (d) any other loss which is caused directly or indirectly by any act or omission of the Supplier. This clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or sub-contractors, or by any circumstances within its or their control.

52.3. Subject always to clause 52.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 52.3.

52.3.1. The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed [REDACTED].

52.3.2. The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 41.10 or clause 52.3(a)) shall in no event exceed:

- (i) the greater of [REDACTED] or [REDACTED] of the amount paid or payable by the Authority for the Services (as determined at the date on which the liability arises) to the Supplier for the Service performed in that Year; or
- (ii) any alternative liability cap that is expressly set out in Schedule 2.

If an alternative liability cap is set out in Schedule 2, it shall apply in place of the terms of clause 52.3.2(i). If no alternative liability cap is expressly set out in Schedule 2 (including if the relevant paragraph of Schedule 2 is marked as "not used" or "not applicable" or similar), the terms of clause 52.3.2(i) shall apply.

52.4. Subject always to clause 52.1, in no event shall either Party be liable to the other for:

52.4.1. loss of profits, business, revenue or goodwill; and/ or

52.4.2. indirect or consequential loss or damage.

52.5. The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement. The levels of professional indemnity insurance and public liability insurance that are to be maintained by the Supplier pursuant to this clause 52.5 shall be at least at the relevant levels stated in Schedule 2.

52.6. The Supplier shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

52.7. The Supplier shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause 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.

52.8. If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

52.9. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in clause 52.2.

53. Professional Indemnity

The Supplier shall hold and maintain professional indemnity insurance cover and shall ensure that all professional contractors or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 53, and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or contractor involved in the performance of Services has a limit of indemnity of not less than [REDACTED] for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

54. Warranties and Representations

54.1. The Supplier warrants and represents that:

- 54.1.1.** the Supplier has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Supplier;
- 54.1.2.** the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- 54.1.3.** all obligations of the Supplier pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 54.1.4.** the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

Part 8 – Default, Disruption and Termination

55. Termination on change of control and insolvency

- 55.1.** The Authority may terminate the Agreement by notice in writing with immediate effect where:
- 55.1.1.** the Supplier undergoes a change of control, within the meaning of section Article 3A of the Income Tax (Jersey) Law 1961, which impacts adversely and materially on the performance of the Agreement; or
 - 55.1.2.** the Supplier is an individual or a firm and a petition is presented for the Supplier's bankruptcy, or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Supplier's or firm's affairs; or
 - 55.1.3.** the Supplier is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any Party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
 - 55.1.4.** where the Supplier is unable to pay its debts within the meaning of the Bankruptcy (Désastre) (Jersey) Law 1990; or
 - 55.1.5.** any similar event occurs under the law of any other jurisdiction.
- 55.2.** The Authority may only exercise its right under clause 55.1.1 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Supplier shall notify the Contract Manager immediately when any change of control occurs.
- 55.3.** If the Supplier, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of the Mental Health (Jersey) Law 1969, the Authority shall be entitled to terminate the Agreement by notice to the Supplier or the Supplier's Representative with immediate effect.

56. Termination on Default

56.1. The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Supplier or the Supplier's Representative with immediate effect if the Supplier commits a Default and if:

56.1.1. the Supplier has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

56.1.2. the Default is not, in the opinion of the Authority, capable of remedy; or

56.1.3. the Default is a material breach of the Agreement.

56.2. In the event that through any Default of the Supplier, data transmitted or processed in connection with the Agreement 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 provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Supplier.

56.3. The Supplier may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Supplier's right of termination under this clause 56.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 25.1 and 47.2.1.

57. Break

57.1. The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement, at any time by giving not less than six Months' written notice to the Supplier.

58. Consequences of Termination

58.1. Where the Authority terminates the Agreement under clause 56, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Initial Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 56, no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

58.2. Where the Authority terminates the Agreement under clause 57, the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under clause 57.

58.3. The Authority shall not be liable under clause 58.2 to pay any sum which:

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

58.3.2. when added to any sums paid or due to the Supplier under the Agreement, exceeds the total sum that would have been payable to the Supplier if the Agreement had not been terminated prior to the expiry of the Initial Term.

59. Disruption

59.1. The Supplier shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

59.2. The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

59.3. In the event of industrial action by the Staff or the Supplier's suppliers the Supplier shall seek the Authority's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.

59.4. If the Supplier's proposals referred to in clause 59.3 are considered insufficient or unacceptable by the Authority, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

59.5. If the Supplier is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be Approved by the Authority. In addition, the Authority will reimburse any additional

expense incurred by the Supplier in fulfilling the provisions of the Agreement as a result of such disruption.

60. Recovery upon Termination

- 60.1.** Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Supplier and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 60.2.** At the end of the Term (and howsoever arising) the Supplier shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Supplier grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.
- 60.3.** At the end of the Term (howsoever arising) and/ or after the Term the Supplier shall provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Supplier's Default, the Supplier shall provide such assistance free of charge. Otherwise the Authority shall pay the Supplier's reasonable costs of providing the assistance, and the Supplier shall take all reasonable steps to mitigate such costs.
- 60.4.** The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

61. Force Majeure

- 61.1.** For the purpose of this clause, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, pandemic or any disaster. It does not include any industrial action occurring within the Supplier's organisation or within any sub-contractor's or Supplier's organisation.
- 61.2.** Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to

continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

- 61.3.** Any failure or delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 61.4.** Clause 61 does not affect the Authority's rights under clause 60.4.
- 61.5.** If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 61.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 61.6.** For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

62. Business Continuity

- 62.1.** The Supplier agrees that it will take appropriate steps to help ensure continuity of the provision of Services under the Agreement throughout the Term.
- 62.2.** Without prejudice to its other obligations under and/or pursuant to the Agreement, the Supplier shall:
 - 62.2.1.** if requested by the Authority at any time, develop (for approval by the Authority) a Business Continuity Plan relating to the Services, the aim of which Business Continuity Plan will be to exclude or minimise the potential impact of any service-affecting events or interruptions on the performance of the Services. The Business Continuity Plan must be provided by the Supplier within such reasonable timescale as may be specified by the Authority;
 - 62.2.2.** maintain in place and comply with the Business Continuity Plan, which the Supplier will update from time to time, and in any event annually, in accordance with Good Industry Practice. The Supplier will promptly provide the Authority with a copy of the Business Continuity Plan as updated from time to time for approval by Authority;

- 62.2.3. if required by the Authority, explain how the procedures set out in the Business Continuity Plan will interface with any business continuity and disaster recovery plans and procedures of the Authority notified to the Supplier from time to time;
- 62.2.4. test the Business Continuity Plan on an six-monthly basis (as well as following any significant updates to the Business Continuity Plan and/or to the Services), and will share details of the results of each such test (and any remedial actions that will be taken by the Supplier to address issues arising from such tests) with the Authority promptly after the completion of each such test; and
- 62.2.5. if the Authority considers (on reasonable grounds) that the Business Continuity Plan is insufficient to ensure the continued performance of the Agreement and the operational resilience of the Supplier's business then the Supplier will make such modifications to the Business Continuity Plan as are required by the Authority (acting reasonably).

63. Third Party Rights

- 63.1. The Agreement is entered into by the Authority for its own benefit and for the benefit of the Beneficiaries. Each Beneficiary shall have the benefit of and the right to enforce the terms of the Agreement, including, but not limited to, the benefit of and the right to enforce all rights, licences, warranties, undertakings and indemnities granted in favour of the Authority under the Agreement.
- 63.2. Without prejudice to the generality of clause 63.1, the Authority shall be entitled:
 - 63.2.1. to enforce the terms of the Agreement on behalf of any Beneficiary; and
 - 63.2.2. to recover any losses suffered and/or incurred by any Beneficiary in connection with the Agreement on behalf of any Beneficiary.
- 63.3. Subject to clauses 63.1 and 63.2, nothing in the Agreement confers or purports to confer any rights to enforce any of its terms pursuant to the Agreement on any person who is not a Party to the Agreement.

Part 9 – Dispute and Law

64. Governing Law

64.1. The Agreement shall be governed by and interpreted in accordance with Jersey law and the Parties submit to the exclusive jurisdiction of the courts of Jersey.

65. Dispute Resolution

65.1. The Dispute Resolution Procedure shall apply to any dispute between the Parties which may arise out of or in connection with this Agreement except where this Agreement expressly provides that a matter may not be disputed and/or is to be determined in the sole and absolute discretion of the Authority.

Signature Page

This Agreement is executed by the Parties as follows:

**Signed for and on behalf of
The Supplier**

**Signed for and on behalf of
The Authority**

Signed:

Signed:

Name:

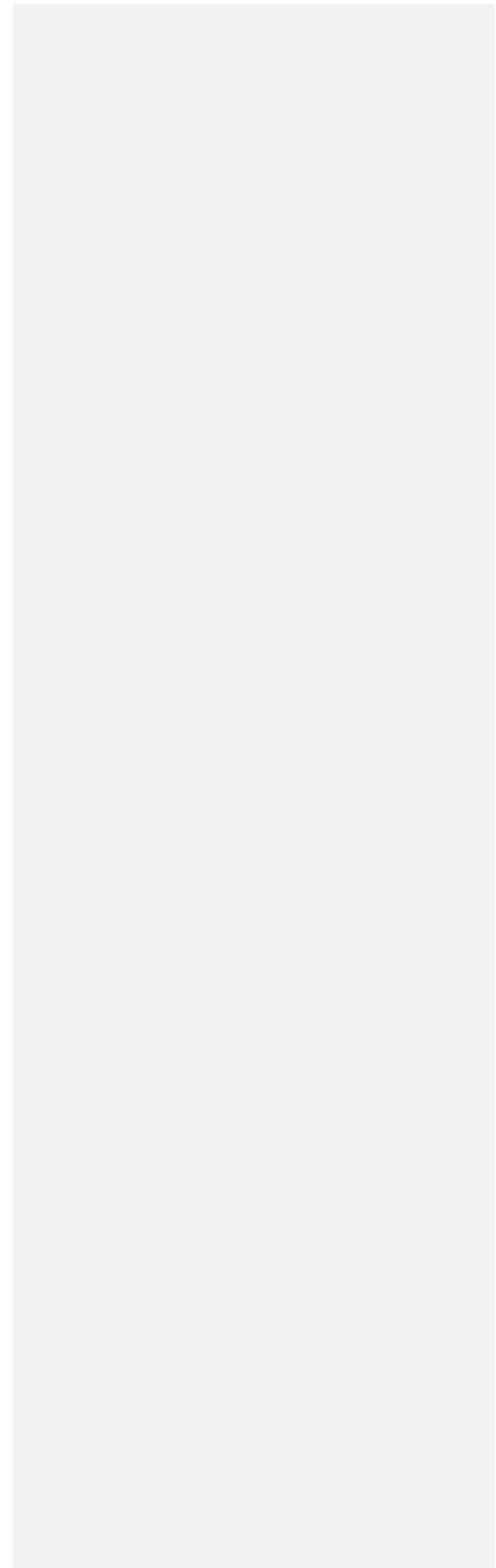
Name:

Position:

Position:

Date:

Date:



Schedule 1 – Services & Service Levels

Part A – Services

1 The Supplier shall provide the Services provided in and in accordance with this Part A of Schedule 1.

2 Commencement of service provision

2.1 The Supplier shall commence providing the Services on 01 October 2023 (the Commencement Date).

2.2 The Supplier shall cease providing the Services on 31st December 2024⁴³ (the "Expiry Date"), subject to any Extension or to earlier termination in accordance with this Agreement.

2.3 Subject to satisfactory performance by the Supplier during the Initial Term, the Authority may (at its sole discretion) extend the Agreement for a further period of up to [•] year(s).

3 Description of Services

3.1 The Services shall be as follows:

3.1.1 Agreement for the provision of Locum Doctor Agency Services

4 Performance of Services

4.1 The Supplier shall perform the Services at the location(s) provided in this paragraph 5.1 of Part A of Schedule 1:

Holt ~~Doctors~~ [Medical Recruitment](#) Limited, 4th Floor, Belle Vue Square, Broughton Road, Skipton, BO23 1FJ

5 Notice to end an Assignment of a Temporary Worker

~~4.25.1~~ [Notwithstanding any provision to the contrary in this Agreement, if the Authority wishes to end the Assignment of a Temporary Worker then, except where the Authority's rules, regulations, policies and procedures permit immediate termination, the Authority shall otherwise give the Supplier not less than \(i\) one weeks' notice in writing \(email is sufficient\) or \(ii\) the statutory minimum required by the Employment \(Jersey\) Law 2003 \(whichever is the greater\). The Authority shall indemnify and keep indemnified the Supplier against all loss, damages, costs, expenses \(including without limitation reasonable legal costs and expenses\), claims or proceedings in relation to any \(i\) failure by the Authority to give the requisite notice to the Supplier as set out in this paragraph or \(ii\) act, fault or omission of the Authority that leads to the unlawful termination of a Temporary Worker's Assignment.](#)

Part B – Service Levels

1. The Supplier shall deliver the Services to the service levels provided in this Part A of Schedule 1

Urgency of Assignment request	Timescale
Temporary Worker required to commence an Assignment within	Fulfilment of request timescale measured from the loading of the request on LMS
less than 24 hours	Maximum fulfilment period 2 hour(s)

1 to 2 Days	Maximum fulfilment period 4 hour(s)
2 to 3 Days	Maximum fulfilment period 4 hour(s)
4 Days	Maximum fulfilment period 1 day(s)
5 to 7 Days	Maximum fulfilment period 2 day(s)
Greater than 7 Days	Maximum fulfilment period 3+ day(s)

The Contractor shall adhere to the following Key Performance Indicators (**KPI**)

Key Performance Indicators:		
Category	Key Performance Indicator	Performance Measure
Use of Rate Card	Use of rate card for determining rate of pay set out in Schedule 3	85% conformance measured over a single month. 15% as per break glass
Provision of locum doctor	Notifying the Authority where a confirmed booking of the locum doctor needs to be cancelled (with or without substitution)	100 percent within 4 hours
Provision of locum doctor	Number of CVs rejected prior to interview	No more than 50%
Provision of locum doctor	Bookings responded to within agreed timescales (including inability to supply)	100%
Provision of locum doctor	Grade requested versus grade provided	100%. Zero tolerance.
Sustainable Business Levels	Fill rate: Minimum of 95% "Hard to Fill" Fill Rate: Minimum of 85%	Equal to or greater than 94% of specified fill rates
Sustainable Business Levels	Cancellation rate less than 10%	Equal to or less than 10% of all booked staff
Service availability	24 hours a day, 7 days a week, 365 days a year	98%
Complaints	Number of complaints received	Less than 1% per annum
Complaints	Acknowledgement of complaints	100 percent of complaints acknowledged within 3 days of receipt of the complaint on the first working day.
Complaints	Make good/resolve the complaint, oversight or omission	100 percent within 15 Working days of receipt of the complaint on the first

		working day, unless the nature of the complaint, oversight or omission requires additional investigation
Policy and Legislation	Compliance with relevant policy and legislation	100%
Safeguarding and Employment Checks	Relevant Safeguarding and Employment Checks (as described in Schedule 4 of the Sub-Contractor Agreement) conducted on locum doctors prior to Introduction to the Authority (unless confirmation from Authority stating otherwise)	100%
Checklists	Provision of Assignment Checklist (if applicable)	100%
FOI	Transfer to the Contracting Authority all FOI requests within 2 Working Day of receipt.	100%
FOI	Provide a copy of all Information the Contracting Authority requires to respond to an FOI within 5 Working Days; or as agreed with the Authority	100%
Pricing	Compliance to Charge Rates and Commission Rates (unless prior approval by the Authority)	100%. Zero tolerance.
Invoicing	Reimbursement of overcharged amounts	100% within 7 Days of notification receipt.
Contract Management	Attendance at regular review meetings further to the terms of the Agreement between the parties	100% attended.
Contract Management	Compliance with processes and procedures, as detailed in this Agreement, the Specification, and the Sub-Contractor Agreement (as applicable to the Contractor), or as further communicated to the Contractor by the Authority, for provision of locum doctors to the Authority.	100% compliance.
Payment Terms	Payment to Sub-Contractors within 30 days of invoice	100% compliance
Management information	Full KPI MI to the Authority by the 10th of each month of the Agreement	100% compliance

Schedule 2 – Particular Conditions

(Note: Relevant clause numbers are shown in brackets)

1. Mandatory Policies (clause 1.1)

The Mandatory Policies, as at the date of signature of the Agreement, are listed out below.

- Data Protection/Privacy Policy
- Business Travel Policy
- Health and Safety Policy

Copies of each of the Mandatory Policies have been provided or made available to the Supplier prior to or around the date of signature of the Agreement. The Mandatory Policies are subject to update by the Authority from time to time.

2. Alternative liability cap (if any) (clause 52.3(b))

[Note – any alternative liability cap to be set out here]

3. Public Liability insurance (clause 52.5):

Minimum of [REDACTED]

4. Professional indemnity insurance (clause 52.5):

Minimum of [REDACTED] save for claims in relation to specialist areas including, but not limited to, asbestos, pollution or contamination which shall be [REDACTED] and may be subject to an annual aggregate limit.


5. Parent company guarantee (clause 11.6):

[Note – delete if not required]

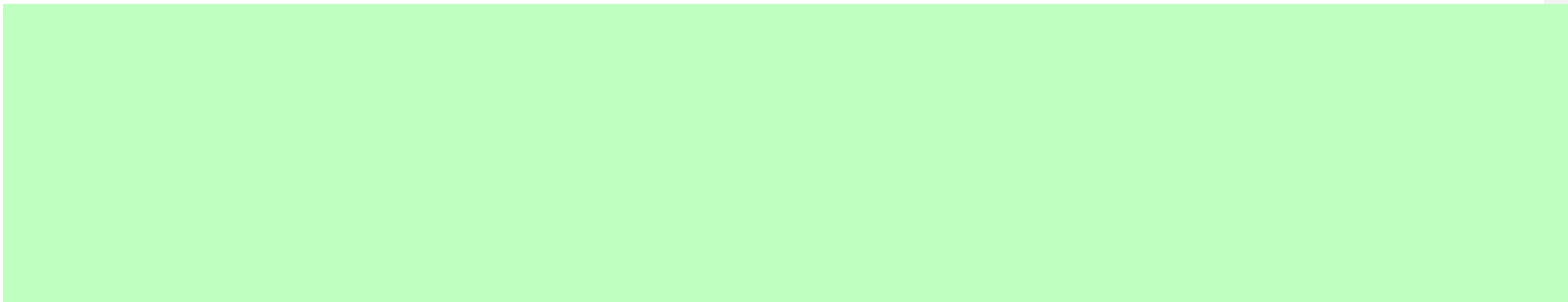
Schedule 3 – Fee & Payment Information

The costs associated with the service are as follows:





Transfer Fees



A Transfer Fee will not be applicable if the Authority gives sufficient written notice to the Contractor that it intends to continue the hire of the Temporary Worker ("Extended Assignment"), on the same terms, before it engages the agency worker other than through the Contractor (on a temp to temp, temp to bank or temp to perm basis). The Authority will be required to give the following periods of notice: four (4) weeks' notice of its intention to engage the agency worker ("Notice Period of Extended Hire").

Schedule 4 – Monitoring & Performance

Contract Review Meetings

The Authority and the Contractor shall agree to the regular monitoring and review of performance levels in accordance with the KPIs listed in Part B above. These meetings shall be Monthly, and then quarterly (or at a frequency agreed by both parties) review meetings will take place with the following agenda as a minimum:

- Review of actions from previous review meeting
- Review of KPIs and MI reports
- Issues arising/continuing over previous 3 months, including positive aspects and lessons learned
- Plans going forward, which may include known requirements coming up (holiday cover, winter pressures for example)
- Review of Sub-Contractor performance
- A review of performance management plan(s) with specific targets actionable by the Contractor

Management Information Reports

The Contractor shall provide the Authority with Management Information required by the Authority on a monthly basis and shall include as a minimum:

- All evidence to support adherence to the Key Performance Indicators
- Fill rate (including agency vs. bank)
- Compliance with rate card usage
- Cancellation rate
- Number of bookings received/filled by grade and specialty.
- Percentage of bookings filled by Contractor vs. Sub-Contractors
- Spend (year to date) by grade and specialty
- Actual rates paid at agreed capped rates; £ rates and % of spend
- Variant rates paid at other rates' £ rates and % of spend
- Fill rate by agreed compliance percentage
- Timeliness of payment to Sub-Contractor
- Volume of locum doctor complaints and details at which stage in the resolution each one sits.
- Reason codes for job
- Vacancy post number
- Response times - average length of time to fill assignment
- Response times for jobs forward - as against agreed timescales

- Split by each agency on fill rate and vacancies filled;
- Number requested vs. number forwarded
- Number forwarded vs. number filled
- Number of bookings made per Directorate, Division, band and grade, person
- Job cancelled/withdrawn by client - reasons
- CV rejected by client - reasons
- Rate escalations (with authorizer details)
- Filled and unfilled shifts
- Shifts >12 hours - MI report.
- Assignment with no time sheets - recorded as not attended in LMS portal.
- Time sheets awaiting approval - visible immediately on screen or through MI report.
- Break Glass Report

Schedule 5 – Compliance and Governance

The Contractor will ensure that the requirements of the Authority in relation to governance and compliance are adhered to during the Agreement.

The following list shows the documents that are required during the process to select a Locum Doctor:-

- Curriculum Vitae (CV) detailing all employment history of the candidate with an explanation for any unexplained breaks in employment.
- 2 references; one dated within the preceding two months ; one to cover the past 2/3 years of employment history.
- The original Full GMC Certificate and GMC annual renewal letter (If subject to IELTS (International English Language Testing System) or PLAB (Professional and Linguistics Assessments Board) details also required)
- A disclosure of current investigation or fitness to practice
- DBS (Disclosure Barring Service) application / DBS update service details Overseas police check (if applicable)
- Evidence of the candidate's right to work in the UK
- 2 Passport Photos for electronic file and ID Badge verification.
- Original Basic and Higher Qualification Certificates
- Life Support Certificate relevant to grade, specialty and patient group, such as:

BLS	Basic Life Support Advanced Life Support
ALS	Advanced Trauma Life Support Newborn Life Support
ATLS	Advanced Paediatric Life Support
NLS	Managing Obstetric Emergencies and Trauma
APLS	Basic Life Support Advanced Life Support
MOET	Advanced Trauma Life Support Newborn Life Support

Fitness to work

Your annual appraisal & revalidation information (RO) about the candidate. Annual Mandatory Training evidence
Safeguarding Certificates - level 2 & level 3 (if required)
English language assessment (where applicable)
Professional Indemnity Insurance Certificate (if applicable)

Whilst the above documents will be relevant at different stages of the fulfilment process, the Contractor warrants that **all** the documents will be provided to the Authority at least 24 hours before the start time of the related role/duty, unless confirmation in writing from the Authority states otherwise.

The Contractor is also responsible for ensuring that the Temporary worker is registered as a Medical Practitioner in Jersey before the start time of the related role/duty using the process required by the Authority. If a registration is not in place at the required time then the booking shall be cancelled and no fees shall be payable by the Authority.

Schedule 6 – Key Personnel

All Temporary Workers engaged by the Authority will have a 30 minute unpaid break from duties for every 6 hours worked.

Schedule 7 – Subcontractors Details

The following list of suppliers represent the organisations that the Authority are happy to be appointed as Sub-Contractors to this Agreement. The Contractor will endeavour to formally appoint all of the suppliers as soon as possible and will by the Commencement Date have contacted all of those listed. It is in the Contractor's interest to attempt to meet this requirement as the use of as many Sub-contractors as is practicable will help the Contractor fulfil its obligations under this Agreement. This list is subject to variation from time to time.

Commented [PR2]: To be updated

Schedule 8 – Data Protection

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Schedule, the following terms have the meanings given to them below::

“**Privacy and Data Protection Requirements**” all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, to the extent applicable, the 2018 Law, the General Data Protection Regulation (EU) 2016/679 (the “**GDPR**”), GDPR as implemented into UK law, the UK Data Protection Act 2018, the Regulation of Investigatory Powers (Jersey) Law 2005, the Electronic Communications (Jersey) Law 2000, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in Jersey or the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in Jersey, England and Wales or a European Union judicial authority; and

the terms “**Controller**”, “**Data Subject(s)**”, “**Processor**”, “**processing**”, “**personal data**” and “**personal data breach**” have the meanings given to them in the applicable Privacy and Data Protection Requirements.

2. GENERAL

2.1 Both Parties warrant that they will comply with their respective obligations under the Privacy and Data Protection Requirements and the terms of this Schedule.

2.2 For the purpose of this Agreement, both Parties warrant to undertake the obligations relevant to them as Controller or Processor as defined under the applicable Privacy and Data Protection Requirements.

2.3 The Authority ~~and the Supplier are each independent data controllers, is the [Controller / Processor]~~ and the Supplier is the [Controller / Processor].

2.4 Both Parties shall comply any registration requirements under the applicable Privacy and Data Protection Requirements and will only process personal data as necessary to fulfil the terms of this Agreement and for the duration of this Agreement.

3. NATURE OF THE DATA

3.1 The subject-matter of the processing of personal data covers the following types/categories of data:

- Name
- Address
- Contact information (e.g. phone number, email address)
- Bank details
- Insurance details
- Children
- Vulnerable adults
- Criminal Records or a person's criminal record or alleged criminal activity
- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership
- Data revealing genetic or biometric data that is processed for the purpose of uniquely identifying a natural person
- Data concerning health
- Data concerning a natural person's sex life or sexual orientation
- _____

3.2 Persons affected (data subjects)

The data subjects whose personal data will be processed includes:

- Employees
- Suppliers
- Members of the public
- _____

4. CONTROLLER OBLIGATIONS

- 4.1 The Controller warrants and represents that all instructions provided to the Processor in relation to the processing of personal data are lawful and shall as a minimum include:
- (a) The nature and purpose of the processing of the personal data;
 - (b) The types of personal data to be processed; and
 - (c) The categories of data subjects to whom the personal data relates.
- 4.2 The Controller shall only provide instructions to the Processor that are in accordance with the terms of the Agreement and this Schedule. Such instructions shall be limited to the subject matter of providing Services under the Agreement.
- 4.3 The Controller acknowledges it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to the Processor to process personal data for the purposes of Services as set out in the Agreement.
- 4.4 The Parties acknowledge and accept that processing of third country or other international organisation's resident personal data shall be lawful only if and to the extent that either:
- (a) an adequacy decision is in place under Article 45 of the GDPR or UK GDPR (as applicable);
 - (b) there are appropriate safeguards in place that meet the requirements of Article 67 of the 2018 Law; or
 - (c) the transfer falls within the exceptions set out in Schedule 3 of the 2018 Law.

5. PROCESSOR OBLIGATIONS

- 5.1 The Processor shall:
- (a) only carry out processing of personal data in accordance with the Controller's documented instructions, including where relevant for transfers of third country resident personal data or to an international organisation, in which case the Processor shall inform the Controller of that legal requirement (unless prohibited by law), and shall immediately inform the Controller if, in

the Processor's opinion, any instruction given by the Controller to the Processor infringes Privacy and Data Protection Requirements;

- (b) notify the Controller without undue delay of any requests received from a Data Subject exercising their rights under Privacy and Data Protection Requirements and, taking into account the nature of the processing, assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data Subject rights under the Privacy and Data Protection Requirements, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of personal data, or for restriction of processing or objections to processing of personal data;
- (c) take all security measures required in accordance with the Privacy and Data Protection Requirements (including where relevant, Article 21 and 22 of the 2018 Law), and at the request of the Controller provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the personal data against unauthorised or unlawful processing and accidental loss; and detect and report personal data breaches without undue delay;
- (d) where relevant for the processing of third country or other international organisation's resident personal data and taking into account the nature of the processing and the information available to the Processor, use all measures to assist the Controller in ensuring compliance with the Controller's obligations under applicable Privacy and Data Protection Requirements to:
 - i. keep personal data secure (including, where relevant, in accordance with Article 21 of the 2018 Law);
 - ii. notify personal data breaches to the Authority (including, where relevant, in accordance with Article 20 of the 2018 Law);
 - iii. advise data subjects when there has been a personal data breach (including, where relevant, in accordance with Article 20(6) of the 2018 Law);
 - iv. carry out data protection impact assessments (including, where relevant, in accordance with Article 16 of the 2018 Law); and

v. consult with the Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (including, where relevant, in accordance with Article 17 of the 2018 Law).

(e) without undue delay, inform the Controller of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the personal data transmitted, stored or otherwise processed. The Processor accepts and acknowledges that the Controller shall direct in its sole discretion, any and all steps and measures taken to remedy a breach by the Processor under the Privacy and Data Protection Requirements, including but not limited to any communications with the Authority. The Processor agrees not to act in any way upon such disclosure without the prior written consent of the Controller;

(f) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller as set out in paragraph 5 below; and

(g) in addition to the confidentiality obligations contained within the Agreement, ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5.2 On expiry or termination of the Agreement, the Processor shall immediately cease to use personal data and shall arrange for its safe return or destruction as shall be required by the Controller (unless otherwise prescribed by law).

6. AUDIT RIGHTS

6.1 Upon the Controller's reasonable request, the Processor agrees to provide the Controller with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) which will enable it to verify and monitor the Processor's compliance with its data protection and security obligations under the terms of this Agreement, within 14 days of receipt of such request, and to notify the Controller of the person within the Processor's organisation who will act as the point of contact for provision of the information required by the Controller. For this purpose, the Processor may present up-to-date attestations, reports or extracts thereof from independent bodies (e.g. external auditors, internal audit, the data protection officer, the IT security department or quality auditors) or suitable certification by way of an IT security or data protection audit;

- 6.2 Where, in the reasonable opinion of the Controller, such documentation is not sufficient in order to meet the obligations of Article 21 of the 2018 Law (or any other equivalent provisions of applicable Privacy and Data Protection Requirements), the Controller will be entitled, upon reasonable prior written notice to the Processor and upon reasonable grounds, to conduct an on-site audit of the Processor's premises used (save for domestic premises), solely to confirm compliance with its data protection and security obligations under this Schedule
- 6.3 Any audit carried out by the Controller will be conducted in a manner that does not disrupt, delay or interfere with the Processor's performance of its business. The Controller shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Agreement.
- 6.4 The Processor shall be entitled to carry out an audit of the Controller on reciprocal terms as those set out in clauses 6.1, 6.2 and 6.3.

7. USE OF SUB-PROCESSORS

- 7.1 The Processor will only engage a sub-processor with the prior consent of the Authority in writing and the Controller shall not unreasonably withhold their consent. If the Controller has a reasonable basis to object to Processor's use of a sub-processor, the Controller shall notify the Processor promptly in writing within ten (10) days after receipt of the Processor's notice. Sub-processing does in particular not include ancillary services, such as telecommunication services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment.
- 7.2 Where the Processor uses a third party and where they are acting as a sub-processor in relation to the personal data the Processor shall:
- (a) in relation to third country or other international organisation's resident personal data, enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Schedule to the extent applicable to the nature of the services provided by such sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Privacy and Data Protection Requirements;
 - (b) shall remain liable for any act or omission of a sub-processor that does not comply with the data protection obligations as set out in this Schedule; and
 - (c) where required by law, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of a sub-processor with access to personal data and give the Controller the opportunity to object to such changes.

Schedule 9 – Cyber Essentials Scheme Requirements

As at the date of this Agreement, information on Cyber Essentials Scheme can be found at: [Cyber Essentials \(gov.je\)](https://www.gov.je/cyber-essentials)

Information on the Government of Jersey's Information Security Policy can be found at: [Information security policies](#)

Schedule 10 – Change Control Template

Title of Change Change Request No
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Initiator Details Name	Agreement No	Date Raised
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Summary of Change Required (including benefits) Additional information may be supplied and attached to this form Attachments:
--

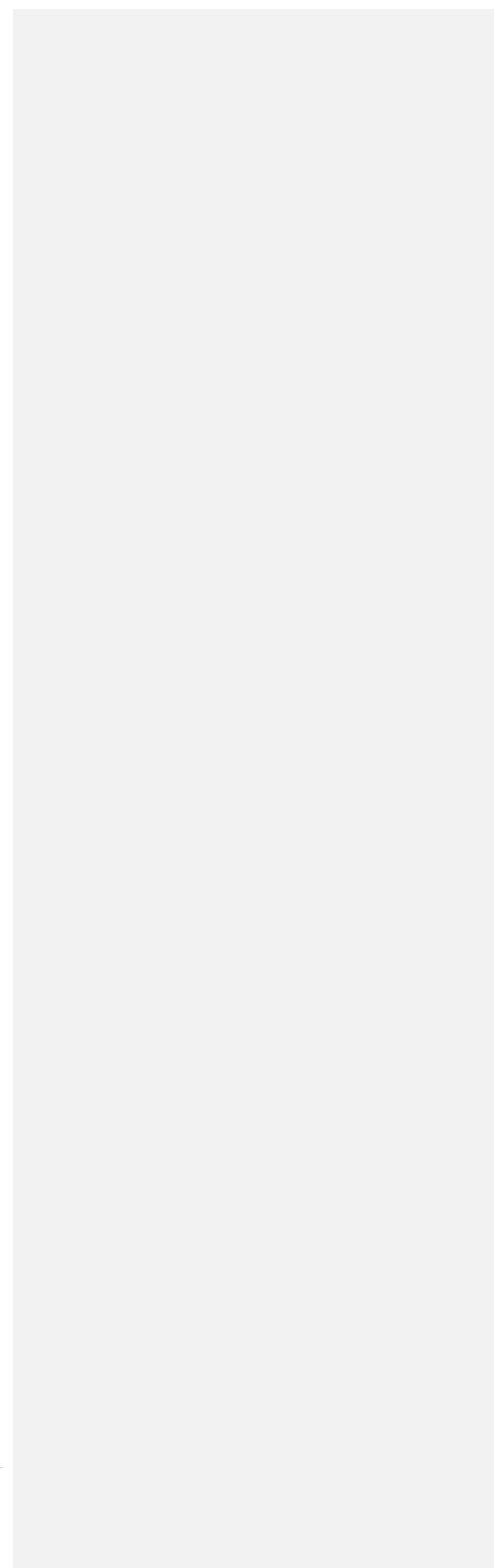
Reason for Change Type of Change	Priority (H, M, L)	Date Required
--	--------------------	---------------

Technical Impact Analysis Author	Agreement No	Date
--	--------------	------

Assumptions

Risks and likely effect of the change on the Authority resources and the provision of the Services

Title of Change Attachments
--



Cost of changes

Impact on charges

Impact on service levels

Contract changes required

Timetable for implementation of change

Authorisation for Implementation of Change

To be completed by authorised signatories of both Parties

Authority Name	Authority Title	Date
Signature		

Supplier Name	Supplier Title	Date
Signature		

Schedule 11 – Software Licencing

Software Licence Agreement - Software Portal

This **Software Licence Agreement** (known hereafter as the "Licence") is made

BETWEEN The Minster for Health and Social Services (known hereafter as "the Authority") of the one part,

AND

Holt Medical Recruitment Limited (known hereafter as "the Contractor") of the other part.

TOGETHER known hereafter as "the Parties" and individually as a "Party".

WHEREAS the Contractor itself has a perpetual and irrevocable licence to use, copy, adapt, create derivate works of, commercially exploit and sub-licence a technology platform to specifically manage the booking process of temporary staff across a range of workforce solutions, called LMS (known hereafter as "the Software").

AND WHEREAS the Authority desires to engage the Contractor to make the Software available to the Authority free of charge by way of sub-licence via the internet to enable the Parties to jointly manage the provision and supply of temporary staff by the Contractor to the Authority under a master vendor arrangement by way of the Authority using the Software to input and forward its requirements for such supplies to the Contractor.

AND WHEREAS the Contractor has submitted to the Authority a service offer for the Software and provision for the supply of temporary staff under the contract for services arrangement (Contract for Services) which the Authority has accepted.

NOW THEREFORE it is agreed that this Licence forms part of this Agreement..

1. Entire Agreement

With the exception of statements made fraudulently, the Authority and the Contractor agree that this Licence and the Contract for Services (the main body of this Agreement) is the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the Parties relating to the subject matter of the Licence.

2. Governing Law and Jurisdiction

- 2.1 This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales,
- 2.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in

connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

3. Term

3.1 This Licence will commence and take effect on **14th August 2017** (known hereafter as the "Commencement Date") or such other date as agreed in writing between the Parties.

3.2 This Licence shall continue after the Commencement Date unless it is otherwise terminated in accordance with clause 8, clause 9 or clause 11 or unless the Contract for Services between the Parties expires or is terminated for any reason in which case this Licence shall terminate contemporaneously with the expiry or termination of that Contract for Services without further action being necessary by the Parties.

4. Licence

4.1 *Subject to the terms of this Licence, the Contractor hereby grants to the Authority a non-exclusive, non-transferable right to permit Authorised Users to use the Software during the term of this Licence solely for the Authority's internal business operations of managing the provision and supply of temporary staff under the Contract for Services between the Parties. For the purposes of this Licence, "Authorised Users" shall mean those employees of the Authority who are authorised by the Authority to use the Software.*

4.2 *Neither party shall access, store, distribute or transmit any Viruses during the course of its use of the Software. For the purposes of this Licence, "Viruses" shall mean anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.*

4.3 *The Authority shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Licence:-*

4.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

4.3.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.

4.4 *The Authority shall not:-*

4.4.1 *access all or any part of the Software in order to build a similar product or service; or*

4.4.2 *use the Software to provide services to third parties; or*

4.4.3 *license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software available to any third party except Authorised Users; or*

4.4.4 *attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Licence.*

4.5 *The Authority shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify the Contractor.*

4.6 *The rights provided under this clause 4 are granted to the Authority only.*

5. Software

5.1 *The Contractor shall, during the term of this Licence, make available the Software to the Authority on and subject to the terms of this Licence.*

5.2 *The Authority acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software meet its requirements.*

5.3 In relation to the Authority's access to the Software, the Contractor may provide one or more unique identifications and passwords which the Authority must keep secure and confidential. The Authority must promptly notify the Contractor should it suspect that any such identification and password is no longer secure and confidential such that there is a risk of unauthorised access to the Software so that the Contractor may disable such access rights to the Software and issue the Authority with a new identification and password.

6. Contractor's Obligations

6.1 *The Contractor:-*

6.1.1 *does not warrant that the Authority's use of the Software will be uninterrupted or error-free; or that the Software will meet the Authority's requirements; and*

6.1.2 *is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities (for which it has no responsibility or control), including the internet, and the Authority acknowledges that the*

Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7. The Authority's Obligations

7.1 The Authority shall:-

7.1.1 ensure that Authorised Users use the Software in accordance with the terms and conditions of this Licence and shall be responsible for any Authorised User's breach of this Licence; and

7.1.2 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Authority's network connections or telecommunications links or caused by the internet.

8. Proprietary Rights

8.1 *Except as expressly stated herein, this Licence does not grant the Authority any rights to, or in, any intellectual property rights including patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Software.*

8.2 *The Contractor confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Licence. Should any such rights be withdrawn or terminated for any reason then the Contractor shall be entitled to terminate this Licence immediately and automatically upon providing notice to the Authority.*

9. Indemnity

9.1 The Authority shall defend, indemnify and hold harmless the Contractor against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Authority's use of the Software and which arises out of (1) the negligence of the Authority, or (ii) any material breach of the terms of this Licence or breach of statutory duty by the Authority, provided that:-

9.1.1 the Authority is given prompt notice of any such claim;

9.1.2 the Contractor provides reasonable co-operation to the Authority in the defence and settlement of such claim, at the Authority's expense; and

9.1.3 the Authority is given sole authority to defend or settle the claim.

9.2 *The Contractor shall defend the Authority against any claim that the Software infringes any intellectual property rights including patents, copyright, trade*

mark, database right or right of confidentiality, effective as of the effective date of this Licence and shall indemnify and hold harmless the Authority against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with a claim of such infringement, provided that:-

9.2.1 the Contractor is given prompt notice of any such claim;

9.2.2 the Authority provides reasonable co-operation to the Contractor in the defence and Settlement of such claim, at the Contractor's expense;

9.2.3 the Contractor, as between it and the Authority, is given sole authority to defend or settle the claim.

9.3 In the defence or settlement of any claim, the Contractor may procure the right for the Authority to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, immediately terminate this Licence on notice to the Authority without any additional liability or obligation to pay liquidated damages or other additional costs to the Authority.

9.4 In no event shall the Contractor be liable to the Authority to the extent that the alleged infringement is based on:-

9.4.1 a modification of the Software by anyone appointed by the Authority, its agents or Sub-Contractors ; or

9.4.2 the Authority's use of the Software in a manner contrary to the instructions given to the Authority by the Contractor; or

9.4.3 the Authorities use of the Software after notice of the alleged or actual infringement from the Contractor or any appropriate authority.

9.5 The foregoing states the Authority's sole and exclusive rights and remedies, and the Contractor's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

10. Limitation of Liability

10.1 This clause 10 sets out the entire financial liability of the Contractor to the Authority:-

10.1.1 arising under or In connection with this Licence;

10.1.2 in respect of any use made by the Authority of the Software; and

10.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Licence.

10.2 *Except as expressly and specifically provided in this Licence:-*

10.2.1 the Authority assumes sole responsibility for results obtained from the use of the Software by the Authority to input and forward its requirements to the Contractor for the supply of Temporary Workers. The Contractor shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Contractor by the Authority in connection with the Software or any actions taken by the Contractor at the Authority's direction;

10.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Licence; and

10.2.3 the Software is provided to the Authority on an "as is" and "as available" basis.

10.3 *Nothing in this Licence excludes the liability of the Contractor:-*

10.3.1 for death or personal injury caused by the Contractor's negligence; or

10.3.2 for fraud or fraudulent misrepresentation.

10.4 *Subject to clause 10.2 and clause 10.3, the Contractor shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Licence.*

10.5 The Authority acknowledges and agrees that the limitations of the Contractor's liability under this clause 10 are an essential part of this Licence and formed the basis for the Contractor agreeing to license the Software to the Authority under this Licence for no additional cost in order to allow the Parties to jointly manage the provision and supply of temporary workers to the Authority under a Contract for Services and of the Authority using the Software to input and forward its requirements for such supplies to the Contractor.

11. Term and Termination

11.1 *On termination of this Licence for any reason:*

11.1.1 all licences granted under this Licence shall immediately terminate and the Authority shall make no further use of the Software;

11.1.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

11.1.3 the Contractor will deliver a to the Authority the most recent back-up of the Authority Content in its possession provided that the Authority has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) The Contractor shall use reasonable commercial endeavours to deliver the back-up to the Authority within 90 days of termination of this Licence.. The Authority shall pay all reasonable expenses incurred by the Contractor in returning or disposing of the Authority Content; and

11.1.4 the accrued rights of the parties as at termination, or the continuation a er termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

For the purposes of this Licence, the Authority Content means: **all material including but not limited to logos, graphics, icons, image, photos, animation, video, audio music and text or other content created or supplied by the Authority to the Contractor, as well as** data inputted into the information fields of the Software by the Authority, by Authorised Users, or by the Contractor on the Authority's behalf.

11.2 *This Licence has been entered into on the date stated in clause 3;*

11.3 The Authority may terminate this Licence by convenience giving 3 months' written notice to the Contractor whilst maintaining the Contract for Services in full subject to a change in local requirements.

11.4 Where the Contractor terminates this Licence in accordance with clause 8.2 or clause 9.3, the Authority may elect to maintain the Contract for Services in full or serve notice to terminate the Contract for Services upon thirty days' written notice to the Contractor.

11.5 Where notice is provided, by either party, to terminate the Contract for Services In accordance with its terms, then subject to written agreement to the contrary by both parties, notice will be served to terminate the Licence contemporaneously.

11.6 Either party may terminate this Licence upon 30 days' written notice to the other party for a material breach if such breach has not been remedied at the expiration of such period, or if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, and where the Licence is terminated in accordance with this clause 11.4, the parties may elect to maintain the Contract for Services in full or serve notice to terminate the Contract for Services upon thirty days' written notice to the other party

12. Service Levels

The Contractor's provision of the Software under the terms of this Licence shall be required to meet the service levels ("Service Levels") agreed by the parties from the Commencement Date of the Licence.

12.1 Baseline Service Levels

The parties agree the following Service Levels for the Software:-

Key Performance Indicators	Service Levels	Target Score
Clear communication & response to queries	Timely, transparent communication with response to any queries within 2 Hours of receipt (during normal office hours)	99%
Service Availability	24 hours, 7 days a week, 365 days per year. Agreed Downtime with the written consent of the Authority's Authorized Officer will be exempt	99.9%
Management Information provided on a monthly basis	Full KPI Management Information to the Authority by the 10 th of each month	1000/o
Service Complaints	less than 1% per annum	99%
Complaint Resolution - Lead Times	Less than 2 weeks	99%
Booking Cascades - must be simultaneously cascaded in line with protected response times	Must cascade to defined Protected Response Times in Contract for Services or as agreed in writing between the parties Emergency bookings cascaded to all tiers by the Authority are exempt	100%
Temporary worker compliance fields	Maintain the mandatory fields of compliance agreed with the Authority and filter any non-compliant temporary workers. Exemptions can only be made by the Authority in writing	100%

12.2 Failure to meet Service Levels

12.2.1 If, the Contractor, persistently or intentionally fails in any material respect, to achieve any Service Level, such failure shall be considered to be a material breach of its obligations and shall entitle the Authority to terminate the Licence in accordance with the provisions of Clause 11.6 provided that neither party shall be prevented from determining that any other breach of the Contract constitutes a material breach.

12.3 SUPPORT

12.3.1 During the continuance of the Licence, the Contractor shall provide any and all of the following support and maintenance services:

12.3.1.1 Identifying and resolving faults in the Software

12.3.1.2 Ongoing routine support and maintenance of the Software

12.3.1.3 The creation and installation of all error corrections and maintenance updates to the Software that might be required from time

12.3.1.4 Provision of assistance to designated Authorised Users at the Authority in the use of the Software, including its administrative tools

12.3.2 The Contractor shall provide the services referred to in clause 12.3.1 above in accordance with the Support Level Standards listed in Appendix 1, and carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate to the tasks they are allocated.

12.3.3 The Contractor does not warrant that all errors can and will be corrected.

12.3.4 The Contractor shall not be required to provide the services listed in clause 12.3.1 in respect of any errors/problems to the Software arising from:

12.3.4.1 Third party applications, including the operating system upon which the Authority accesses the Software

12.3.4.2 The improper use or neglect of the Software by the Authority or its employees

12.3.4.3 The modification of the operating system upon which the Authority accesses the Software or its merger with any other Software.

12.4 Review

The Contractor shall attend formal, minuted review meetings ("Reviews") as required by the Authorised Officer to discuss the Authority's levels of satisfaction in respect of the provision of the Software under the terms of this Licence and, in particular, the Contractor's ability to meet (i) the Service Levels and (ii) the support and maintenance services set out in clause 12, and to agree the necessary action to address areas of dissatisfaction. The Contractor will

not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Authority and the Contractor, together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

13 Deliverables

13.1 Wherever the Authority requires the Contractor to provide a Deliverable in relation to the provision of the software under the terms of the Licence

13.1.1 such Deliverable will be delivered in the form prescribed and in accordance with a specification ("**Specification**"), as agreed between the Parties. If no such form is prescribed in the Specification, the Contractor will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Contractor by the Authority;

13.1.2 the Authority may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification as agreed between the Parties or the requirements otherwise made known to the Contractor by the Authority;

13.1.3 the Authority will not reject any Deliverable (wholly or in part) without providing written reasons to the Contractor as to why such Deliverable has been rejected;

13.1.4 any dispute as to whether the Authority has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and

13.1.5 any Deliverables which are rejected shall be replaced by the Contractor (at no extra charge to the Authority) by Deliverables which are reasonably satisfactory to the Authorised Officer.

13.2 The Contractor shall allow the Authority and any person, firm or organisation authorised by the Authority to have access to and to audit all records maintained by the Contractor in relation to the supply of the Software under the terms of this Licence. The Contractor shall assist the Authority in the conduct of the audit.

13.3 The Authority's rights under Clause 13.1 are- without prejudice to any other rights or remedies the Authority may be entitled to.

13.4 If required by the Authority, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Authority.

14 Information Governance

- 14.1 The Contractor shall, in providing the Software, abide by the Authority's reasonable policies as notified from time to time in respect of governance of its information, including but not limited to data protection, data security, data retention, the Freedom of Information Act 2000, Freedom of Information (Jersey) Law 2011, and relevant subordinate legislation, and confidentiality of the Authority information.
- 14.2 Both parties shall comply with the Data Protection Act 1998 ("DPA"), the Data Protection (Jersey) Law 2005 and any other applicable data protection legislation including but not limited to any legislation relating to data exports and any associated guidance issued by the Information Commissioner.

This Licence is hereby enacted by the signing of the Agreement to which this Licence forms a Schedule

Appendix 1 (to Schedule 7)

The Contractor will provide the Software and applicable support from LMS teams to facilitate the booking and payment of temporary workers engaged by the Authority.

Locum Management System (master vendor

model) The Software will:

- Provide password protected access to an unlimited number of users
- Be available 24 hours a day, seven days a week, reflecting the nature of the services it is designed to support. Planned downtime for maintenance will be scheduled outside the core hours of operation for the Authority and will be discussed with the Authority in advance to ensure there is no interruption to the operational requirements of the Authority.
- Be supported by LMS help desk 24/7 according to Support Level Standards and contact details below.
- Automatically escalate actions in accordance with the Authority approved hierarchy.
- Allow access for all agencies providing services to the Authority to view bookings, upload required documentation and view all necessary information.
- Agencies can log on to Software and submit an online timesheet for authorisation.
- Self billing invoices are automatically generated for each tiered agency.
- Provide Management Information, including financial and operational reports, as required by the Authority.

Training

The Contractor will provide full training to all individuals at the Authority identified during the implementation process (the Authority Authorised Users) as requiring access to LMS, and will provide training manuals (updated as required).

On-going training support will be provided via webinars (including refresher training required, training on new functionality/updates to system) as well as face to face training for new starters, from time to time, and where agreed between the Authority and the Contractor.

Support Level Standards

1. The Contractor will take all reasonable measures to ensure continuity of the Software.
2. The Software will have 99% availability where the Authority's internet is fully functional, and availability rates will be monitored and reviewed from the first date of the month following "go live" at the Authority.
3. Planned and agreed maintenance to LMS and the Software shall be excluded from the monthly availability report.
4. For the provision of assistance to designated Authorised Users at the Authority in the use of the Software, including its administrative tools, the LMS Help Desk may be contacted during the 9am and 5.30pm on 01756 704762. Outside of these hours a message may be left for the help desk team who will respond to all calls within 2 hours.

5. As regards fault reporting, the Contractor will determine the priority of any defect using the one of the following priorities:

Priority	Description	Contact Details	Target Resolution Time after receipt
1	Entire system down and inaccessible, or major components of system not operational and work cannot continue	For Priority 1 faults, the Client should contact the following number 01756 704762	6 business hours (with Client's full cooperation)
2	Operation of system severely degraded, or non business critical components of system not operational	01756 704762	Within 1 business day
3	Certain non essential features of system impaired	01756 704762	Within 5 business days
4	Errors that are cosmetic or non disabling - low impact	01756 704762	Next software release

6. For the purpose of fault reporting, a business day is between 9am and 5.30pm (UK local time) Monday to Friday, excluding UK bank holidays.

Schedule 12 – Social Value Schedule (Optional)

The Supplier shall implement the following Social Value KPIs listed in the table below, providing measurable targets and reporting on a [•] basis to the Authority. The Authority shall review the Supplier's Social Value activity on a [•] basis using the Key Performance Indicators as listed.

For guidance on how to include Social Value commitments within the contract, please refer to the [Social Value Toolkit](#).

Social Value Key Performance Indicators					
Theme (Economic/ Social/Environmental)	Outcome	Activity	Measure/KPI	Delivered By Date	Reporting Frequency

Schedule 13 – Dispute Resolution Procedure

In this Schedule 13, the following expressions shall have the following meanings:

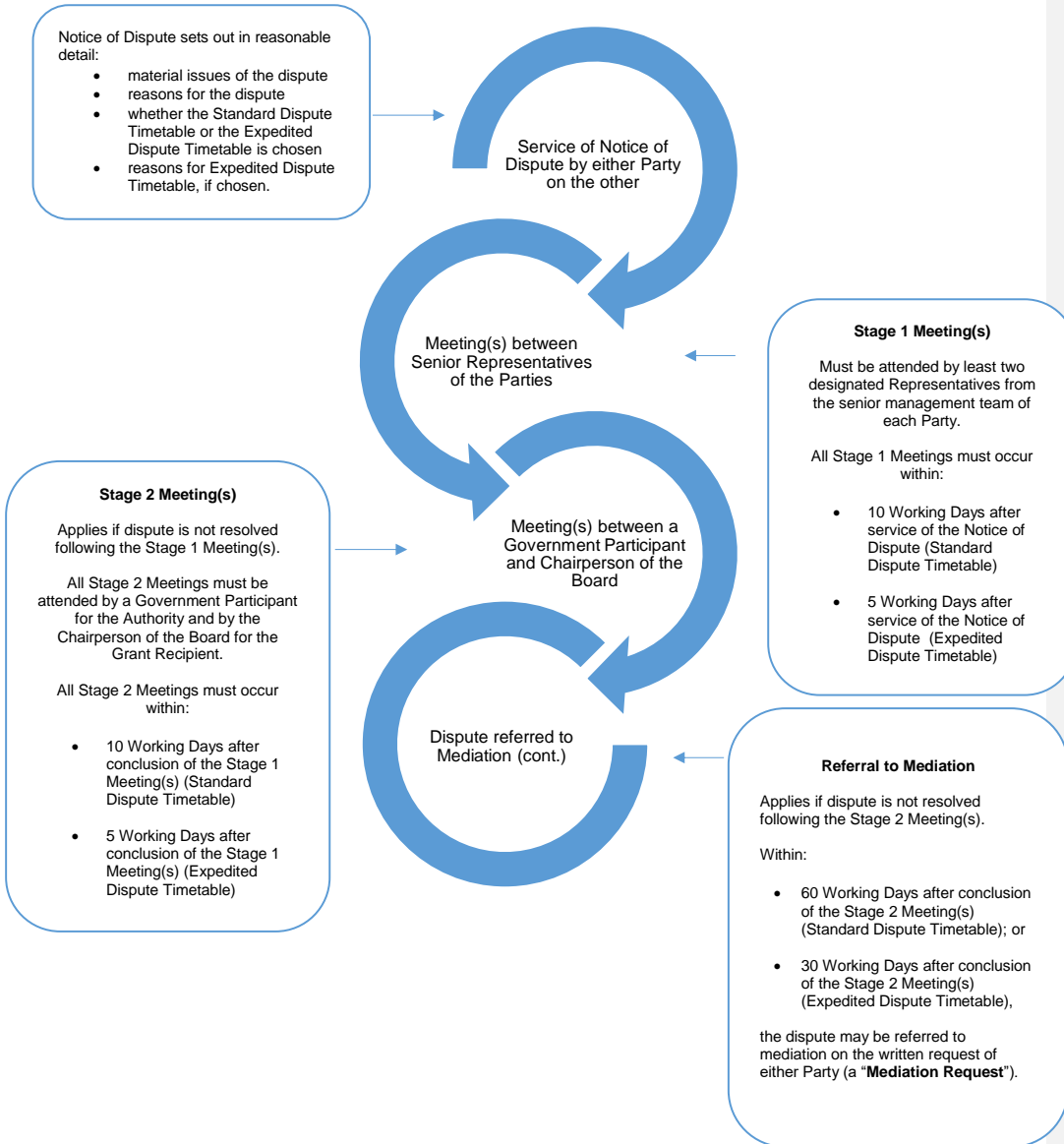
“Expedited Dispute Timetable” means the reduced timetable for the resolution of disputes set out in this Dispute Resolution Procedure.

“Notice of Dispute” means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a dispute to which this Dispute Resolution Procedure applies.

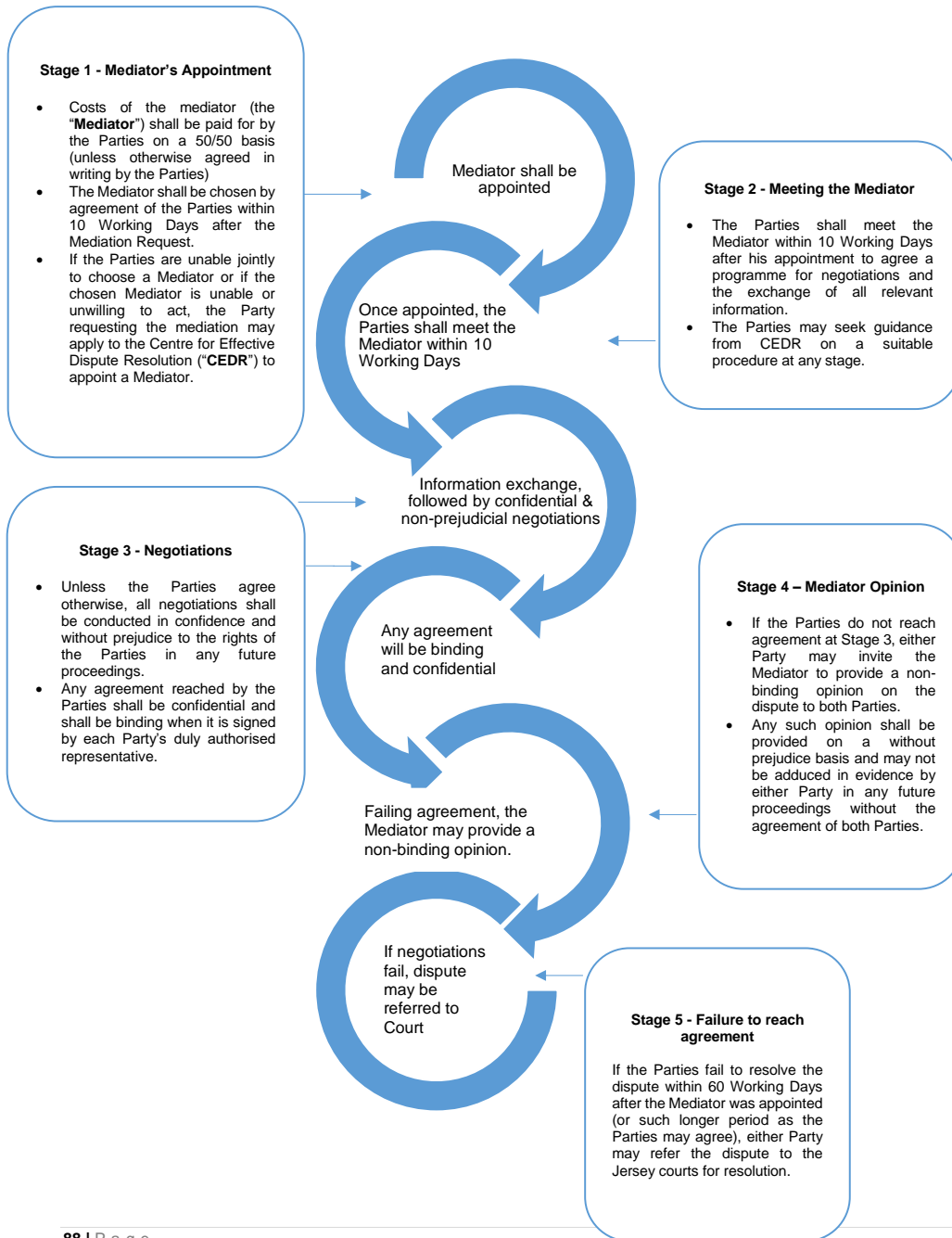
“Standard Dispute Timetable” means the standard timetable for the resolution of disputes set out in this Dispute Resolution Procedure.

- 1) The Dispute Resolution Procedure is set out in the infographics on the following pages of this Schedule 13.
- 2) The Parties shall use all reasonable endeavours to settle any dispute between them in good faith and in accordance with the Dispute Resolution Procedure.
- 3) Unless agreed otherwise in writing by the Authority, the Grant Recipient shall continue to comply with its obligations under this Agreement regardless of the nature of the dispute and notwithstanding the referral of the dispute to the Dispute Resolution Procedure.
- 4) The time periods set out in the Dispute Resolution Procedure shall apply to all disputes unless the Parties agree in writing that an alternative timetable should apply in respect of a specific dispute.
- 5) The Parties may only agree to use the Expedited Dispute Timetable in exceptional circumstances where the use of the Standard Dispute Timetable would be unreasonable, including where a delay in resolving the dispute would have a material impact on the immediate delivery of a material objective of a Grant. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days after the service of a Notice of Dispute, then the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 6) If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Procedure cannot be met or has passed, the Parties may agree in writing to extend the deadline. Any agreed Extension shall have the effect of delaying the start of the subsequent stages set out in the Dispute Resolution Procedure by the period agreed in the Extension.

DISPUTE RESOLUTION PROCEDURE



DISPUTE RESOLUTION PROCEDURE CONTINUED - MEDIATION



Document Control Table

Version	Date	Author(s) & Role(s)	Changes	Approved by Name & Role
V1.1	10/01/2023	[Redacted] Contracting Specialist	-Clause relating to Security of Confidential Information updated	Contract Amendments Approvals Board