Children’s Commissioner Contract

**CONTRACT FOR:**

**Description of contract**

**THIS CONTRACT IS DATED: date**

**BETWEEN**

1. **The Children’s Commissioner**, whosehead office is located at Sanctuary Buildings, 20 Great Smith Street, London SW1B 3BT (the "Children’s Commissioner");

Andsupplier

**2)**

**Recitals**

The Contractor has agreed to engage in xxx according to the terms and conditions of this contract

**1 DEFINITIONS & INTERPRETATION**

**1.1** In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

|  |  |  |  |
| --- | --- | --- | --- |
|  | |  | |
| “Approval” | | means the prior written consent of the Children’s Commissioner and "Approve" and "Approved" shall be construed accordingly; | |
| “Confidential Information” | | means all Personal Data and 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 but not limited to 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 and commercially sensitive information which may be regarded as the confidential information of the disclosing party; | |
| “Charges” | | means the charges raised under or in connection with this Contract from time to time, which Charges shall be calculated in a manner which is consistent with Schedule 2 (Payment Terms); | |
| “Contract” | | means this legally binding agreement between the Client and the Contractor consisting of these clauses and any attached Schedules for the provision of Services; | |
| “Commencement Date” | | means the date agreed by the Parties in writing as detailed in Clause 2, on which the provision of the Services is to start; | |
| “Contract Manager” | | means the representative appointed by the Children’s Commissioner from time to time and authorised to issue instructions to the Contractor and his/her representative – Leon Feinstein | |
| “Contractors Contract Manager” | | means the representative appointed by the Contractor from time to time – Stephen Boxford | |
| “Contract Period” | | means (subject to earlier termination in accordance with the terms of this Contract or by operation of Law) the duration of the Contract, starting on the Commencement Date, as set out in Clause 2; | |
| “Contractor Staff” | | means all persons employed or engaged by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, consultants, agents, suppliers and sub-contractors used in the performance of its obligations under this Contract; | |
| “Convictions” | | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006; | |
| “Critical Service Failure” | | means failure to meet over three (3) consecutive Milestones Dates across a 3 months period or a multiple outage of the Services totalling over two (2)Working Days; | |
| “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and  “Processing” | | shall have the same meaning as set out in the Data Protection Act 1998; | |
| “DPA” | | means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; | |
| “Documentation” | | means all documentation as:   1. is required to be supplied by the Contractor to the Children’s Commissioner under this Contract; 2. would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Children’s Commissioner to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; 3. is required by the Contractor in order to provide the Services; and/or has been or shall be generated for the purpose of providing the the Services; | |
| "Environmental Information Regulations" | | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations; | |
| "FOIA" | | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; | |
| "Force Majeure Event" | | means any event, occurrence, circumstance, matter or cause affecting the performance by either the Children’s Commissioner or the Contractor of its obligations arising from:   * 1. acts, events, omissions, happenings or non- happenings beyond the reasonable control of the affected party which prevent or materially delay the affected party from performing its obligations under this Contract;   2. riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;   3. acts of the Crown, local government or regulatory bodies;   4. fire, flood or any disaster; and   5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:      1. any industrial dispute relating to the Contractor, the Contractor Staff (including any subsets of them) or any other failure in the Contractor or the sub-contractor's supply chain; and      2. any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and   any failure of delay caused by a lack of funds. | |
| "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; | |
| “ICT Environment” | | means the Children’s Commissioner system and the  Contractor system; | |
| “Implementation Plan” | | means the plan as set out in Schedule 5 (Implementation Plan); | |
| "Information" | | has the meaning given under section 84 of the Freedom of Information Act 2000; | |
| “Intellectual Property Rights” or “IPR” | | means  a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, know-how, trade secrets and other rights in Confidential Information;  b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and  c) all other rights having equivalent or similar effect in any country or jurisdiction; | |
| “Law” | | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, bye-law, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, judgment of a relevant court of law, or directives or requirements or any regulatory body of which the Contractor is bound to comply; | |
| “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 willfully, negligently or without knowledge of its existence; | |
| “Milestone Date” | | means the target date set out against the relevant milestone in the Implementation Plan by which the milestone must be achieved; | |
| "Ministry of Justice Guidance" | | means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at [http://www.justice.gov.uk/guidance/docs/bribery-act-2010-](http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf) [guidance.pdf;](http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf) | |
| “Children’s Commissioner’s Background IPR” | | shall mean any Intellectual Property Rights vested in or licensed to the Children’s Commissioner prior to or independently of the performance by the Contractor of its obligations under the Contract; | |
| “Children’s Commissioner’s  Personal Data” | | means the personal data supplied by the Children’s Commissioner to the Contractor and for the purposes of or in connection with this Contract “Personal Data” shall have the  same meaning as set out in the Data Protection Act 1998; | |
| “Children’s Commissioner Data” | | means:   1. the data, reports, findings, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:    1. are supplied to the Contractor by or on behalf of the Children’s Commissioner; and/or    2. the Contractor is required to generate, process, store or transmit pursuant to this Contract; or 2. any Personal Data for which the Children’s Commissioner is the Data Controller; | |
| “Children’s Commissioner Software” | | means software which is owned by or licensed to the Children’s Commissioner, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor software; | |
| “Children’s Commissioner Marks” | | means the Children’s Commissioner’s trade marks (whether  registered or not), logos and brands pertinent to this Contract; | |
| “Children’s Commissioner Branding Guidance” | | means the Children’s Commissioner's guidance in relation to the use of branding as set out in Annex A; | |
| “Children’s Commissioner House Style Guidance” | | means the Children’s Commissioner's house style guidance as set out in Annex B; | |
| “Party” | | means the Children’s Commissioner or the Contractor and “Parties” shall mean both of them; | |
| “Persistent Service Failure” | | means:  a) any failure for two (2) or more consecutive months in either Services availability or individual incident failure occurring twice in any six (6) months period; or  b) any three (3) or more failures by the Contractor to meet the Service Levels (whether the failures relate to the same or different Service Level(s) in relation to this Contract in any rolling period of twelve (12) months; | |
| "Prohibited Act" | | means:   1. to directly or indirectly offer, promise or give any person working for or engaged by the Children’s Commissioner a financial or other advantage to: 2. induce that person to perform improperly a relevant function or activity; or 3. reward that person for improper performance of a relevant function or activity; 4. committing any offence: 5. under the Bribery Act 2010; or 6. under legislation creating offences concerning fraud; or 7. at common law concerning fraud;   committing or attempting or conspiring to commit fraud; | |
| “Project Specific IPR” | | means:  a) Intellectual Property Rights in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or  b) IPR in or arising as a result of the performance of the Contractor’s obligations under this Contract and all updates and amendments to the same;  but shall not include the Contractor background IPR or the specially written software; | |
| "Request for Information" | | means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the FOIA or the Environmental Information Regulations; | |
| “Service Levels” | | means any service levels applicable to the provision of the Services under this Contract specified in Annex 1 to Schedule 4 (Service Levels and Performance Monitoring) and delivery to the project Milestones Dates as set out in the Implementation Plan; | |
| “Service Level Threshold” | | shall be as set out against the relevant Service Level performance criterion in Annex 1 of Schedule 4 (Service Levels and Performance Monitoring); | |
| “Services” | | means the services to be performed by the Contractor as described in Schedule 1 (Services); | |
| “Tender" | | means the tender as agreed by the Parties on 01 April 2014 a copy of which is set out in Schedule 7 (Tender); | |
| “Trade Mark” | | means a sign, including words, logos, pictures or a combination of these, which distinguishes the Services of one supplier from those of another, or as otherwise set out in the Trade Marks Act 1994, as amended from time to time; and | |
| “Working Day” | | means any Day other than a Saturday or Sunday or public holiday in England and Wales | |
|  | |  | |

**1.2** The interpretation and construction of this Contract shall be subject to the following provisions:

1. references to “Contract” mean this Contract (and includes the Schedules);
2. references to “Clauses” and “Schedules” and “Appendices” mean clauses of and schedules and appendices to this Contract;
3. references to “paragraphs” are, unless otherwise provided, references to paragraphs of the Contract Schedule in which the references are made;
4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;
6. reference to the singular include the plural and vice versa and references to any gender include all genders.

**1.3** Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of this Contract. The provisions of the Schedules and Appendices shall be binding on the Parties as if set out in full in this Contract.

**1.4** In the event and to the extent only of any conflict between any provisions of this Contract the conflict shall be resolved in accordance with the following order of precedence:

**1.4.1** the Clauses and the Glossary to this Contract;

**1.4.2** Schedules 1 to 8 inclusive and any annexes to them (but excluding Schedule 7 (Tender));

**1.4.3** Schedule 7 (Tender).

**2 COMMENCEMENT AND CONTINUATION**

**2.1** The Contract shall take effect on **date** (the “Commencement Date”) and shall expire either:

1. automatically on **date** at the end of the Initial Contract Period; or
2. where the Client elects to extend the Initial Contract Period in accordance with Clause 2.2 below, at the end of the Extension Period,

unless it is terminated earlier in accordance with the terms of this Contract or otherwise by operation of Law.

**2.2** The Children’s Commissioner may extend the duration of this Contract for a period of **12 months** from the expiry of the Initial Contract Period by giving the Contractor no less than three (3) Months' written notice.

**3 CONTRACTOR’S OBLIGATIONS**

**3.1** The Contractor shall promptly and efficiently supply and complete the Services in accordance with the Children’s Commissioner’s requirements as set out in Schedule 1 (Services).

**3.2** The Contractor shall comply with the accounting and information provisions of Schedule 2 (Charges & Payment Terms)***.***

**3.3** If the Children’s Commissioner informs the Contractor in writing that the Children’s Commissioner reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a default by the Children’s Commissioner, the Contractor shall at its own expense:

**3.3.1**  re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Children’s Commissioner; or

**3.3.2** assess the cost of remedying the failure (“the assessed cost”) and to deduct from any sums due to the Contractor the assessed cost for the period that such failure continues.

**3.4** The Contractor acknowledges and agrees that the Children’s Commissioner relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under this Contract.

**3.5** In the event that not all of the Services are delivered in accordance with Clause 3.3 or Clause 34.1 (Time of Performance) then the Children’s Commissioner shall be entitled to withhold payment of the applicable Contract Charge for any Services that were not so delivered (and in accordance with the corresponding Milestone Date, if any) until such time as the undelivered Services are satisfactorily delivered. This right shall be without prejudice to any other rights and remedies the Children’s Commissioner has under this Contract and at Law.

**3.6** The Contractor shall ensure that all Contractor Staff supplying the Services shall:

**3.6.1** deliver the Services with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services and in accordance with this Contract; and

**3.6.2** obey all lawful instructions and reasonable directions of the Children’s Commissioner and provide the Services to the reasonable satisfaction of the Children’s Commissioner.

**3.7** The Contractor shall ensure that:

1. it minimises any disruption to the Services, the ICT Environment and/or the Children’s Commissioner's operations when providing the Services;
2. ensure that any Documentation and training provided by the Contractor to the Children’s Commissioner are comprehensive, accurate and prepared in accordance with Good Industry Practice;
3. co-operate with the other suppliers and provide reasonable information (including any Documentation), advice and assistance to any other supplier to enable such other supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry date for any reason, to enable the timely transition of the Services (or any of them) to the Children’s Commissioner and/or to any replacement Contractor;
4. deliver the Services in a proportionate and efficient manner; and
5. ensure that neither it, nor any of its affiliates, embarrasses the Children’s Commissioner or otherwise brings the Children’s Commissioner into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Children’s Commissioner, regardless of whether or not such act or omission is related to the Contractor’s obligations under this Contract.

**3.8** The Contractor shall perform its obligations under this Contract in accordance with:

**a)** all applicable Law;

**b)** the Children’s Commissioner House Style Guidance; and

**c)** the Children’s Commissioner Branding Guidance.

**4 Children’s Commissioner’S OBLIGATIONS**

In consideration of the Contractor's performance of its obligations under this Contract, including the provision of the Services, the Children’s Commissioner will comply with the payment provisions of Schedule 2 (Charges & Payment Terms) provided that the Children’s Commissioner has received full and accurate information and documentation as required by Schedule 2 (Charges & Payment Terms) to be submitted by the Contractor for work completed to the satisfaction of the Children’s Commissioner.

**5 CHANGES TO REQUIREMENTS**

* 1. Children’s Commissioner shall notify the Contractor of any material change to Children’s Commissioner requirement under this Contract.
  2. The Contractor shall use its best endeavours to accommodate any changes to the needs and requirements of the Children’s Commissioner provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. Any such changes and the amount of such additional costs is to be agreed between the Parties in writing.

**6 PERFORMANCE MONITORING**

**6.1** The Contractor shall promptly comply with all reasonable requests or directions of the Contract Manager in respect of the Services.

**6.2** Unless otherwise Approved or notified by the Children’s Commissioner, the Contractor shall comply with the monitoring requirements set out in Schedule 4 (Service Levels and Performance Monitoring).

**6.3** The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Contractor’s performance of the provision of the Services against the applicable Service Levels and Milestone Dates at a level of detail sufficient to verify compliance with the Service Levels and/or Implementation Plan. The Contractor shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.

**7 CONTRACTOR’S STAFF AND SUB-CONTRACTORS**

**7.1** The Contractor shall include in its contracts with suppliers or sub-contractors engaged for the purposes of the Services a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).

**7.2** The Contractor shall take all reasonable steps to satisfy itself that the Contractor Staff are suitable in all respects to perform the Services

**7.3** The Contractor warrants in respect of all Contractor Staff that:

**7.3.1** theyhave theright to work in the UK without any additional approvals and the Contractor has copies of the original documents required to establish that right;

**7.3.2** in each case it has verified their identity and address using appropriate checks and has documentary evidence of such checks having taken place; and

**7.3.3** in each case it has verified their work history for the three years prior to the start of their employment or engagement using appropriate checks (including the taking of references) and has documentary evidence of such checks having taken place.

**7.4** The Contractor will on reasonable notice provide copies of the evidence referred to at clause 7.3 above to the Children’s Commissioner.

**7.5** The Contractor shall immediately notify the Children’s Commissioner if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Contract.

1. **INTELLECTUAL PROPERTY RIGHTS**
   1. All IPR including copyright in all the Documentation, data, reports, other documents and materials arising out of the performance by the Contractor of their duties under this Contract shall remain vested in the Children’s Commissioner. This condition shall apply during the continuance of this Contract and after its termination howsoever arising.
   2. Save as expressly granted elsewhere under this Contract the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Children’s Commissioner or its licensors, including:

###### 8.2.1 the Children’s Commissioner Background IPRs;

###### 8.2.2 in the Children’s Commissioner Data;

###### Project Specific IPR;

###### Children’s Commissioner rights’ in all authorship credit in the Documentation and reports produced as result of this Contract; and

* + 1. the Children’s Commissioner Software.
  1. Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clauses 8.1 and 8.2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
  2. **Children’s Commissioner Reports**
     1. The first edition of the report produced under this Contract shall be published by the Children’s Commissioner. If Contractor or Contractor Staff wishes to publish subsequent editions, either in full or a modified form, in journals and other publications, these must acknowledge that the original work was commissioned by the Children’s Commissioner. The following acknowledgement wording shall be used at all times: ‘This research was commissioned by the Office of the Children’s Commissioner which promotes and protects the rights of children’
     2. The Children’s Commissioner shall determine the design and layout of any editions of the report it publishes and would expect the Contractor to comply with the Children’s Commissioner’s House Style Guidance and the Children’s Commissioner’s Branding Guidance when delivering the Services under the Contract.
     3. The cover of the first edition of the report will carry the logos of (both organizations) the Children’s Commissioner and of the research team (of equal size). For the avoidance of doubt, the authorship of the report rests with the research team of the Children’s Commissioner and the authors of the report will be named on the front cover of the report. Further acknowledgement of the researchers and those involved in an advisory or contributory role will be included in the title page with their agreement.
     4. Each report will reach conclusions but any policy calls on the basis of these shall be the decision of the Children’s Commissioner. This will not prevent the Contractor or the Contractor Staff from highlighting the other outcomes of the research and every effort will be made to reach an agreement as to the messages emerging from the research.

**8.6** Each Party will at the request and reasonable expense of the other execute all such documents and do all such acts as may be reasonably necessary in order to vest in the other the rights granted to the other under this Clause 8.

* 1. The Contractor shall have no rights to use any of the Children’s Commissioner’s names, logos or trademarks or any of its reports or publications without the Approval.
  2. Where the Children’s Commissioner for the purpose of this Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Children’s Commissioner. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Children’s Commissioner of any surplus materials remaining after completion of the Services and shall dispose of them as the Children’s Commissioner may direct.
  3. **Licences granted by the Contractor:** 
     1. The Contractor hereby grants to the Children’s Commissioner, or shall procure the direct grant to the Children’s Commissioner of, a perpetual, royalty-free, irrevocable, non-exclusive licence to use:
        1. the Documentation, source code and the object code of the specially written software (including any Contractor background IPR or third party IPR that are embedded in or which are an integral part of the specially written software) which shall include the right to load, execute, interpret, store, transmit, display, copy (for the purposes of loading, execution, interpretation, storage, transmission or display), modify, adapt, enhance, reverse compile, decode and translate such specially written software;
        2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the specially written software (together the **Software Supporting Materials**).
     2. The Contractor shall:
        1. inform the Children’s Commissioner of all specially written software that constitutes a modification or enhancement to Contractor software or third party software; and
        2. deliver to the Children’s Commissioner the specially written software in both source code and object code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant milestone has been identified in an Implementation Plan and shall provide updates of the source code and of the Software Supporting Materials promptly following each new release of the specially written software, in each case on media that is reasonably acceptable to the Children’s Commissioner.
     3. The Contractor acknowledges and agrees that the ownership of the media referred to in Clause 8.9.2.2 shall vest in the Children’s Commissioner upon their receipt by the Children’s Commissioner.
     4. The Contractor hereby grants to the Children’s Commissioner a non-exclusive perpetual, transferable, irrevocable, royalty-free licence in the copyright to:
        1. do and authorise others to do any and all acts restricted by any statute or other legal means in respect of any copyright work in the United Kingdom and in all other territories in the world for the full period of time during which the copyright subsists; and
        2. exercise all rights of a similar nature as those described in Clause 8.1 above which may be conferred in respect of any copyright work by the laws from time to time in all other parts of the world.
  4. **Licence granted by the Children’s Commissioner**
     1. The Children’s Commissioner hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use [the Children’s Commissioner Software,] [the Children’s Commissioner Background IPR and] the Children’s Commissioner Data solely to the extent necessary for providing the Services in accordance with this Contract, provided that:
        1. the Contractor shall not without Approval use the licensed materials for any other purpose or for the benefit of any person other than the Children’s Commissioner.
     2. Subject to Clause 43 (Publicity and Branding), the Children’s Commissioner hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Project Specific IPR including but not limited to the right to copy, adapt, publish (including on the ICT Environment) and distribute such Project Specific IPR).
  5. **Termination of licenses**
     1. The licence granted pursuant to Clause 8.10 (Licence granted by the Children’s Commissioner) and any licence granted by the Contractor in accordance with Clause 8.9 (Licence granted by the Contractor) shall terminate automatically on the Contract expiry date and the Contractor shall:
        1. immediately cease all use of the Children’s Commissioner Software, the Children’s Commissioner Background IPR, Project Specific IPR and the Children’s Commissioner Data (as the case may be);
        2. at the discretion of the Children’s Commissioner, return or destroy documents and other tangible materials that contain any of the Children’s Commissioner Software, Project Specific IPR, the Children’s Commissioner Background IPR and the Children’s Commissioner Data, provided that if the Children’s Commissioner has not made an election within six months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Children’s Commissioner Software, the Children’s Commissioner Background IPR, Project Specific IPR and the Children’s Commissioner Data (as the case may be); and
        3. ensure, so far as reasonably practicable, that any Children’s Commissioner Software, Children’s Commissioner Background IPR, Project Specific IPR and Children’s Commissioner Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Contractor containing such Children’s Commissioner Software, Project Specific IPR, Children’s Commissioner Background IPR and/or Children’s Commissioner Data.
  6. **Moral Rights**
     1. The Contractor hereby assigns to the Children’s Commissioner the copyright and all other rights in the Contractor’s contributions for use in all Documents now known or which may be developed in future and confirms that its contributions will not infringe the copyright, or similar rights, of any third party.
     2. The Contractor shall and shall procure that the Contractor Staff agree that the Children’s Commissioner may edit, adapt, or translate Contractor or Contractor Staff contributions.
     3. The Contractor shall waive or procure a waiver from the Contractor Staff of any Moral Rights subsisting in copyright produced by the Contractor or the performance of the Contract or any uses of the Contractor’s research finding or contributions pursuant to the Contract.

**9 WARRANTY AND INDEMNITY**

**9.1** The Contractor warrants to Children’s Commissioner that the obligations of the Contractor under this Contract will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence and to such high standards of quality as it is reasonable for Children’s Commissioner to expect and in accordance with the Good Industry Practice. The Contractor acknowledges that the Children’s Commissioner will be relying upon the Contractor's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Contractor as part of this Contract. The Contractor warrants that any goods supplied by the Contractor forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.

**9.2** The Contractor warrants, represents and undertakes to the Children’s Commissioner that:

##### **9.2.1** it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under this Contract;

##### **9.2.2** this Contract is executed by a duly authorised representative of the Contractor;

**9.2.3** in entering this Contract it has not committed any fraud;

**9.2.4** in entering this Contract it has not committed or agreed to commit a Prohibited Act including any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

##### **9.2.5** this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable standards;

**9.2.6** all information, statements, warranties and representations contained in the Tender and (unless otherwise agreed) any other document which resulted in the award of this Contract to the Contractor are, as at the date hereof, true, accurate, and not misleading save as may have been specifically disclosed in writing to the Children’s Commissioner prior to the execution of this Contract; and hereafter, for the Contract Period, it undertakes that it will promptly advise the Children’s Commissioner of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

**9.3** For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Children’s Commissioner may have in respect of breach of that provision by the Contractor which constitutes a material breach.

**9.4** The Contractor acknowledges and agrees that:

##### **9.4.1** the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Children’s Commissioner into entering into it; and

##### **9.4.2** the Children’s Commissioner has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

**9.5** Neither Party excludes or limits it liability for:

##### **9.5.1** death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or;

##### **9.5.2** bribery or fraud by it or its employees; or

##### **9.5.3** breach of any obligation as to title implied by section 2 of the Supply of Goods and Services Act 1982; or

##### **9.5.4** any other liability to the extent it cannot be excluded or limited by Law.

**9.6** The Contractor shall be liable for and shall indemnify Children’s Commissioner in full and shall keep the Children’s Commissioner fully indemnified against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever caused by the Contractor’s negligence or fraudulent misrepresentation on the part of the Contractor.

**9.7** Subject to Clause 9.8, the Contractor shall be liable for and shall indemnify Children’s Commissioner against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of this Contract or otherwise through the default of the Contractor unless such breach or default is the result of the Children’s Commissioner’s negligence and provided that the Contractor’s aggregate liability (other than under Clause 9.6, which liability shall be unlimited) in contract, tort (including negligence or breach of statutory duty, misrepresentation or otherwise) or for any other common law or statutory cause of action or otherwise arising by reason of or in connection with the Contract or in relation to the indemnities contained in this Contract shall be limited to £3,000,000 in respect of any one claim with a limit of £3,000,000 in any one year.

**9.8** Subject to Clause 9.6, in no event shall either Party be liable to the other for any:

##### loss of profits;

##### loss of business;

##### loss of revenue;

##### loss of or damage to goodwill;

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

##### any indirect, special or consequential loss or damage.

**9.9** Nothing in this Clause 9 shall act to reduce or affect a Party’s general duty to mitigate its loss.

**9.10** Any deductions shall not be taken into consideration when calculating the Contractor’s liability under Clause 9.7.

**9.11** All property of the Contractor whilst on Children’s Commissioner’s premises shall be there at the risk of the Contractor and Children’s Commissioner shall accept no liability for any loss or damage howsoever occurring to it.

**9.12** The Contractor shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract in a minimum amount of £3,000,000 in respect of any one claim with a limit of £3,000,000 in any one year. The Contractor shall upon request produce to Children’s Commissioner, copies of its policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.

**9.13** The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability in relation to the performance of its obligations under this Contract.

**10 TERMINATION**

**10.1** This Contract may be terminated by either Party giving to the other Party at least thirty (30) Working Days written notice.

**10.2** In the event of any breach of this Contract by the Contractor, the Children’s Commissioner may serve a notice on the Contractor requiring the breach to be remedied within thirty (30) Working Days. If the breach has not been remedied by the expiry of the specified period or if the Contractor default is a material breach of this Contract, the Children’s Commissioner may terminate this Contract with immediate effect by notice in writing.

**10.3** Not Used

**10.4** The Children’s Commissioner may be terminate this Contract with immediate effect by notice in writing if at any time:-

**10.4.1** the Contractor passes a resolution that it be wound-up or that an application be made for an administration order or applies to enter into a voluntary arrangement with its creditors within Part I of the Insolvency Act 1986; or

**10.4.2** a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Contractor property, assets or any part thereof; or

**10.4.3** the court orders that the Contractor be wound-up or a receiver of all or any part of the other's assets be appointed; or

**10.4.4**  the Contractor is unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986; or

**10.4.5** there is a change in the legal or beneficial ownership of 50% or more of the Contractor's share capital issued at the date of this Contract or there is a change in the control of the Contractor, unless the Contractor has previously notified Children’s Commissioner in writing and the Children’s Commissioner Approved such change of control. For the purpose of this Sub-Clause 10.4.5 “Change of Control” shall be within the meaning of section 450 of the Corporation Tax Act 2010.

**10.4.6** the Contractor is convicted (or being a company, any officers or representatives of either Party are convicted) of a criminal offence related to the business or professional conduct; or

**10.4.7** the Contractor commits (or being a company, any officers or representatives of the other commit) an act of grave misconduct in the course of the business; or

**10.4.8** the Contractor fails (or being a company, any officers or representatives of either Party fail) to fulfil his/their obligations relating to the payment of social security contributions; or

**10.4.9** the Contractor fails (or being a company, any officers or representatives of either Party the fails) to fulfil his/their obligations relating to payment of taxes; or

**10.4.10** the Contractor fails (or being a company, any officers or representatives of either Party other fail) to disclose any serious misrepresentation in supplying information required by either Party in or pursuant to this Contract; or

**10.4.11** a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) calendar days; or

**10.4.12** the Contractor is in default of any duty of care or any fiduciary or statutory duty owed to the Children’s Commissioner or its agents; or

**10.4.13**  a Critical Service Failure or a Persistent Service Failure has occurred.

**10.5** Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.

**11 CONSEQUENCES OF EXPIRY OR TERMINATION**

**11.1** At the end of the Contract Period (howsoever arising), the Contractor shall:

###### 11.1.1 immediately return to the Children’s Commissioner all Children’s Commissioner Data, Documentation, reports, findings, summaries, records and any other information (whether stored electronically or otherwise) relating in whole or in part to the Services;

**11.1.2** cease to use the Children’s Commissioner Data and, at the direction of the Children’s Commissioner, provide the Children’s Commissioner and/or the replacement supplier with a complete and uncorrupted version of the Children’s Commissioner Data in electronic form in the formats and on media agreed with the Children’s Commissioner and/or the replacement supplier;

**11.1.3** except where the retention of Children’s Commissioner Data is required by Law, on the earlier of the receipt of the Children’s Commissioner's written instructions or twelve (12) Months after the Contract expiry date or date of termination of this Contract, destroy all copies of the Children’s Commissioner Data and promptly provide written confirmation to the Children’s Commissioner that the data has been destroyed;

**11.1.4** immediately deliver to the Children’s Commissioner all property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back to the Children’s Commissioner in good working order (allowance shall be made for reasonable wear and tear);

**11.1.5** return to the Children’s Commissioner any sums prepaid in respect of the Services not provided by the Contract expiry date or date of termination of this Contract (howsoever arising);

**11.1.6** co-operate fully with the Children’s Commissioner during the handover leading to termination of the Contract;and

**11.1.7** promptly provide all information concerning the provision of the Services which may reasonably be requested by the Children’s Commissioner for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Children’s Commissioner or the replacement supplier to conduct due diligence.

**11.2** Save as otherwise expressly provided in this Contract:

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

###### 11.2.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Children’s Commissioner or the Contractor under Clauses 33 (Payment), 8 (Intellectual Property Rights), 25 (Information Data Security and Protection of Personal Data), 12 (Confidentiality), 14 (Official Secrets Acts 1911 to 1989), 13 (Freedom of Information), 9 (Warranty and Indemnity), 11 (Consequences of Expiry or Termination), 37 (Prevention of Bribery and Corruption), 38 (Cumulative Remedies), 30 (Third Party Rights), 43 (Publicity & Branding) and 24 (Law and Jurisdiction) and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Contract.

**12 CONFIDENTIALITY**

**12.1** Each Party hereby warrants that:

**12.1.1** it andany person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to the other Party as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract without limit in time; and

**12.1.2** neither it norany person employed or engaged by it (in connection with this Contract) shall disclose any Confidential Information to any third party without prior written consent of the other Party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.

**12.2** The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Children’s Commissioner is treated as confidential and not disclosed (without prior Approval) or used other than for the purposes of this Contract by the Contractor Staff.

**12.3**The Contractor shall procure that the Contractor Staff or such professional advisors or consultants:

12.3.1 sign a confidentiality undertaking before commencing work in connection with this Contract; and

12.3.2 when they cease providing Services under this Contract, if requested, sign a declaration confirming that they have complied with the Children’s Commissioner’s in formation security policies and procedures (referred to in clause 25.1) and have not retained copies of any information, whether or not confidential, obtained during the course of their work under this Contract.

**12.4** The Contractor undertakes to make no reference in any advertising or other promotional material to this Contract without the Approval.

**12.5** In the event that the Contractor fails to comply with this Clause 12, the Children’s Commissioner reserves the right to terminate the Contract by notice in writing with immediate effect.

**12.6** The provisions of Clauses 12.1 to 12.5 inclusive shall not apply to any information received by one Party from the other:

**12.6.1** which is or becomes public knowledge (other than by breach of this Contract);

**12.6.2** which was in the possession of the receiving Party, without restriction as to its disclosure, before the date of receipt from the disclosing Party;

###### 12.6.3 which must be disclosed pursuant to a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 13 (Freedom of Information).

**12.7** Nothing in this Clause 12 shall be deemed or construed to prevent the Children’s Commissioner from disclosing any Confidential Information obtained from the Contractor:

**12.7.1** to any Government Department, Non-Departmental or quasi Government body or agency, central or local, provided that Children’s Commissioner has required that such information is treated as confidential by the receiving body; or

**12.7.2** to any consultant, contractor or other person engaged by the Children’s Commissioner directly in connection with this Contract, provided that such information is treated as confidential by the receiving consultant, contractor or any other person and such contractor or other person signs a confidentiality undertaking in these terms before any such disclosure; or

###### 12.7.3 for the purpose of the examination and certification of the Children’s Commissioner's accounts; or

###### 12.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Children’s Commissioner has used its resources.

**12.8** The provisions under this Clause 12 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.

**13. FREEDOM OF INFORMATION**

**13.1** The Contractor acknowledges that the Children’s Commissioner is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Children’s Commissioner to enable the Children’s Commissioner to comply with its Information disclosure obligations.

**13.2** The Contractor shall and shall procure that its sub-contractors shall:

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

**13.2.2** provide the Children’s Commissioner with a copy of all Information in its possession, or control in the form that the Children’s Commissioner requires within five (5) Working Days (or such other period as the Children’s Commissioner may specify) of the Children’s Commissioner's request; and

**13.2.3** provide all necessary assistance as reasonably requested by the Children’s Commissioner to enable the Children’s Commissioner to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

**13.3** The Children’s Commissioner shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

**13.4** In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Children’s Commissioner.

**13.5** The Contractor acknowledges that (notwithstanding the provisions of Clause 1 (Confidentiality)) the Children’s Commissioner may, acting in accordance with the Ministry of Justice’s Code, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

**13.5.1** in certain circumstances without consulting the Contractor; or

**13.5.2** following consultation with the Contractor and having taken their views into account;

provided always that where Clause 13.5.1 applies the Children’s Commissioner shall, in accordance with any recommendations of the Ministry of Justice’s Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

**13.6** The Contractor shall ensure that all Information is retained for disclosure and shall permit the Children’s Commissioner to inspect such records as requested from time to time.

**14 OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**

**14.1** The Contractor shall comply with and shall ensure that the Contractor Staff comply with, the provisions of:

**14.1.1** the Official Secrets Acts 1911 to 1989; and

**14.1.2** Section 182 of the Finance Act 1989.

**14.2** In the event that the Contractor or the Contractor Staff fail to comply with this Clause 14.2, the Children’s Commissioner reserves the right to terminate this Contract for material breach.

**15 TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**

**15.1** The Contractor shall, at no cost to the Children’s Commissioner, promptly provide such assistance and comply with such timetable as the Children’s Commissioner may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Contract. The Children’s Commissioner shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

**15.2** Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Contractor which relate to this Contract, including the Documentation and data, if any, referred to in Schedule 1 (Services).

**15.3** The Contractor undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Children’s Commissioner to ensure an orderly transfer of responsibility.

**16 AMENDMENT AND VARIATION**

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the Parties hereto. The Contractor shall comply with any formal procedures for amending or varying contracts which the Children’s Commissioner may have in place from time to time.

**17 ASSIGNMENT AND SUB-CONTRACTING**

**17.1** The Children’s Commissioner may assign, novate or transfer this Contract or any part of it.

**17.2** The Contractor shall not assign, novate or sub-contract or in any other way dispose of the Contract or any part of it without the Approval. The granting of any consent to sub-contract any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract. The Contractor shall supply to the Children’s Commissioner such information about proposed assignment, or sub-contractors as the Children’s Commissioner may reasonably require in order to enable the Children’s Commissioner to consider whether to grant Approval.

**18** **TRANSPARENCY**

**18.1** The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Children’s Commissioner shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.

**18.2** Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Children’s Commissioner to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Contract, to the general public.

**18.3** The Children’s Commissioner may consult with the Contractor to inform its decision regarding any redactions but the Children’s Commissioner shall have the final decision in its absolute discretion. The Contractor shall assist and cooperate with the Children’s Commissioner to enable the Children’s Commissioner to publish this Contract.

**19 WAIVER**

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

**20 NOTICES**

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

## 20.2 Any notice or other communication given or made by either Party to the other shall:

### 20.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service) or electronic mail confirmed by letter; and

### 20.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:

### 20.2.2.1 if delivered personally, at the time of delivery;

### 20.2.2.2 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;

### 20.2.2.3 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter.

**20.3** Each of the Parties shall give notice to the other of the change of address at the earliest opportunity but in any event within 48 hours of such change.

**21 DISPUTE RESOLUTION**

**21.1** The Parties shall resolve disputes arising out of or in connection with this Contract in accordance with provisions of Schedule 6 (Dispute Resolution Procedure).

**21.2** The Contractor shall continue to provide the Services in accordance with the terms of this Contract until a dispute has been resolved.

**21.3** The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.

**22** **RECYCLED PAPER**

The Contractor shall ensure that all paper used in the production of reports, documents and other materials arising out of the performance by the Contractor of their duties under this Contract consists of a minimum of 60% recycled content of which 75% is post-consumer waste.

**23 DISCRIMINATION**

**23.1** The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

**23.2** The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all Contractor Staff and all suppliers and sub-contractors employed in the execution of the Contract.

**24 LAW AND JURISDICTION**

This Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts.

**25 INFORMATION DATA SECURITY AND PROTECTION OF PERSONAL DATA**

**25.1** The Children’s Commissioner requires the Contractor to comply with its requirements in respect of information data security. The Contractor shall comply, and shall procure the compliance of the Contractor Staff, with the Children’s Commissioner’s information security policies, including but not limited to its:

25.1.1 Data Protection Policy;

25.1.2 Freedom of Information Policy;

25.1.3 Information Risk Management Policy;

25.1.4 Reporting policy: loss of information data and equipment

25.1.5 Data Retention and Disposal Schedule;

25.1.6 Policies regarding Government Security Classifications; and

25.1.7 Clear Desk Policy

##### **25.2** Where any Personal Data are Processed with respect to the Parties' rights and obligations under this Contract, the Parties agree that the Children’s Commissioner is the Data Controller and that the Contractor is the Data Processor.

##### **25.3** The Contractor shall:

###### 25.3.1 Process the Personal Data only in accordance with instructions from the Children’s Commissioner (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Children’s Commissioner to the Contractor during this Contract Period);

###### 25.3.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law;

###### 25.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

###### 25.3.4 take reasonable steps to ensure the reliability of any Contractor Staff who have access to the Personal Data;

###### 25.3.5 ensure that all Contractor Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in Clause 12 (Confidentiality);

**25.3.6** not Process or otherwise transfer any Personal Data outside the European Economic Area.

**25.4** The Contractor must not at any time transfer any Personal Data collected in the course of performing the Services by e-mail, or send it neither on CDs/DVD nor memory sticks. Any electronic data which is to be handed over to Children’s Commissioner must be handed over on a CD to the Contract Manager. If the Personal Data is to be stored on a laptop which leaves the premises of the Contractor then the laptop must be encrypted.

**25.5** Paper copies of Personal Data collected should similarly only be passed to Children’s Commissioner in person.

**26 FORCE MAJEURE**

#### Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure Event. However, if such Force Majeure Event prevents either Party from performing its material obligations under this Contract for a period in excess of one hundred and twenty (120) days, either Party may terminate this Contract with immediate effect by notice in writing to the other Party.

**27 Compliance**

The Contractor certifies that they and any sub-contractors they use in fulfilment of their obligations under this Contract are in full compliance with the provisions of relevant health and safety legislation, race relations and discrimination legislation, and the Human Rights Act 1998.

**28 CONTRACTOR STAFF CLEARANCE**

* 1. The Contractor shall be entirely responsible for the employment and terms of employment of the Contractor Staff employed in connection with the provision of the Services under this Contract and shall procure that the Contractor Staff complies with the Children’s Commissioner safeguarding policies.
  2. The Contractor will employ sufficient Contractor Staff to ensure that all of the Services are provided at all times and in all respects in complete conformity with the specification. This will include, but not be limited to, the Contractor providing a sufficient reserve of trained and competent Contractor Staff to provide the Services during staff holidays or absence due to sickness or voluntary absence. In relation to the Services, the Contractor shall employ only such Contractor Staff as are skilled and experienced in the duties required of them, and will ensure that every Contractor Staff is properly and sufficiently trained and instructed (at the Contractor's expense) and carries out the Services with regard to:
     1. the task or tasks that person has to perform;
     2. all relevant provisions of the Contract and the specification;
     3. all relevant policies, rules, procedures and standards of the Children’s Commissioner (including any racial discrimination and equal opportunities policies);
     4. the highest standards of safety, customer care and compliant with the national childcare standards; and
     5. the need to keep confidential all information howsoever acquired whether relating to the Children’s Commissioner or its business.
  3. The Contractor shall procure that all Contractor Staff performing any of the Services during the Contract Period who will or may in the course of their employment or engagement have access to Service users, children or other vulnerable persons:
     1. are questioned concerning their relevant Convictions; and
     2. obtain standard and enhanced disclosures from the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 including a check against the adults' barred list or the children's barred list, as appropriate before the Contractor engages the potential staff or persons in the provision of the Services. The Contractor shall take all necessary steps to procure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service including, without limitation, the Contractor being registered with the Disclosure and Barring Service (the “DBS”). For the avoidance of doubt, Contractor Staff without DBS checks cannot be involved with provision of Services for the Children’s Commissioner.
  4. The Contractor shall forward to the Children’s Commissioner upon request the results of the checks referred to in Clauses 28.3.1 and 28.3.2 and the Contractor shall procure that no person who is barred by the DBS, or discloses any relevant Convictions upon being questioned about their relevant Convictions in accordance with Clause 28.3.1, or who is found to have any relevant Convictions following receipt of standard and enhanced disclosures from the DBS in accordance with Clause 28.3.2, or who fails to obtain standard and enhanced disclosures from the DBS upon request by the Contractor in accordance with Clause 28.3.2 is employed without the Children’s Commissioner's Approval.
  5. The Contractor shall procure that the Children’s Commissioner is kept advised at all times of any Contractor Staff engaged in the provision of the Services who, subsequent to his/her commencement of the provision of the Services receives a relevant Conviction or whose previous relevant Convictions become known to the Children’s Commissioner or whose status changes with the DBS.
  6. The Contractor shall monitor the level and validity of the checks under this Clause 28 for each member of Contractor Staff.
  7. The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
  8. The Contractor shall immediately notify the Children’s Commissioner of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 28 have been met.
  9. The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service users or children or vulnerable adults.

**29** **SEVERABILITY**

If any provision of this Contract is held to be void, invalid, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality. Where such amendment is not possible, such provision shall not take effect and shall be deemed to be severed from the remainder of the Contract to the extent that the remainder of this Contract and the unaffected part of the provision shall continue to be fully enforceable.

**30**  **THIRD PARTY RIGHTS**

The Contract is not intended to create any rights of any kind whatsoever enforceable by any person who is not a party to the Contract (including any rights enforceable under the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

**31** **AUDIT**

**31.1.** The Contractor shall keep and maintain, until two years after the Contract has been completed, records to the satisfaction of the Children’s Commissioner of all expenditure which are reimbursable by the Children’s Commissioner and of the hours worked and costs incurred in connection with any of the Contractor's Staff paid for by the Children’s Commissioner on a time charge basis. The Contractor shall on request afford the Children’s Commissioner or its representatives such access to those records as may be required by the Children’s Commissioner in connection with this Contract.

**31.2** The Contractor shall provide access at all reasonable times to Children’s Commissioner’s internal auditors or other duly authorised staff or agents to inspect such documents as Children’s Commissioner considers necessary in connection with this Contract and where appropriate speak to the Contractor Staff.

**32** **HEALTH AND SAFETY**

#### Throughout the Contract Period the Contractor shall not, in the performance of its obligations under this Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

**33**  **PAYMENT**

**33.1** Unless otherwise stated in the Contract, payment of the Charges shall be made by the Children’s Commissioner within thirty (30) calendar days of receipt of valid undisputed invoices, submitted in accordance with Schedule 2 (Charges and Payment Terms), for performance of the Services to the satisfaction of the Children’s Commissioner.

##### **33.2** The Contractor shall ensure that each invoice (whether submitted electronically or in a paper form, as the Children’s Commissioner may specify):

###### 33.2.1 contains all appropriate references and a detailed breakdown of the delivered Services against the applicable due and payable Charges; and

###### 33.2.2 shows separately the VAT added to the due and payable Charges as a strictly net extra charge. The Contractor who is registered for VAT is required to issue a proper tax invoice in accordance with the relevant legislation before the Children’s Commissioner shall be required to make payment for the Services supplied in accordance with this Contract; and

###### 33.2.3 it is supported by any other documentation reasonably required by the Children’s Commissioner to substantiate that the invoice is a valid invoice.

**33.3** The Children’s Commissioner specifically reserves the right to withhold or deduct by way of set-off or otherwise due or to become due to the Contractor any monies due to the Children’s Commissioner from the Contractor, arising under the Contract or any other agreement between the Children’s Commissioner and the Contractor.

**33.4** The Children’s Commissioner shall not be liable for any Charges relating to changes to the Services or additional Services other than those issued or confirmed on the purchase order or by agreed written variations signed by the duly authorised representatives of either Party.

**33.5** No payment of or on account of the Charges shall constitute any admission by the Children’s Commissioner as to proper performance by the Contractor of its obligations.

**33.6** The Contractor shall be exclusively responsible for the discharge of any income tax in relation to its Contractor Staff or such similar liability arising out of remuneration of the performance of the Services under this Contract.

**33.7** The Contractor shall not suspend the supply of the Services for failure of the Children’s Commissioner to pay undisputed sums of money (whether in whole or in part). Interest shall be payable by the Children’s Commissioner on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended from time to time.

**33.8** The Contractor shall make any payments due to the Children’s Commissioner without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Children’s Commissioner to the Contractor.

**34**  **TIME OF PERFORMANCE**

**34.1** The Contractor shall deliver the Services to the Milestone Dates as set out in the Implementation Plan. Time for performance of the Services shall be of the essence for the purposes of this Contract. The Contractor shall provide the Services on the dates specified by the Children’s Commissioner and to deliver to the set Milestone Dates as set out in Schedule 5 (Implementation Plan). In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Children’s Commissioner may from time to time require.

**34.2** Failure by the Contractor to adhere to any provision as to time contained in the purchase order shall entitle the Children’s Commissioner at its option to terminate the Services (in whole or in part) under the Contract. The Children’s Commissioner shall be entitled to exercise its option at any time notwithstanding that it has waived any delay, unless a written extension of time has been given to the Contractor by the Children’s Commissioner and the time of any extension has not elapsed. Failure by the Children’s Commissioner to exercise its option to terminate in respect of any part of the Contract shall not be deemed to constitute a waiver with respect to any subsequent part.

**35 CONTRACTOR’S PERSONNEL**

**35.1** The Contractor shall take the steps reasonably required by the Children’s Commissioner to prevent unauthorised persons being admitted to the Children’s Commissioner premises. If the Children’s Commissioner gives the Contractor notice that any Contractor Staff is not to be admitted to or is to be removed from the premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Children’s Commissioner the Contractor shall replace any Contractor Staff removed under this Contract with another suitably qualified person and procure that any pass issued to the Contractor Staff removed is surrendered.

**35.2** If and when instructed by the Children’s Commissioner the Contractor shall give to the Children’s Commissioner a list of names and addresses of all Contractor Staff who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Children’s Commissioner may reasonably require.

**35.3** The decision of the Children’s Commissioner as to whether any Contractor Staff is to be admitted to or is to be removed from the Children’s Commissioner premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of it by this Clause shall be final and conclusive.

**35.4** The Contractor shall bear the cost of any notice, instruction or decision of the Children’s Commissioner under this Clause.

**35.5** The Contractor shall make available information for the purpose of the Contract relating to any Contractor Staff who are deemed to be key personnel. The Contractor shall not without the Approval make any changes to the key personnel referred to in this Clause.

**36 CONTRACTOR'S STATUS**

**36.1** In carrying out the Services the Contractor shall act as an independent Contractor, and as principal and not as the agent of the Children’s Commissioner, and nothing in the Contract shall create the relationship of employer and employee, principal and agent or a partnership.

**36.2** Accordingly:

**36.2.1** the Contractor shall not (and shall procure that the Contractor Staff shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Children’s Commissioner; and

**36.2.2** nothing in the Contract shall impose any liability on the Children’s Commissioner in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Children’s Commissioner to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Children’s Commissioner, its staff or agents.

## 37 PREVENTION OF BRIBERY AND CORRUPTION

#### 37.1 The Contractor shall not commit and shall procure that all Contractor Staff or any person acting on the Contractor's behalf shall not commit, in connection with this Contract, any Prohibited Act.

#### 37.2 The Contractor shall:

##### **37.2.1** in relation to this Contract, act in accordance with the Ministry of Justice Guidance;

##### **37.2.2** immediately notify the Children’s Commissioner if it suspects or becomes aware of any breach of this Clause 37;

##### **37.2.3** respond promptly to any of the Children’s Commissioner’s enquiries regarding any breach, potential breach or suspected breach of this Clause 37 and the Contractor shall co-operate with any investigation and allow the Children’s Commissioner to audit the Contractor’s books, records and any other relevant documentation in connection with the breach;

##### **37.2.4** have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Children’s Commissioner on request) to prevent it and any Contractor Staff or any person acting on the Contractor's behalf from committing a Prohibited Act and shall enforce it where appropriate.

#### 37.3 If the Contractor, the Contractor Staff or any person acting on the Contractor's behalf, in all cases whether or not acting with the Contractor's knowledge breaches this Clause 37 the Children’s Commissioner shall be entitled to terminate this Contract for material breach.

## 38 CUMULATIVE REMEDIES

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

1. **ENTIRE AGREEMENT**

## This Contract, together with other documents referred to in it constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

## Each of the Parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

1. NOT USED
2. CONTINUOUS IMPROVEMENT
   1. The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the provision of the Services in accordance with this Clause with a view to reducing the Children’s Commissioner’s costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Children’s Commissioner. As part of this obligation the Contractor shall identify and report to the Children’s Commissioner once every six (6) months:
      1. the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the provision of the Services, and those technological advances potentially available to the Contractor and the Children’s Commissioner which the Parties may wish to adopt;
      2. new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
      3. changes in business processes and ways of working that would enable the Services to be provided at lower costs and/or at greater benefits to the Children’s Commissioner; and/or
      4. changes to the ICT Environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the provision of the Services.
   2. The Contractor shall ensure that the information that it provides to the Children’s Commissioner shall be sufficient for the Children’s Commissioner to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Children’s Commissioner requests.
3. Malicious Software
   1. The Contractor shall, as an enduring obligation throughout the Contract Period use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
   2. Notwithstanding Clause 42.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Children’s Commissioner Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.
   3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 42.2 shall be borne by the Parties as follows:

**42.3.1** by the Contractor, where the Malicious Software originates from the Contractor software, the third party software supplied by the Contractor (except where the Children’s Commissioner has waived the obligation set out in Clause 42.1) or the Children’s Commissioner Data (whilst the Children’s Commissioner Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Children’s Commissioner when provided to the Contractor; and

* + 1. **42.3.2** by the Children’s Commissioner if the Malicious Software originates from the Children’s Commissioner Software (in respect of which the Children’s Commissioner has waived its obligation set out in Clause 42.1) or the Children’s Commissioner Data (whilst the Children’s Commissioner Data was under the control of the Children’s Commissioner).

1. PUBLICITY AND BRANDING
   1. The Contractor throughout the Contract Period shall not:
      1. make any press announcements or publicise this Contract in any way; or
      2. use the Children’s Commissioner's name or brand in any promotion or marketing or announcement,

without Approval (the decision of the Children’s Commissioner to Approve or not shall not be unreasonably withheld or delayed).

* 1. Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any report conclusion, products or services of the other Party.
  2. The Contractor shall take all reasonable steps to ensure that the Contractor Staff comply with Clause 43.1
  3. The Children’s Commissioner shall be entitled to publicise this Contract and any findings of any reports produced following performance of this Contract and delivery of the Services in accordance with any legal obligation upon the Children’s Commissioner.
  4. The Contractor shall not do anything or cause anything to be done, which may damage the reputation of the Children’s Commissioner or bring the Children’s Commissioner into disrepute.
  5. Any publishing materials in relation to this Contract that the Contractor produces must comply in all respects with the latest Children’s Commissioner House Style Guidance and Children’s Commissioner Branding Guidance.
  6. The Contractor shall at all times during the Contract Period on written demand fully indemnify the Children’s Commissioner against all losses, incurred by, awarded against or agreed to be paid by the Children’s Commissioner arising out of any claim or infringement or alleged infringement (including the defence of such infringement or alleged infringement) resulting from the Contractor's use of the Children’s Commissioner logo.
  7. The Parties agree that when asked, the Contractor must properly identify the Children’s Commissioner as the creator and owner of the Services and any final reports. The Contractor shall have an obligation to display the Children’s Commissioner’s logo and name on any produced reports and shall ensure that the Children’s Commissioner ownership to such reports is fully preserved.

**44**  **TRADE MARKS**

## 44.1 The Contractor shall not apply for a Trade Mark in any part of the world in respect of the Children’s Commissioner Marks or any derivative thereof nor any mark so nearly resembling them as to be likely to deceive or cause confusion, either during the Contract Period or at any time thereafter except with the Approval of the Children’s Commissioner.

## 44.2 The Contractor hereby acknowledges that title to and goodwill in Intellectual Property Rights in the Children’s Commissioner Marks vests with the Children’s Commissioner and its licensors. The Children’s Commissioner hereby grants to the Contractor a non-exclusive, non-transferable, revocable licence to use, copy and broadcast the Children’s Commissioner Marks solely to the extent necessary for the performance of the Contractor’s responsibilities hereunder during the Contract Period.

## 44.3 The Contractor shall not use the Children’s Commissioner Marks in any way which would allow them to become generic, lose their distinctiveness, become liable to mislead the public in particular as to their quality, nature or geographic origin, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Children’s Commissioner.

## 44.4 Unless otherwise specified, nothing contained in this Contract shall entitle the Contractor to use the Children’s Commissioner Marks as part of any corporate business or trading name or style of the Contractor either during or after termination of this Contract.

**45 LEGISLATIVE CHANGE**

The Contractor shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Charges as a result of change in Law.

#### IN WITNESS of which this Contract has been duly executed by the Parties.

|  |  |
| --- | --- |
| Authorised to Sign on Behalf of the **Office of the Children’s Commissioner (Children’s Commissioner)** | Authorised to Sign on Behalf of the ***Contractor*** |
| Name and Title: | Name and Title: |
|  |  |
| Signature | Signature |
| Date | Date |

**SCHEDULE 1 – SERVICES**

The following deliverables will be supplied as part of this Contract:

xxxx

**SCHEDULE 2 - CHARGES & PAYMENT TERMS**

DEFINITIONS

The following terms used in this Schedule shall have the following meaning:

|  |  |
| --- | --- |
| ["ReReimbursable Expenses" | means:  a) the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Children’s Commissioner's expenses policy current from time to time, but not including:  b) Travel will only be reimbursed where travel is not to Sanctuary Buildings (ie Children’s Commissioner meetings outside the office base)  c)subsistence expenses incurred by Contractor Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;**] and** |
| Supporting Documentation | 1. means sufficient information in writing to enable the Children’s Commissioner to reasonably to assess whether the Charges, and other sums due from the Children’s Commissioner under this Contract detailed in the information are properly payable.**]** |

GENERAL PROVISIONS

* 1. This Schedule details:
     1. the Charges for the Services under this Contract; and
     2. the payment terms/profile for the Charges;
     3. the invoicing procedure; and
     4. the procedure applicable to any adjustments of the Charges.

1. CONTRACT CHARGES
   1. The Charges which are applicable to this Contract are set out in Annex 1 of this Schedule.
   2. The Contractor acknowledges and agrees that the Charges cannot be increased during the Contract Period.
2. COSTS AND EXPENSES
   1. Except as expressly set out in paragraph 4 of this Schedule (Reimbursable Expenses) the Charges include all costs and expenses relating to the Services and/or the Contractor’s performance of its obligations under this Contract and no further amounts shall be payable by the Children’s Commissioner to the Contractor in respect of such performance, including in respect of matters such as:
   2. any incidental expenses that the Contractor incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Contractor Staff, network or data interchange costs or other telecommunications charges; or
   3. any amount for any services provided or costs incurred by the Contractor prior to the Commencement Date.
3. [REIMBURSEABLE EXPENSES
   1. The Contractor shall be entitled to be reimbursed by the Children’s Commissioner for Reimbursable Expenses (in addition to being paid the relevant Contract Charges under this Contract), provided that such Reimbursable Expenses are supported by Supporting Documentation. The Children’s Commissioner shall provide a copy of their current expenses policy to the Contractor upon request. ]

## 5 PAYMENT TERMS

**5.1** Invoices in respect of each accounting period expressed in the lawful currency of the United Kingdom, are to be submitted within five (5) Working Days of the end of the accounting period addressed to:-

**Address**

Office of the Children’s Commissioner

Sanctuary Buildings,

20 Great Smith Street,  
London.  
SW1P 3BT

**for the attention of : Anna Bogunovic**

Alternatively, the invoice can be emailed to Finance.Mailbox@childrenscommissioner.gsi.gov.uk

**5.2** Invoices must not have copies attached and shall indicate or contain the following:

(a) the Service title;

(b) the Children’s Commissioner’s contract/order number;

(c) VAT shall be shown separately;

(d) only valid VAT invoices shall be processed for payment. Any invoice which does not meet VAT criteria shall be rejected;

(e) apply (if relevant) rebates relating to the Services.

**5.3** Payment shall be made by the Children’s Commissioner to the Contractor, in the lawful currency of the United Kingdom, within thirty (30) calendar days from receipt of the undisputed invoices. Where the Services are provided for a fixed price, the Charges shall be the amount set out in the specification. The Contractor shall invoice the Children’s Commissioner for the Charges that are payable in accordance with the terms of the Contract.

### 5.4 If the Children’s Commissioner fails to pay the Contractor undisputed sums of money within thirty (30) calendar days from the receipt of a validly issued invoice the Contractor shall:

#### 5.4.1 notify the Children’s Commissioner in writing of such failure to pay and provide details of the invoice concerned;

#### 5.4.2 allow the Children’s Commissioner to make prompt payment of such undisputed sums; and

#### 5.4.3 allow the Children’s Commissioner to provide details of the grounds for why the invoice is disputed.

**5.5** Any queries regarding invoicing and progress of payments should be directed to the contacts shown at paragraph 5.1 above. Invoices attached to letters shall have the Children’s Commissioner and the address in full as above typed on the invoice.

ANNEX 1: CHARGES

**SCHEDULE 3 - KEY PERSONNEL**

**The Contractor's key personnel are:-**

**The addresses for notices referred to in Clause 20 are:**

Children’s Commissioner Contract Manager:

Address:

Office of the Children’s Commissioner

Sanctuary Buildings

Great Smith St

London SW1P 3BT

Tel: 020 7783 8330

E-mail: info.request@childrenscommissioner.gsi.gov.uk

Notices to the Contractor:

Contact name: xxx

Address: xxx

Mobile: xx**x**

E-mail: xxx@xxx

Schedule 4 - SERVICE LEVELS AND performance monitoring

1. **SCOPE**
   1. This Schedule sets out the Service Levels which the Contractor is required to achieve when delivering the Services, the mechanism by which Service Level Failures will be managed and the method by which the Contractor's performance of the Services will be monitored. This Schedule comprises:
      1. Part A: Service Levels;
      2. Part B: Performance Monitoring.

PART A

Service Levels

1. **GENERAL PROVISIONS**
   1. The Contractor’s Contract Manager shall proactively manage the Services to ensure that all Service Levels are met throughout the Contract Period.
   2. The Contractor shall provide support and advice through the Contractor’s Contract Manager, where required on matters relating to:
      1. Service availability
      2. Turnaround times /Milestone Dates delivery of all Services
      3. Customer Support; and
      4. Accurate and timely billing
   3. The Contractor accepts and acknowledges that failure to meet the Service Levels set out in this Schedule will result in rebates being issued to the Children’s Commissioner.
2. **PRINCIPAL POINTS**
   1. The objectives of the Service Levels are to:
      1. ensure that the Services are of a consistently high quality and meet the requirements of the Children’s Commissioner;
      2. provide a mechanism whereby the Children’s Commissioner can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the level of Service for which it has contracted to deliver; and
      3. incentivise the Contractor to meet the Service Levels, deliver to the Milestones Dates as set out in Schedule 5 (Implementation Plan) and to remedy any failure to meet the Service Levels expeditiously.
3. **SERVICE LEVELS AND SERVICE LEVEL FAILURES**
   1. The Contractor shall monitor its performance of each of the Services referred to in Schedule 1 and all Milestone Dates as set out in Schedule 5 (Implementation Plan) by reference to the Service Level(s) for that part of the Service and shall send the Children’s Commissioner a report detailing the level of service which was achieved in accordance with the provisions of part B of this Schedule.
   2. The Contractor shall, at all times, provide the Services in such a manner that the Service Level for each Service is achieved.
   3. In the event of a Service Level failure or failure to meet Milestone Dates or if the Contractor has reasonable grounds to believe that it will not be able to achieve Service Levels and/or Milestone Date(s), the Contractor shall:
      1. immediately notify the Children’s Commissioner in writing;
      2. immediately take all remedial action that is reasonable to mitigate the impact on the Children’s Commissioner and to rectify or prevent the Service Level failure from taking place or recurring;
      3. if action taken under 4.3.2 has not already remedied the Service Level failure and/or failure to deliver to the Milestone Dates, provide the Children’s Commissioner with a correction plan (the “Correction Plan”) within five (5) Working Days (or such other period as the Parties agree in writing) from the day the Contractor notifies the Children’s Commissioner under paragraph 4.3.1. The Contractor will set out in the Correction Plan the action that it will take to:
         1. rectify or prevent the Service Level failure and ensure timely compliance with the Milestone Dates; and
         2. prevent the Service Level failure from recurring; and
         3. obtain the Children’s Commissioner’s Approval of such Correction Plan; and
         4. carry out the Correction Plan Approved under paragraph 4.3.3.3 in accordance with its terms.
   4. Approval and implementation of any Correction Plan by the Children’s Commissioner shall not relieve the Contractor of any responsibility to achieve the Service Levels and Milestone Date(s), or remedy any failure to do so, and no estoppels or waiver shall arise from any such Approval and/or implementation.
   5. If the level of performance of the Contractor of any element of the Services during the Contract Period:
      1. fails to achieve a Service Level in respect of any element of the Service, then the Children’s Commissioner shall make a deduction from the Charges; or
      2. fails to deliver to three Milestone Dates then the Children’s Commissioner shall make a deduction from the Charges; or
      3. constitutes a Critical Service Failure, the Children’s Commissioner shall be entitled to terminate this Contract pursuant to Clause 10.4.13 and/or seek damages in addition to any Service rebates which are already payable by the Contractor to the Children’s Commissioner.

ANNEX 1 TO PART A: SERVICE LEVELS AND SERVICE rebate TABLE

|  | Service Levels | | | |
| --- | --- | --- | --- | --- |
| Service Level Performance Criterion | Response Time & Fix Time | Key Indicator | Service Level Performance Measure | Service Level Threshold |
| Accurate and timely billing of the OCC |  | Accuracy /Timelines | at least 98% at all times | [98] |
| Timely submission of update reports |  | Timelines | at least 98% at all times | [98] |
|  |  |  |  |  |

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**PART B**

**Performance Monitoring**

**1. PRINCIPAL POINTS**

1.1 This Part B provides the methodology for monitoring the Services:

1.1.1 to ensure that the Contractor is complying with the Service Levels; and

1.1.2 to ensure that the Contractor is delivering to Milestone Dates; and

1.1.3 for identifying any failures to achieve Service Levels and Milestone Dates in the performance of the Contractor and/or provision of the Services (**"Performance Monitoring System"**).

1.2 Within twenty (20) Working Days of the Commencement Date the Contractor shall provide the Children’s Commissioner with details of how the process in respect of the monitoring and reporting of Service Levels and Milestone Dates will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

1. **REPORTING OF SERVICE LEVEL FAILURES**

# The Contractor shall report all failures to achieve Service Levels, Milestone Dates and any Critical Service Failure to the Children’s Commissioner in accordance with the processes agreed in paragraph 1.2 above.

1. **PERFORMANCE MONITORING AND PERFORMANCE REVIEW**
   1. The Contractor shall provide the Children’s Commissioner with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
      1. for each Service Level, the actual performance achieved over the Service Level for the relevant period;
      2. a summary of all failures to achieve Service Levels and/or delivery to the Milestone Date(s) that occurred during that period;
      3. any Critical Service Failures and details in relation thereto;
      4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
      5. the Service rebates to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service rebates relate; and
      6. such other details as the Children’s Commissioner may reasonably require from time to time.
   2. The Parties shall attend meetings ("**Performance Review Meetings**") to discuss Service Level reports ("**Performance Monitoring Reports**") on monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Contractor and the Children’s Commissioner of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
      1. take place within one (1) week of the reports being issued by the Contractor;
      2. take place at such location and time (within normal business hours) as the Children’s Commissioner shall reasonably require unless otherwise agreed in advance;
      3. be attended by the Contractor’s Contract Manager and the Children’s Commissioner Contract Manager; and
      4. be fully minuted by the Contractor. The prepared minutes will be circulated by the Contractor to all attendees at the relevant meeting and also to the Children’s Commissioner Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Contractor’s Contract Manager and the Children’s Commissioner Contract Manager at each meeting.
   3. The Children’s Commissioner shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
   4. The Contractor shall provide to the Children’s Commissioner such supporting documentation as the Children’s Commissioner may reasonably require in order to verify the level of the performance by the Contractor and the calculations of the amount of any rebate for any specified period.

SCHEDULE 5 - IMPLEMENTATION PLAN

1. INTRODUCTION
   1. This Schedule specifies:
      1. the Implementation Plan in accordance with which the Contractor shall provide the Services

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **2.** **PERFORMANCE OF THE SERVICES AND DELIVERABLES** | | | | |
| 2.1 Implementation Plan and Milestones (including dates for completion) | | | | |
|  | | | | |
|  | | | | |
| Milestone | Deliverables | Duration | Milestone Date | Children’s Commissioner Responsibilities |
|  |  |  |  |  |
| 2.1.1 If so required by the Children’s Commissioner, the Contractor shall produce within one (1) Month of the Commencement Date a further version of the Implementation Plan (based on the above plan) in such further detail as the Children’s Commissioner may reasonably require. The Contractor shall ensure that each version of the Implementation Plan is subject to Approval. The Contractor shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation transition and/or transformation of the Services. | | | | |
| 2.1.2 The Children’s Commissioner shall have the right to require the Contractor to include any reasonable changes or provisions in each version of the Implementation Plan. | | | | |
| 2.1.3 The Contractor shall perform its obligations so as to achieve each milestone by the Milestone Date. | | | | |
|  | | | | |

SCHEDULE 6 - DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

* 1. In this Schedule 6, the following definitions shall apply:

|  |  |
| --- | --- |
| CEDR | 1. the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU; |
| Counter Notice | 1. has the meaning given to it in paragraph 5.2 of this Schedule; |
| Dispute Notice | 1. has the meaning given to it in paragraph 2.2 of this Schedule; |
| Mediation Notice | 1. has the meaning given to it in paragraph 3.1 of this Schedule; |
| Mediator | 1. the independent third party appointed in accordance with paragraph 4.2 of this Schedule. |

1. INTRODUCTION
   1. If a Dispute arises then:
      1. the representative of the Children’s Commissioner and the Contractor’s Contract Manager shall attempt in good faith to resolve the dispute; and
      2. if such attempts are not successful within a reasonable time either Party may give to the other a dispute notice.
   2. The Dispute Notice shall set out:
      1. the material particulars of the dispute;
      2. the reasons why the Party serving the dispute notice believes that the dispute has arisen; and
      3. if the Party serving the dispute notice believes that the dispute should be dealt with under the Expedited dispute timetable as set out in paragraph 2.6 of this Schedule, the reason why.
   3. Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the dispute and notwithstanding the referral of the dispute to the dispute resolution procedure.
   4. The Parties shall seek to resolve disputes:
      1. first by commercial negotiation (as prescribed in paragraph 3 of this Schedule);
      2. then by mediation (as prescribed in paragraph 4 of this Schedule); and
      3. lastly by recourse to arbitration (as prescribed in paragraph 5 of this Schedule) or litigation (in accordance with Clause 24 of this Contract (Law and Jurisdiction)).
   5. In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Children’s Commissioner.
   6. If the use of the Expedited Dispute Timetable is determined in accordance with paragraph 2.5 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
      1. in paragraph 3.1.3, ten (10) Working Days;
      2. in paragraph 4.2, ten (10) Working Days; and
      3. in paragraph 5.2, ten (10) Working Days.
   7. If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
2. COMMERCIAL NEGOTIATIONS
   1. Following the service of a Dispute Notice, the Children’s Commissioner and the Contractor shall use reasonable endeavours to resolve the dispute as soon as possible, by discussion between the Children’s Commissioner’and the Contractor

If:

* + 1. either Party is of the reasonable opinion that the resolution of a dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
    2. the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 3 of this Schedule; or
    3. the Parties have not settled the dispute in accordance with paragraph 3.1 of this Schedule within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a **Mediation Notice**) in accordance with paragraph 4 of this Schedule.

1. MEDIATION
   1. If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Contract.
   2. If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
   3. If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
   4. Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the variation as set out in Clause 16 where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.
2. ARBITRATION
   1. The Children’s Commissioner may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of paragraph 5.4 of this Schedule.
   2. Before the Contractor commences court proceedings or arbitration, it shall serve written notice on the Children’s Commissioner of its intentions and the Children’s Commissioner shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a Counter Notice) on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with paragraph 5.4 of this Schedule or be subject to the jurisdiction of the courts in accordance with Clause 24 of this Contract (Governing Law and Jurisdiction). The Contractor shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
   3. If:
      1. the Counter Notice requires the dispute to be referred to arbitration, the provisions of paragraph 5.4 of this Schedule shall apply;
      2. the Counter Notice requires the dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 24 of this Contract (Law and Jurisdiction), the dispute shall be so referred to the courts and the Contractor shall not commence arbitration proceedings;
      3. the Children’s Commissioner does not serve a Counter Notice within the fifteen (15) Working Days period referred to in paragraph 5.2 of this Schedule, the Contractor may either commence arbitration proceedings in accordance with paragraph 5.4 of this Schedule or commence court proceedings in the courts in accordance with Clause 24 of this Contract (Law and Jurisdiction) which shall (in those circumstances) have exclusive jurisdiction.
   4. In the event that any arbitration proceedings are commenced pursuant to paragraphs 5.1 to 5.3 of this Schedule, the Parties hereby confirm that:
      1. all disputes, issues or claims arising out of or in connection with this Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (**LCIA**) (subject to paragraphs 5.4.5 to 5.4.7 of this Schedule);
      2. the arbitration shall be administered by the LCIA;
      3. the LCIA procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
      4. if the Parties fail to agree the appointment of the arbitrator within ten (10) calendar days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
      5. the chair of the arbitral tribunal shall be British;
      6. the arbitration proceedings shall take place in London and in the English language; and
      7. the seat of the arbitration shall be London
3. URGENT RELIEF
   1. Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
      1. for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
      2. where compliance with paragraph 2.1 of this Schedule and/or referring the dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 8 – standards

1. **Introduction**
   1. This Schedule 8 sets out the standards with which the Contractor shall comply in its provision of the Services. Annex A to this Schedule sets out Children’s Commissioner Branding Guidance with which the Children’s Commissioner requires the Contractor and the Services to comply and Annex B sets out Children’s Commissioner House Style Guidance with which the Children’s Commissioner requires the Contractor and the Services to comply. If Contractor is producing reports Annex C to this Schedule will also need to be complied in the delivery of the Services.

**Annex A**



**Annex B**

