

DATED [x]2018

Contract for the operation of the Donor Conceived Register (DCR)

between

HUMAN FERTILISATION AND EMBRYOLOGY AUTHORITY

and

SUPPLIER

CONTENTS

CLAUSE

1.	Definitions and Interpretation.....	1
2.	Term.....	8
3.	Extending the initial term	8
4.	Due diligence and Supplier's warranty	8
5.	Supply of services.....	10
6.	KPIs	10
7.	Service standards	10
8.	Compliance	10
9.	Payment.....	11
10.	Key personnel.....	13
11.	Other personnel used to provide the services.....	13
12.	Contract management, Reporting and meetings.....	15
13.	Monitoring	15
14.	Change control, benchmarking and continuous improvement	15
15.	Dispute resolution	16
16.	Sub-Contracting and assignment	17
17.	Indemnities.....	18
18.	Limitation of liability.....	18
19.	Insurance	19
20.	Freedom of information.....	20
21.	Data protection	20
22.	Confidentiality	21
23.	Audit.....	22
24.	Intellectual property	24
25.	Prohibition on Offering Tracing Services.....	27
26.	Termination for breach.....	24
27.	Termination on notice	25
28.	Force majeure.....	25
29.	Prevention of bribery.....	26
30.	Consequences of termination.....	28
31.	Waiver.....	29
32.	Rights and remedies.....	29
33.	Severability	29
34.	Partnership or agency.....	30
35.	Third party rights	30
36.	Publicity.....	30
37.	Notices	30
38.	Entire agreement	31
39.	Counterparts	31
40.	Governing law.....	31
41.	Jurisdiction	31

SCHEDULE

SCHEDULE 1	SPECIFICATION	33
SCHEDULE 2	PERFORMANCE REGIME.....	36
Part 1.	KPIs	36
1.	The KPIs	36
Part 2.	Consistent failure	38
1.	Consistent failure	38
SCHEDULE 3	SUPPLIER'S TENDER	39
SCHEDULE 4	CHARGES AND PAYMENT	56
1.	Calculation of the Charges	40
2.	Charges based on a fixed price.....	40
3.	Cap on contract value.....	56
4.	Invoices.....	57
5.	Termination Payment Default	57
SCHEDULE 5	CONTRACT MANAGEMENT.....	58
1.	Authorised representatives	58
2.	The Supplier's initial Authorised Representative and Key Personnel	58
3.	Reports	43
SCHEDULE 6	CHANGE CONTROL	44
1.	General principles.....	44
2.	Procedure	44
SCHEDULE 7	COMMERCIALLY SENSITIVE INFORMATION	46
SCHEDULE 8	INSURANCE.....	47
SCHEDULE 9	THE HFEA POLICIES.....	77
SCHEDULE 10	CONFIDENTIALITY AGREEMENT	78
SCHEDULE 11	SECTION 33A OF THE 1990 ACT	82

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) Human Fertilisation and Embryology Authority of 10 Spring Gardens, London SW1A 2BU (HFEA).
- (2) **(Supplier)**.

BACKGROUND

- (A) The HFEA sought proposals for the operation of the Donor Conceived Register (DCR) by means of a public tender exercise.
- (B) The HFEA has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

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

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that is calculated and expressed in Schedule 2).

Applicable Law: any applicable, law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the HFEA and the Supplier, the first such persons being set out in Schedule 5.

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

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of

practice issued by the relevant government department concerning the legislation.

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

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

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

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Charges: the charges which shall become due and payable by the HFEA to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Contract Value: the total value of all of the Charges in any one Contract Year, not including any deduction for unpaid or disputed invoices.

Commencement Date: the date of this agreement.

Commercially Sensitive Information: the information listed in Schedule 7 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the HFEA that, if disclosed by the HFEA, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: information in whatever form (including without limitation in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the HFEA or the Service Users, their families, relatives or other parties accessing or enquiring about the services of the HFEA (including, without limitation any medical records, notes, records of counselling or intervention sessions, and the HFEA Register Information), whether or not such information (if in anything other than oral form) is marked confidential.

Consistent Failure: shall have the meaning set out in 2 of Schedule 2.

Contract Year: a period of 12 months, from the Service Commencement Date and annually thereafter.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the General Data Protection Regulation (**GDPR**) (Regulation (EU) 2016/679) and EU Data Protection Directive 95/46/EC whilst it remains in force, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC,

the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: is defined in clause 5.3.

Dispute Resolution Procedure: the procedure set out in clause 15.

Donor: An individual who donated their eggs, sperm or embryos for treatment or research.

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

Exit Management Plan: the plan, to be agreed between the parties in accordance with clause 34 of this agreement to provide for the rights and obligations of the parties prior to and where required following termination of this agreement.

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

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

HCPC: the Health Care Professionals Council of Park House, Kennington Park Road, London, SE11 4BU

HFEA Register Information: any information, in whatever form falling within the scope of s.31 of The 1990 Act

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

Initial Term: the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

Insolvency Event: where:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company)
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (h) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

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

KPIs: the key performance indicators set out in Schedule 2.

Key Personnel: those personnel identified Schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 10.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

Management Reports: the reports to be prepared and presented by the Supplier in accordance with clause 12 and Schedule 5 to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

Median Price: in relation to the Benchmarking Exercise, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the sample of suppliers selected by the HFEA then the Median Price will be the arithmetic mean of the middle two prices.

Payment Plan: the plan for payment of the Charges as set out Schedule 4 .

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the HFEA a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.

Remediation Notice: a notice served by the HFEA in accordance with clause 26.1(a).

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

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

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

Service Commencement Date: means 1 April 2018

Service Users: individuals to whom the Services have been or may be provided, including current and past users of the Services.

Services: the services to be delivered by or on behalf of the Supplier under this agreement.

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services or Self-Funded Services from that third party.

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

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

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 3.

Support Workers: employees, staff, other worker, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the direct provision of the Services to the Service Users.

Target KPI: the minimum level of performance for a KPI which is required by the HFEA as set out against the relevant KPI in Schedule 2.

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

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

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

Termination Payment Default: is defined in Schedule 4, paragraph 5.

The 1990 Act: the Human Fertilisation and Embryology Act 1990 as amended from time to time

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the agreement;
- (b) Schedule 1 to this agreement;
- (c) the remaining schedules to this agreement other than Schedule 3;
- (d) Schedule 3 to this agreement.

COMMENCEMENT AND DURATION

2. TERM

2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

3.1 The HFEA may extend this agreement beyond the Initial Term by a further period or a number of periods of six months each (although there shall be no limit to the total number of periods which may be allowed) (each an **Extension Period**). If the HFEA wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or current Extension Period.

3.2 If the HFEA does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 30 shall apply.

3.3 If, pursuant to clause 3.1 the HFEA gives such notice then the Term shall be extended by the Extension Period set out in the notice and shall expire at the end of that Extension Period unless further extended.

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

4.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the HFEA all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the HFEA pursuant to clause 4.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the HFEA pursuant to clause 4.1(b);
 - (d) it has raised all relevant due diligence questions with the HFEA before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the HFEA in respect of any information which is provided to the Supplier by the HFEA and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Supplier:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the HFEA prior to execution of the agreement; and
 - (b) shall promptly notify the HFEA in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the HFEA during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Supplier shall not be entitled to recover any additional costs from the HFEA which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the HFEA by the Supplier in accordance with clause 4.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the HFEA and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the HFEA or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the HFEA for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall provide the Services with effect from the Service Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the HFEA may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

6. KPIs

- 6.1 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.
- 6.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 2.
- 6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 12.

7. SERVICE STANDARDS

Without prejudice to clause 6, the Supplier shall provide the Services or procure that they are provided:

- (a) with reasonable skill and care and in accordance with the best practice prevailing in the industry from time to time;
- (b) in all respects in accordance with the HFEA's policies set out in Schedule 10; and
- (c) in accordance with all Applicable Laws, including, without prejudice to the generality of the foregoing, the 1990 Act as amended from time to time.

8. COMPLIANCE

- 8.1 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the HFEA's equal opportunities policy.

- 8.2 Without limiting the general obligation set out in clause 8.1, the Supplier shall (and shall procure that the Supplier's Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the HFEA's equal opportunities policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the HFEA reasonably imposes in connection with any equality obligations imposed on the HFEA at any time under applicable equality law; and
 - (b) take all necessary steps, and inform the HFEA of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
 - (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the HFEA requests so as to enable the HFEA to comply with its obligations under the Human Rights Act 1998.
 - (d) at all times comply with the provisions of the 1990 Act as amended from time to time.

CHARGES AND PAYMENT

9. PAYMENT

- (a) In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the HFEA shall pay the Charges to the Supplier.

The Supplier shall invoice the HFEA for payment of the Charges for the Services at the end of each monthly in arrears. All invoices shall be directed to HFEA's Finance department by sending them to :

Finance
Human Fertilisation and Embryology Authority
10 Spring Gardens
London
SW1A 2BU
Quoting Purchase Order number: HFEA

Or via email to:

finance@hfea.gov.uk

Quoting Purchase Order number: HFEA

- 9.2 The HFEA shall pay the Charges which have become payable within 30 days of receipt of an undisputed invoice from the Supplier.
- 9.3 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 15. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 9.4 Subject to clause 9.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 9.5 The Charges stated in this contract are inclusive of VAT. The Supplier shall indemnify the HFEA against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the HFEA at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 9.6 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the HFEA pursuant to this agreement. Such records shall be retained for inspection by the HFEA for 6 years from the end of the Contract Year to which the records relate.
- 9.7 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 9.8 The HFEA may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this

agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the HFEA.

- 9.9 If the HFEA wishes to set off any amount owed by the Supplier to the HFEA against any amount due to the Supplier pursuant to clause 9.9 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the HFEA's reasons for withholding or retaining the relevant Charges.
- 9.10 The Supplier shall make any payments due to the HFEA without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the HFEA to the Supplier.

STAFF

10. KEY PERSONNEL

- 10.1 Each party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 10.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the HFEA;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the HFEA's satisfaction;
 - (d) the person resigns from their employment with the Supplier or moves to another role within the Supplier; or
 - (e) the Supplier obtains the prior written consent of the HFEA.
- 10.3 In the event that either party replaces a member of the Key Personnel, any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the HFEA becoming aware of the role becoming vacant.

11. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 11.1 At all times, the Supplier shall ensure that:
- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Supplier's Personnel comply with all of the HFEA's policies set out at schedule 10 as may be updated or amended from time to time by the Authority.
- 11.2 The HFEA is entitled to request that the Supplier shall replace any of the Supplier's Personnel who do not comply with any such policies in accordance with clause 11.1. (d) above, or if they otherwise present a security threat.
- 11.3 The Supplier shall replace any of the Supplier's Personnel who the HFEA reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 11.4 The Supplier shall maintain up to date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the HFEA as the HFEA reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide those records in compliance with the applicable Data Protection Legislation.
- 11.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 11.6 The Supplier shall ensure that all Supplier Personnel are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service and shall monitor the level and validity of the checks under this clause 10.6 for each member of staff.
- 11.7 The Supplier shall not employ or use the services of any person who is barred from or whose previous conduct or records indicate that he or she would not be suitable to carry out the Services or who may otherwise present a risk to Service Users.

12. CONTRACT MANAGEMENT, REPORTING AND MEETINGS

- 12.1 The Supplier shall provide the management reports in the form and at the intervals set out in Schedule 5.
- 12.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 5 and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

13. MONITORING

- 13.1 The HFEA may monitor the performance of the Services by the Supplier.
- 13.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the HFEA in carrying out the monitoring referred to in clause 13.1 at no additional charge to the Authority.

14. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

- 14.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 14.2 The HFEA may conduct a Benchmarking Exercise not more than once each contract year in order to assess whether this Agreement is providing Good Value (as defined at 14.4 below).
- 14.3 The HFEA will conduct a survey of the prices for services equivalent to the Services of up to three (3) providers of services similar to those provided by the Supplier and determine the Median Price for the relevant services (the "Benchmarking Exercise").
- 14.4 The Services as a whole shall be Good Value if the Charges attributable to the Services are, having regard to the KPI's less than or equal to 10% more than the Median Price for equivalent services provided by a comparison sample.
- 14.5 In the event that the HFEA does not consider the Services or to be good value, the HFEA shall be entitled to request that the Supplier makes a proposal for changes to the Services or in order to ensure that they represent Good Value in the reasonable opinion of the HFEA, having regard to the benchmarking exercise carried out by the HFEA.
- 14.6 On receipt of the proposal from the Supplier under 15.5 the HFEA shall have the option to:

- (a) Accept the new proposal in which case the Parties shall record the change in accordance with Schedule 6;
 - (b) Reject the proposal and elect to continue to receive the Services or the Self-Funded Services on the existing basis; or
 - (c) Reject the proposal and terminate this agreement on six weeks' notice in writing to the Supplier without cost other than the Charges up to the date of such termination.
- 14.7 If the Supplier reasonably believes that the HFEA has not undertaken an appropriate benchmarking exercise, or that it has made a manifest error in determining whether the Services are Good Value, the Supplier may Dispute the benchmarking Exercise and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.
- 14.8 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the HFEA's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:
- (a) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services ;
 - (b) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 14.9 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 14.2 shall be addressed by the parties using the Change Control Procedure.

15. DISPUTE RESOLUTION

- 15.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 20 days of service of the Dispute Notice, the Dispute shall be referred to the HFEA's Director of Strategy and

Corporate Affairs (as set out at Schedule 5) and the Supplier's Chief Executive Officer who shall attempt in good faith to resolve it; and

- (c) if the HFEA's Director of Compliance and Information and the Supplier's Chief Executive Officer are for any reason unable to resolve the Dispute within 20 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 days after the date of the ADR notice.

15.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 40 which clause shall apply at all times.

16. SUB-CONTRACTING AND ASSIGNMENT

16.1 Subject to clause 16.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority.

16.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the HFEA for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the HFEA, of any such Sub-Contract on receipt of a request for such by the HFEA's Authorised Representative.

16.3 The HFEA shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the HFEA.

LIABILITY

17. INDEMNITIES

The Supplier shall indemnify and keep indemnified the HFEA against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the HFEA or its Representatives (excluding any Supplier's Personnel).

18. LIMITATION OF LIABILITY

- 18.1 Subject to clause 18.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 18.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 18.3 Subject to clause 18.5, the Supplier's total aggregate liability:
- (a) is unlimited in respect of:
 - (i) the indemnities in clause 17
 - (ii) any breach of clause 29;
 - (iii) the Supplier's wilful default; and
 - (iv) any breach of clause 21 (Data Protection)
 - (v) any breach of clause 22 (Confidentiality)
- 18.4 Subject to clause 18.5, the HFEA's maximum aggregate liability to the Supplier for all claims arising in any Contract Year (other than a failure to pay any of the Charges that are properly due and payable and for which the HFEA shall remain fully liable) shall not in any circumstances exceed the Contract Value in any one Contract Year.
- 18.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

19. INSURANCE

- 19.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;
 - employer's liability insurance with a limit of indemnity of not less than £5 million or in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
 - professional indemnity insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including: death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 19.2 The Supplier shall give the HFEA, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 19.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the HFEA may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 19.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 19.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

INFORMATION

20. FREEDOM OF INFORMATION

- 20.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the HFEA to enable the HFEA to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the HFEA all Requests for Information relating to this agreement or the HFEA that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the HFEA with a copy of all Information belonging to the Supplier or the HFEA requested in the Request For Information which is in its possession or control in the form that the HFEA requires within 2 Working Days (or such other period as the HFEA may reasonably specify) of the HFEA's request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the HFEA.
- 20.2 The Supplier acknowledges that the HFEA may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information and information relating to the procurement process leading to the award of the contract to the Supplier and about this contract) without consulting or obtaining consent from the Supplier. The HFEA shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the HFEA shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

21. DATA PROTECTION

- 21.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA or replacement GDPR legislation and both Parties shall duly observe all their obligations under the DPA and the commencement of any other data legislation such as the GDPR , which arise in connection with the agreement.

- 21.2 Notwithstanding the general obligation in clause 21.1, where the Supplier is processing Personal Data as a Data Processor for the HFEA, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- (a) provide the HFEA with such information as the HFEA may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA and GDPR;
 - (b) promptly notify the HFEA of any breach of the security measures required to be put in place pursuant to clause 21.2; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the HFEA in breach of the HFEA's obligations under the DPA and GDPR.
- 21.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

22. CONFIDENTIALITY

- 22.1 Subject to clause 21.5, the parties shall keep confidential all matters relating to this agreement, and in particular information relating to Service Users, their relatives and families and any individual coming into contact with the Supplier by reason of this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 22.2 Without prejudice to the generality of clause 22.1 above, the supplier shall not (except as strictly necessary in order to perform the Services) either before the Commencement Date or at any time after termination of the Agreement:
- (a) use any Confidential information
 - (b) make or use any Copies of Confidential Information
 - (c) disclose any Confidential Information to any person, company or other organisation whatsoever
- 22.3 The Supplier warrants that it will procure that the Supplier Personnel, the Suppliers Representatives and any Sub Contractor, its personnel and representatives sign the Authority's standard confidentiality agreement in the form set out at schedule 11
- 22.4 The Supplier warrants that it is aware of and understands the obligations placed on the Parties by s.33A of the 1990 Act and confirms that it shall not

disclose information falling within section 31 (2) of the 1990 Act the relevant sections being set out at Schedule [12] for reference. The Supplier shall be required to sign the HFEA's confidentiality agreement a copy of which is set out at schedule 11.

- 22.5 Clause 22.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 20.2 shall apply to any disclosures required under the FOIA or the EIRs;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 22.1;
 - (d) by the HFEA of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
 - (e) to enable a determination to be made under clause 15;
 - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (g) by the HFEA to any other department, office or agency of the Government; and
 - (h) by the HFEA relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 22.6 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal or confidential information of the HFEA or any Service Users are transferred to the future supplier under the guidance of the HFEA. After successful transfer, all data, documents and/or computer records must be delivered up to the HFEA or securely destroyed, including all documents and/or computer records in its possession, custody or control which relate to personal information of Service Users.

23. AUDIT

- 23.1 During the Term and for a period of 6 years after the Termination Date, the HFEA may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

- (b) to review the integrity, confidentiality and security of any data relating to the HFEA or any Service Users;
- (c) to review the Supplier's compliance with the DPA, GDPR, the FOIA, and the 1990 Act in accordance with clause 21 (Data Protection) clause 22 (Freedom of Information) clause 23 (Confidentiality) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the HFEA's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the HFEA
- (h) has used its resources;
- (i) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

- 23.2 Except where an audit is imposed on the HFEA by a regulatory body, the HFEA may not conduct an audit under this clause 23 more than twice in any calendar year.
- 23.3 The HFEA shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 23.4 Subject to the HFEA's obligations of confidentiality, the Supplier shall on demand provide the HFEA and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Supplier's Personnel.
- 23.5 The HFEA shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 23.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this

clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the HFEA for all the HFEA's reasonable costs incurred in the course of the audit.

23.7 If an audit identifies that:

- (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the HFEA about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the HFEA has overpaid any Charges, the Supplier shall pay to the HFEA the amount overpaid within 20 days of being notified by the HFEA. The HFEA may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the HFEA has underpaid any Charges, the HFEA shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the HFEA if this was due to a default by the Supplier in relation to invoicing within 20 days of notifying the Supplier.

24. INTELLECTUAL PROPERTY

24.1 In the absence of prior written agreement by the HFEA to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the HFEA on creation.

24.2 The Supplier shall indemnify the HFEA against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the HFEA's acts or omissions.

TERMINATION

25. TERMINATION FOR BREACH

- 25.1 The HFEA may terminate this agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:
- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the HFEA may only terminate this agreement under this clause 26.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the HFEA (a **Remediation Notice**) to do so;
 - (b) if a Consistent Failure has occurred;
 - (c) if a Catastrophic Failure has occurred;
 - (d) if there is an Insolvency Event.
 - (e) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010
- 25.2 The HFEA may terminate this agreement in accordance with the provisions of clause 27 and clause 28.
- 25.3 If this agreement is terminated by the HFEA for cause such termination shall be at no loss or cost to the HFEA and the Supplier hereby indemnifies the HFEA against any such losses or costs which the HFEA may suffer as a result of any such termination for cause.
- 25.4 Subject to clause 15, the Supplier may terminate this agreement in the event that the HFEA commits a Termination Payment Default by giving 30 days' written notice to the HFEA, following completion of the process set out in clause 15. In the event that the HFEA remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

26. TERMINATION ON NOTICE

- 26.1 Without affecting any other right or remedy available to it, the HFEA may terminate this agreement at any time by giving 6 weeks' written notice to the Supplier.
- 26.2 Subject to the provisions of Schedule 4, the HFEA may terminate the agreement without notice in the event that the value of payments made under the contract reaches £50,000.

27. FORCE MAJEURE

- 27.1 Subject to the remaining provisions of this clause 28, neither party to this agreement shall be liable to the other for any delay or non-performance of its

obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

- 27.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 27.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 27.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 27.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 27.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 27.7 The HFEA may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 14 Working Days.

28. PREVENTION OF BRIBERY

- 28.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 28.2 The Supplier shall not during the term of this agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the HFEA or any of the HFEA's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 28.3 The Supplier shall during the term of this agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 29.3(a) and make such records available to the HFEA on request.
- 28.4 The Supplier shall immediately notify the HFEA in writing if it becomes aware of any breach of clause 29.1 and/or clause 29.2, or has reason to believe that it has or any of the Supplier's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

28.5 If the Supplier makes a notification to the HFEA pursuant to clause 29.4, the Supplier shall respond promptly to the HFEA's enquiries, co-operate with any investigation, and allow the HFEA to audit any books, records and/or any other relevant documentation in accordance with clause 23.

28.6 If the Supplier is in Default under clause 29.1 and/or clause 29.2, the HFEA may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this agreement.

28.7 Any notice served by the HFEA under clause 29.6 shall specify the nature of the Prohibited Act, the identity of the Party who the HFEA believes has committed the Prohibited Act and the action that the HFEA has elected to take (including, where relevant, the date on which this agreement shall terminate).

29. CONSEQUENCES OF TERMINATION

29.1 The Supplier shall prepare an Exit Management Plan within 3 months of the Commencement Date and submit the Exit Management Plan to the HFEA for approval.

29.2 The Supplier shall ensure that the Exit Management Plan makes provision for the transfer of the Services to the HFEA or a Replacement Supplier and for the transfer of all data and other material belonging to the HFEA or relating to the Services (and all media of any nature containing information and data belonging to the HFEA or relating to the Services) to be delivered to the HFEA; in addition to any other reasonable conditions that the HFEA in its absolute discretion shall notify to the Supplier within 2 months of the Commencement Date.

29.3 In preparing the Exit Management Plan, the Supplier shall have regard to the HFEA's statutory obligations; having particular regard to clause 20 (Freedom of Information) clause 21 (Data Protection) and clause 23 (Confidentiality).

29.4 The HFEA and the Supplier shall use their best endeavours to agree the Exit Management Plan. In the event that the Exit Management Plan cannot be agreed between the parties, the Dispute Resolution Procedure in clause 15 shall apply.

29.5 On the termination of this agreement in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the HFEA to ensure an orderly migration of the Services to the HFEA or, at the HFEA's request, a Replacement Supplier.

- 29.6 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the HFEA before such completion) the Supplier shall procure that all data and other material belonging to the HFEA or relating to the Services (and all media of any nature containing information and data belonging to the HFEA or relating to the Services), shall be delivered to the HFEA forthwith and the Supplier's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 29.7 Any costs incurred by either party in relation to preparing or implementing the Exit Management Plan shall be borne by the HFEA and the Supplier equally.
- 29.8 The provisions of clause 6.3 (provision of records), clause 17 (Indemnities), clause 19 (Insurance), clause 20 (Freedom of Information), clause 21 (Data Protection), clause 21 (Confidentiality), clause 23 (Audit), clause 25 (prohibition on offering tracing services), clause 25 (Termination for Breach) and this clause 30 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

30. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

32. SEVERABILITY

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

provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33. PARTNERSHIP OR AGENCY

33.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

34. THIRD PARTY RIGHTS

34.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

35. PUBLICITY

The Supplier shall not:

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

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the HFEA, which shall not be unreasonably withheld or delayed.

36. NOTICES

36.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

36.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.
- (c) if sent by fax, at 9.00 am on the next Working Day after transmission.

36.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

37. ENTIRE AGREEMENT

37.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

37.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

38. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

39. GOVERNING LAW

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

40. JURISDICTION

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

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

Signed by
for and on behalf of the Human
Fertilisation and Embryology
Authority

Signed by
for and on behalf of (Supplier) Chief Executive Officer

SAMPLE

Schedule 1 Specification

1. The Requirement and Scope of the Work

This agreement establishes provision of the operation of the Donor Conceived Register (DCR). The services will be funded by the HFEA and will consist of, but are not limited to, the following:

1. Services to registrants:

- DNA testing. Registrants are charged for this service but the DCR will subsidise the cost for those who can't afford it and also fund additional testing where weak matches require confirmation
- Management of the results of DNA testing plus referral to professional counselling if needed/requested
- Advice line for registrants or people considering registering.
- A quarterly newsletter for registrants
- A private social media portal for registrants
- Invitations to attend twice yearly Registrants' Panel meetings
- Support and help from the Registrants' Panel Chair
- Follow up contact/support as long as needed/requested

2. Administration of the DCR:

- Initiatives to publicise the DCR
- Responding to media enquiries and requests from researchers
- Supporting the Registrants' Panel which meets twice a year
- Funding the Registrants' Panel meetings
- Funding attendees of the Registrants' Panel meetings in case of financial hardship
- Secure and accurate record keeping

This service will consist of but not limited to:

Providing practical information to existing and potential members of the register with any DCR related questions

Managing the relationship between the DNA testing service and the service provider

Arranging and carrying out the necessary and appropriate DNA tests required to match donors, donor-conceived people and any donor-conceived genetic half siblings

Being responsible for ensuring all DNA testing and matching is performed to the highest accuracy possible

Providing support and guidance both before and during the DNA matching process

Providing an opportunity for a donor-conceived person to discuss the implications of seeking information, considering making contact with or in fact making contact with their donor-conceived genetic sibling(s)

Facilitating the exchange of information/communication through an intermediary support worker for successful matches

Managing and dealing with any complaints regarding the DCR

The service is to be delivered on a nationwide basis (England, Wales, Scotland and Northern Ireland)

The Supplier will be expected to carry out on-going internal monitoring and evaluation of the services, and put in place appropriate service user feedback mechanisms to enable the HFEA to carry out independent annual evaluation of the quality of the service. This will include providing users with a confidential HFEA survey, and details on how to submit it. Both forms of feedback will inform the annual evaluation and possible periodic discussions between the Supplier and the HFEA.

Confidentiality Information and Release

It is important that the Supplier understands all relevant confidentiality requirements, including the specific requirements of the Human Fertilisation and Embryology Act 1990 ("The HFEA 1990") in addition to the usual confidentiality and Data Protection provisions that apply to identifying information. The HFEA 1990 places even greater restraints on the disclosure of data pertaining to people who have used the services of clinics that are regulated by the HFEA. Section 33A of the HFEA Act 1990 prohibits the disclosure of information as defined in section 31(2) of the Act – information commonly referred to by the HFEA as register information – except in the limited circumstances prescribed by section 33A(2)(a) to (t). This prohibition applies to the categories of person as set out in section 33A(1)(a) to (g) and includes persons who are engaged to provide services to the HFEA and any sub-contractors who may be engaged by those with whom the HFEA has contracted. This therefore includes the Supplier. Disclosure of information falling within section 31(2) in breach of section 33A is an offence under section 41(5) and anyone convicted on indictment is liable to imprisonment, a fine or both.

1. Service Outcomes

The HFEA expects the service provider to maintain, develop and run the DCR, providing a high quality service for people affected by donation at a UK clinic pre-1991. They will also be expected to carry out ongoing evaluation and monitoring of the service. In addition, the HFEA will carry out its own evaluation of the service during the course of the contract period.

A high quality service will include having the organisational infrastructure in place to enable suitably qualified and experienced staff to deliver the service to a high standard and to develop good practice in this specific area. These outcomes will be a measure of how effectively the service is being delivered and a significant failure to meet them could result in a premature termination of contract.

Evidence that a high quality service is being provided will include feedback from service users and is expected to demonstrate:

satisfaction with the level and delivery of: advice; practical and emotional support; information and guidance by DCR support workers and that they have been able to refer them on for other specialist support, if required

satisfaction with the ease of contacting the service

satisfaction with the timing and pace of the service

that staff have treated all parties with respect and understood their needs

that staff are able to offer a range of options for meeting service users' needs, and have taken the appropriate approach in meeting those needs

satisfaction with how the intermediary process was managed by the DCR support worker, regardless of whether or not the outcome with the other party was the one they had anticipated or hoped for

The supplier should ensure that mechanisms are in place to gather this evidence (e.g. by providing service users with a confidential HFEA survey).

An annual meeting will be held with the HFEA to review the service. This will be an opportunity to:

discuss user feedback and feedback from the service provider and to consider any service changes in the light of that feedback.

Please see Appendix A for a full description of issues arising from running the DCR and further service description.

Schedule 2 Performance regime

Part 1. KPIs

1. THE KPIs

1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (Red/ green)
Initial response to contact (however contact is made and by whomever contact is made) in relation to the provision of the services should be made within 2 Working Days	Number of Working Days between (and not including) the day of initial contact (however contact is made and by whomever contact is made) and the day the initial response from Supplier is sent	100%	
Advice line availability	Evidence of advice line being available between the hours agreed by the Supplier and HFEA by way of evidence of calls received at varying times	99.6%	
DNA testing time frame not to exceed 12 weeks	Number of weeks from the point DNA is submitted to the date the results are received by Service User	100%	
DNA testing time frame not to exceed 12 weeks	Number of weeks from the point DNA is submitted to the date the	100%	

	results are received by Service User		
Referral to professional counselling if needed/requested within 2 weeks	Number of weeks from point of referral request to referral being made to professional counselling service. Evidence to be submitted of the number of referrals and how long they took on quarterly basis to the HFEA	100%	
Quarterly newsletter for Service Users	Evidence of quarterly newsletter for Service Users to be submitted to the HFEA on quarterly basis	100%	
Supporting the Registrants Panel including facilitating meetings twice a year	Evidence of the meetings occurring twice a year submitted to the HFEA on an annual basis	100%	
Complaints feedback: service provider to supply HFEA with information on number and nature of any complaints received from service users and, where relevant, how they were resolved.	To be sent to the HFEA via a quarterly report	100%.	
Contract Management meetings between	Evidence of the meetings occurring a minimum of twice a year	100%	

HFEA and successful bidder			
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- 1.2 The Supplier shall monitor its performance against each Target KPI and shall send the HFEA a quarterly report detailing the Achieved KPIs in accordance with Schedule 5.
- 1.3 The HFEA may add additional KPI's during the performance of the Agreement (subject to paragraph 1.4 of this Schedule) if it reasonably believes that these are necessary for the appropriate monitoring of the Services
- 1.4 Prior to addition of a new KPI to the contract pursuant to paragraph 1.3 above, the HFEA shall discuss the new KPI with the Supplier and the parties shall attempt in good faith to agree the KPI. The final decision on the inclusion of a new KPI shall remain with the HFEA.
- 1.5 If the Supplier does not agree with the addition of a KPI pursuant to paragraph 1.3 of this Schedule, it shall notify the HFEA in accordance with the Dispute resolution procedure at clause 15.

Part 2. Consistent failure

1. CONSISTENT FAILURE

In this agreement, **consistent failure** shall mean:

- (a) a failure to meet
 - (i) 3 or more Target KPIs in a rolling 3 month period.

OR

- (b) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

Schedule 3 Supplier's Tender

Proposal

Contact Details

Management Summary

Introduction

Method Statement Skills and Experience Management

Proposed Staffing

Plans for Delivery

Development of Work

Communication and Management Reporting

Organisation

Innovation

Costings (final costings):

Schedule 4 Charges and payment

1. CALCULATION OF THE CHARGES

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

2. CHARGES BASED ON: A FIXED PRICE

Service	Quarterly invoice
Operation of the DCR	

3. CAP ON CONTRACT VALUE

3.1 The maximum value of the Charges to be paid by the HFEA under this agreement shall be £45,000 (“the **Capped Amount**”)

3.2 The Supplier shall continue to supply the Services with effect from the Service Commencement Date until the total value of payments due under the agreement reaches the Capped Amount. Should Charges under this agreement come within £5,000 of the Capped Amount, the Supplier shall contact the HFEA Authorised Representative who will decide whether this agreement should continue in accordance with paragraph 4.4 of this Schedule 4 or be terminated in accordance with clause 27.2.

3.3 In the event that the value of Charges due under the contract exceeds the Capped Amount, the Supplier shall issue a credit note to the HFEA for a sum equal to any amount exceeding the Capped Amount and such sum shall be repayable by the Supplier to the HFEA as a debt, due for payment by the Supplier within 30 days of the date of the credit note.

3.4 The HFEA may notify the Supplier in writing that it wishes to continue to receive services from the Supplier over the Capped Amount and in such case paragraph 4.4 of this Schedule 4 and clause 27.2 shall not have effect and the agreement will continue until terminated in accordance with the provisions of this agreement.

4. INVOICES

4.1 Invoices will be submitted by the Supplier to the HFEA’s Authorised Representative for payment monthly in arrears. Invoices will be due for

payment by the HFEA within 30 days. The supplier shall also invoice for the sum for the set up costs within one month of the service launching. .

5. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £3000 have been overdue for payment for a period of 90 days or more, the HFEA will have committed a Termination Payment Default.

SAMPLE

Schedule 5 Contract management

1. AUTHORISED REPRESENTATIVES

1.1 The HFEA's initial Authorised Representative:

Sumrah Chohan, Donor Information Manager

Address: Human Fertilisation and Embryology Authority, 10 Spring Gardens,
London, SW1A 2BU

Tel: 0207 291 8277

Email: sumrah.chohan@hfea.gov.uk

1.2 The HFEA's Chief Information Officer

Address: Human Fertilisation and Embryology Authority, 10 Spring Gardens,
London, SW1A 2BU

Tel: 020 7291 8268

Email: dan.howard@hfea.gov.uk

2. The Supplier's initial Authorised Representative:

2.1 Name and Position

Address:

Tel:

Email

2.2 The HFEA's initial Key Personnel are:

Sumrah Chohan, Donor Information Manager

Address: Human Fertilisation and Embryology Authority, 10 Spring Gardens,
London, SW1A 2BU

Tel: 0207 291 8277

Email: sumrah.chohan@hfea.gov.uk

2.3 The Supplier's Key Personnel are:

Address:

Tel:

E-mail:

3. REPORTS

- 3.1 In accordance with paragraph 1.2 of Schedule 1 the Supplier shall monitor its performance against each Target KPI and shall send the HFEA a quarterly report detailing the Achieved KPI's for the previous month ("the **Quarterly Report**").
- 3.2 The Supplier shall monitor its performance over the course of the year beginning on the Service Commencement Date and provide an Annual Report to the HFEA detailing the Achieved KPI's for the year three months prior to each anniversary of the Service Commencement Date. ("the **Annual Report**").
- 3.3 The HFEA may request additional information to be included in the Quarterly Report and the Annual Report and the Supplier shall use reasonable endeavours to supply the requested information.
- 3.4 The Supplier and the HFEA shall meet annually at a venue to be agreed between the Parties to discuss the Annual Report.
- 3.5 The Supplier and the HFEA may meet quarterly to discuss the Suppliers performance as agreed between the parties.
- 3.6 The Quarterly and Annual reports shall be provided to the HFEA's Authorised Representative.

Schedule 6 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the HFEA or the Supplier sees a need to change this agreement, the HFEA may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 6.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the HFEA and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the HFEA and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 6, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the HFEA and the Supplier concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the HFEA; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for an amendment is received from the HFEA, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the HFEA within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the HFEA in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The HFEA shall give its response to the Change Control Note within three weeks.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;

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

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

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

2.6 A Change Control Note signed by the HFEA and by the Supplier shall constitute an amendment to this agreement.

Schedule 7 Commercially sensitive information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS
COMMERCIALY SENSITIVE]

SAMPLE

SAMPLE

Schedule 9 The HFEA Policies

Equal Opportunities and Diversity Statement

In accordance with its corporate values of integrity, impartiality, fairness and best practice, the HFEA is committed to providing a working environment where a policy of equal opportunity and promotion of diversity and human rights is upheld. We will not tolerate discrimination or bullying and harassment.

In addition to ensuring compliance with a range of anti-discrimination legislation covering, race, gender, disability, religion or belief, sexual orientation and age, the HFEA along with all public authorities, has additional legal duties relating to race, gender and disability. Their obligations within each of these areas focus on:

- promoting equality of opportunity
- promoting good relations
- promoting positive attitudes
- eliminating harassment, and
- eliminating unlawful discrimination

Our obligations relate to employment, policies and the provision of services or activities. The HFEA retains responsibility for ensuring good practice in these areas, including where it contracts out services, e.g. to recruitment agencies, training providers or companies undertaking surveys, producing publications and providing goods and equipment.

To ensure that our standards are maintained we require all organisations that we contract with, to be aware of our standards, to uphold these standards on our behalf and to sign an agreement to do so. Any specific requirements will be notified to the Contractor as part of contracts issued, e.g. monitoring activities.

Copies of the HFEA'S policies can be found on our website www.hfea.gov.uk

Name of organisation: _____

I have read the policies on the HFEA's website, and agree to abide by and uphold the HFEA'S equality and diversity standards in all our business dealings with and on behalf of the HFEA.

Signed: _____ Date: _____

Print Name:

Position:

Schedule 10 Standard Confidentiality Agreement

HUMAN FERTILISATION AND EMBRYOLOGY AUTHORITY CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is made on the [date]

BETWEEN: **The Human Fertilisation and Embryology Authority** of 10 Spring Gardens, London SW1A 2BU (“the HFEA”); and **[name of Supplier]** of [address] (“the Supplier”).

1. In this Agreement:-

“the **Act**” means the Human Fertilisation and Embryology Act 1990 (as amended); and

“the **Contract**” means the contract for support and intermediary services for individuals affected by post-donation issues (egg, sperm, and embryo) where treatment has been carried out at a UK licenced centre (“the **Services**”) as further described at Schedule 1 of the contract entered into between the parties and dated [date of contract].

“the **Supplier Representative**” means employees, agents and other representatives of the Supplier.

“**Service Users**” means individuals to whom the Services have been or may be provided, including current and past users of the Services, which includes for the avoidance of doubt individuals to whom the Supplier is providing Services which are being remunerated directly through the Service User, as well as those funded by the HFEA.

2. The Supplier understands that in the course of providing services to the HFEA under the Contract, they may have access to, or come into contact with: material; medical records; register forms; correspondence; documents; or other information relating to:
- a) persons who may be considering fertility treatment;
 - b) information which the HFEA is required to hold on a Register in accordance with Section 31 of the Act (which includes information about persons for whom fertility treatment is provided; or whose gametes or embryos are used in treatment services; or who are born in consequence of fertility treatment services);
 - c) information which the HFEA is required to hold on a Register in accordance with Section 31B of the Act (which includes information about serious adverse events and serious adverse reactions reported to the HFEA); and
 - d) sensitive information about research projects undertaken by centres licensed by the HFEA; and
 - e) sensitive commercial information relating to the business activities of centres licensed by the HFEA.
 - f) information in whatever form (including without limitation in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the HFEA or the Service Users, their families, relatives or other parties accessing or enquiring about the services of the HFEA (including, without limitation any medical records,

notes, records of counselling or intervention sessions), whether or not such information (if in anything other than oral form) is marked confidential.

3. The Supplier understands and acknowledges that the HFEA, and any person providing services to the HFEA under the Contract, is subject to the strict confidentiality provisions set out in Section 33A of the Act.
4. The Supplier confirms that they have read the provisions of section 31; 33A; and 41 of the Act which are annexed to this Agreement, and further acknowledges and understands that any disclosure of the information specified in section 31 of the Act, which is not authorised by or in accordance with section 33A of the Act, is a criminal offence under section 41(5) of the Act.
5. The Supplier further acknowledges and understands that the provisions of the Act relating to disclosure of information specified in Section 31 of the Act bind the Supplier whilst delivering the Contract; after the completion of the work; and after termination of the Contract.
6. In signing this document, the Supplier agrees not to disclose:-
 - a) any material, medical records; register forms; correspondence; documents or other information specified in Clause 2 of this Agreement to any person without express written permission from the HFEA; and
 - b) any information specified in section 31 of the Act other than in accordance with the provisions of section 33A of the Act and with express written permission from the HFEA.
7. In signing this document, the Supplier further agrees that he/she will not use any information about the HFEA's affairs that has been obtained in the course of providing services under the contract, for any purpose other than for the provision of those services, and that he/she will not disclose such information to any third party unless authorised by the HFEA in writing to do so. Such information includes but is not limited to:
 - 7.1 any area of HFEA policy under review that is not yet in the public domain;
 - 7.2 corporate strategy, business plans or other similar documents not made available to the public;
 - 7.3 personal information about any HFEA member or employee that is not already in the public domain; and
 - 7.4 any document marked "confidential".
8. Clause 7 shall not apply to information which:
 - 8.1 is or becomes public knowledge (otherwise than by breach of this agreement or a breach of an obligation of confidentiality);
 - 8.2 is in the possession of the Supplier without restriction as to its disclosure, before receiving it from the HFEA;

- 8.3 must be disclosed pursuant to a statutory, legal, professional or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.
9. The Supplier agrees that he/she shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the work of, or views held or expressed by the HFEA unless authorised to do so in advance, and in writing, by the HFEA.
10. The Supplier shall indemnify and keep fully indemnified the HFEA at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other costs and expenses suffered or incurred by the HFEA arising from any breach of this Contract by the Supplier and from the actions or omissions of any Supplier Representative.
11. The obligations contained in this agreement shall continue to apply to the Supplier after the conclusion of the provision of services to the HFEA under the Contract, and after the termination of the Contract.
12. For the avoidance of doubt, where there is any discrepancy between the confidentiality requirements set out in the Contract and this agreement, the parties agree that the terms of this agreement shall prevail.

Signed as a deed: _____ **Date:** _____

**On behalf of
Supplier**

Witnessed: _____ **Date:** _____

Signed as a deed _____ **Date:** _____

**On behalf of
the HFEA**

Witnessed: _____ **Date:** _____

For Individuals engaged on the contract:

I acknowledge the terms of the overall Confidentiality Agreement with HFEA in respect to the contract, and I agree to comply with the terms of the agreement.

Name:
Job title:

Signed:

Date:

Company/organisation:

SAMPLE

Schedule 11 s.33A of the 1990 Act

33A Disclosure of information

(1) No person shall disclose any information falling within section 31(2) which the person obtained (whether before or after the coming into force of section 24 of the Human Fertilisation and Embryology Act 2008) in the person's capacity as—

(a) a member or employee of the Authority,

(b) any person exercising functions of the Authority by virtue of section 8B or 8C of this Act (including a person exercising such functions by virtue of either of those sections as a member of staff or as an employee),

(c) any person engaged by the Authority to provide services to the Authority,

(d) any person employed by, or engaged to provide services to, a person mentioned in paragraph (c),

(e) a person to whom a licence applies,

(f) a person to whom a third party agreement applies, or

(g) a person to whom directions have been given.

(2) Subsection (1) does not apply where—

(a) the disclosure is made to a person as a member or employee of the Authority or as a person exercising functions of the Authority as mentioned in subsection (1)(b),

(b) the disclosure is made to or by a person falling within subsection (1)(c) for the purpose of the provision of services which that person is engaged to provide to the Authority,

(c) the disclosure is made by a person mentioned in subsection (1)(d) for the purpose of enabling a person falling within subsection (1)(c) to provide services which that person is engaged to provide to the Authority,

(d) the disclosure is made to a person to whom a licence applies for the purpose of that person's functions as such,

(e) the disclosure is made to a person to whom a third party agreement applies for the purpose of that person's functions under that agreement,

(f) the disclosure is made in pursuance of directions given by virtue of section 24,

(g) the disclosure is made so that no individual can be identified from the information,

(h) the disclosure is of information other than identifying donor information and is made with the consent required by section 33B,

(i) the disclosure—

(i) is made by a person who is satisfied that it is necessary to make the disclosure to avert an imminent danger to the health of an individual ("P"),

(ii) is of information falling within section 31(2)(a) which could be disclosed by virtue of paragraph (h) with P's consent or could be disclosed to P by virtue of subsection (5), and

(iii) is made in circumstances where it is not reasonably practicable to obtain P's consent,

(j) the disclosure is of information which has been lawfully made available to the public before the disclosure is made,

(k) the disclosure is made in accordance with sections 31ZA to 31ZE,

(l) the disclosure is required or authorised to be made—

(i) under regulations made under section 33D, or

(ii) in relation to any time before the coming into force of the first regulations under that section, under regulations made under section 251 of the National Health Service Act 2006,

(m) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or

(b) for the purpose of carrying out the Authority's duties under section 8A,

(n) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or

(b) in pursuance of an order of a court under section 34 or 35,

(o) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to the Registrar General in pursuance of a request under section 32,

(p) the disclosure is made by a person acting in the capacity mentioned in subsection (1)(a) or (b) to any body or person discharging a regulatory function for the purpose of assisting that body or person to carry out that function,

(q) the disclosure is made for the purpose of establishing in any proceedings relating to an application for an order under subsection (1) of section 54 of the Human Fertilisation and Embryology Act 2008 whether the condition specified in paragraph (a) or (b) of that subsection is met,

(r) the disclosure is made under section 3 of the Access to Health Records Act 1990,

(s) the disclosure is made under Article 5 of the Access to Health Records (Northern Ireland) Order 1993, or

(t) the disclosure is made necessarily for—

(i) the purpose of the investigation of any offence (or suspected offence), or

(ii) any purpose preliminary to proceedings, or for the purposes of, or in connection with, any proceedings.

(3) Subsection (1) does not apply to the disclosure of information in so far as—

(a) the information identifies a person who, but for sections 27 to 29 of this Act or sections 33 to 47 of the Human Fertilisation and Embryology Act 2008, would or might be a parent of a person who instituted proceedings under section 1A of the Congenital Disabilities (Civil Liability) Act 1976, and

(b) the disclosure is made for the purpose of defending such proceedings, or instituting connected proceedings for compensation against that parent.

(4) Paragraph (t) of subsection (2), so far as relating to disclosure for the purpose of the investigation of an offence or suspected offence, or for any purpose preliminary to, or in connection with proceedings, does not apply—

(a) to disclosure of identifying donor information, or

(b) to disclosure, in circumstances in which subsection (1) of section 34 of this Act applies, of information relevant to the determination of the question mentioned in that subsection, made by any person acting in a capacity mentioned in any of paragraphs (c) to (g) of subsection (1).

(5) Subsection (1) does not apply to the disclosure to any individual of information which—

(a) falls within subsection (2) of section 31 of this Act by virtue of any of paragraphs (a) to (e) of that subsection, and

(b) relates only to that individual or, in the case of an individual who is treated together with, or gives a notice under section 37 or 44 of the Human Fertilisation and Embryology Act 2008 in respect of, another, only to that individual and that other.

(6) In subsection (2)—

(a) in paragraph (p) “regulatory function” has the same meaning as in section 32 of the Legislative and Regulatory Reform Act 2006, and

(b) in paragraph (t) references to “proceedings” include any formal procedure for dealing with a complaint.

(7) In this section “identifying donor information” means information enabling a person to be identified as a person whose gametes were used in accordance with consent given under paragraph 5 of Schedule 3 for the purposes of treatment services or non-medical fertility services in consequence of which an identifiable individual was, or may have been, born.

Invitation to Tender (ITT)

Tender for the provision of services to the Human Fertilisation and Embryology Authority for the operation of the Donor Conceived Register (DCR)

Closing date:

26/01/2018 5pm

CONTENTS

Part 1: Instructions to tender	page 3
Part 2: Information about the tender	page 7
Part 3: Evaluation criteria and weightings	page 12
Part 4: Tenderer information and cost schedule	page 14
Part 5: Administrative instructions	page 17
Part 6: Form of tender	page 18

Part 1: Instructions to tender

Tender Documents

Tenders shall be submitted in accordance with the following instructions.

All pages of the tender shall be sequentially numbered (including any forms to be completed and returned).

The tender is expected to examine all of the instructions, forms, Terms and conditions and specifications that comprise the tender documents. If the tenderer does not provide all of the information required, the Human Fertilisation and Embryology Authority (HFEA) may reject the tender.

Amendments to tender documents

At any time prior to the deadline for receipt of tenders, the HFEA may modify the tender documents by amendments in writing.

The HFEA may extend the deadline for tenders to allow for significant amendments to be fully assessed and taken into account.

Tender prices

The prices must be quoted in the currency specified in the Conditions of Contract.

The price of Services shall remain the same for the duration of the Contract and will not be subject to any variation unless detailed in the Conditions of Contract.

Timetable

The timetable for the procurement of these Services is as follows. This is an indicative timetable and may be subject to change.

Key Actions	Dates
Tender published	15/12/2017
Final date for questions	19/01/2018 5pm
Tender return date	26/01/2018 5pm
Scoring, presentations and interviews (if necessary)	09/02/2018
Contract award w/c	12/02/2108
Contract start date	01/04/2018

Form of tender and schedules

A copy of Part 6, Form of Tender, should be completed and returned with your submission.

Tenderers shall notify the HFEA of any errors, omissions or details contained within the documents which precludes them from tendering for this service.

Only prices shown in Part 4: Tender Information and Cost Schedule, will be regarded as part of the bid.

Information and confidentiality

Information that is supplied to tenderers as part of this procurement exercise is supplied in good faith. However, tenderers must satisfy themselves as to the accuracy of such information and no responsibility is accepted for any loss or damage of whatever kind or howsoever caused arising from the use by the tenderers of such information, unless such information has been supplied fraudulently by the HFEA (where the meaning of fraudulently is "the making of false representation knowingly, or without belief in its truth, or recklessly").

All information supplied to tenderers by the HFEA in connection with this procurement exercise shall be regarded as confidential. By submitting a tender, the tenderer agrees to be bound by the obligation to preserve the confidentiality of all such information.

This invitation and its accompanying documents shall remain the property of the HFEA and must be returned on demand.

Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOIA) applies to the HFEA.

Tenderers should be aware of the HFEA's obligations and responsibilities under the FOIA to disclose, on written request, recorded information held by the HFEA. Information provided by tenderers in connection with this procurement exercise, or with any Contract that may be awarded as a result of this exercise, may therefore have to be disclosed by the HFEA in response to such a request, unless the HFEA decides that one of the statutory exemptions under the FOIA applies. The HFEA may also include certain information in the publication scheme which it maintains under the FOIA.

In certain circumstances, and in accordance with the Code of Practice issued under section 45 of the FOIA or the Environmental Information Regulations 2004, the HFEA may consider it appropriate to ask tenderers for their views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under the FOIA, the HFEA must comply with a strict timetable and the HFEA would, therefore, expect a timely response to any consultation within two working days.

Tenderers may provide information to the HFEA in connection with this procurement exercise, or with any Contract that may be awarded as a result of this exercise, which is confidential in nature and which a tenderer wishes to be held in confidence. Tenderers must give a clear indication which type of material is to be considered confidential and why it is considered to be so (including the Section number in the Freedom of Information Act for the Exemption that they believe applies), along with the time period for which it will remain confidential in nature. The use of blanket protective markings such as "commercial in confidence" will no longer be appropriate. In addition, marking any material as confidential or equivalent should not be taken to mean that the HFEA accepts any duty of confidentiality by virtue of such marking. Please note that even where a tenderer has indicated that information is confidential the HFEA may be required to disclose it under the FOIA if a request is received.

The HFEA cannot accept that trivial information or information which by its very nature cannot be regarded as confidential should be subject to any obligation of confidence.

In certain circumstances where information has not been provided in confidence, the HFEA may still wish to consult with tenderers about the application of any other exemption such as that relating to disclosure that will prejudice the commercial interests of any party.

The decision as to which information will be disclosed is reserved to the HFEA, notwithstanding any consultation with the tenderer.

Submission of tenders

You should submit your tender to the HFEA by **26/01/2018 by 5pm** by post or email to:

Sumrah Chohan
Human Fertilisation and Embryology Authority
10 Spring Gardens
London
SW1A 2BU

sumrah.chohan@hfea.gov.uk

Whatever method of tender delivery is chosen shall be at the tenderers' risk.

The HFEA reserves the right to reject any tender if the tenderer has failed to complete and return the Form of Tender or fails to provide the information requested in this Invitation to Tender or the tenderer has submitted any modification or any qualification to their tender.

Modification and withdrawal of tenders

The tenderer may modify the tender prior to the deadline for receipt by giving notice in writing. The modification must be sent in the same manner as the original.

No tender may be modified after the deadline for receipt.

Tenders may be withdrawn at any time before the award of Contract, providing such intention is expressed in writing to the relevant Officer within the HFEA.

Tender evaluations

The HFEA intends to accept the tender that best meets the outcomes, evaluation criteria and considerations outlined in this document. At its sole discretion, the HFEA reserves the right to accept or reject all or any part of any tender. The HFEA does not accept any costs incurred in the production of your submission.

Language

Tenders, all documents and all correspondence relating to the tender must be written in English.

Contract Period

The Contract is to be for the planned period of work from 01/04/2018 until 31/03/2021 unless terminated or extended by the HFEA in accordance with the Conditions of Contract. The HFEA may extend the Contract by issuing a contract variation no later than one month before the Contract would otherwise expire. The HFEA may also terminate the contract before the end date (with 2 months notice), should the agency fail to meet some or all of the outcomes/ evaluation criteria outlined in this document to a significant extent. Similarly, if the agency decide to terminate the contract prematurely, they would also need to provide the HFEA with a 6 month notice period.

Part 2: Information about the tender

The HFEA

The Human Fertilisation and Embryology Authority (HFEA) is an executive Non-Departmental Public Body sponsored by the Department of Health. The Authority was created by Section 5 of the Human Fertilisation and Embryology Act 1990 (“the Act”), and began operating on 1 August 1991. A copy of the Act is on the Authority’s website at www.hfea.gov.uk.

The Authority is the UK’s independent regulator of treatment using eggs and sperm, and of treatment and research involving human embryos. We set standards for, and issue licences to, fertility clinics.

HFEA responsibilities

Our current statutory functions as a regulator under the HFE Acts 1990 and 2008 and other legislation are to:

- license and monitor clinics carrying out in vitro fertilisation (IVF) and donor insemination
- Maintain a formal register of information about licensed treatments (as of 1 August 1991). This includes information about donors, donor treatments and people born as a result of those treatments. Donors and donor conceived people have rights of access to this information in certain situations. This information release is managed by the HFEA. (The HFEA’s performance indicator is to release this information within 20 working days of a valid request.)
- license and monitor establishments undertaking human embryo research
- maintain a register of licences held by clinics, research establishments and storage centres
- regulate storage of gametes (eggs and sperm) and embryos
- implement the requirements of the European Union Tissue and Cells Directive (EUTCD) to relicence IVF clinics and to license Intrauterine Insemination (IUI), Gamete Intrafallopian Transfer (GIFT) and other services.

The Authority is committed to providing and promoting equal opportunities in accordance with the policies set out on our website. The Authority will expect the successful contractor to abide by the same principles.

Background

Since its establishment in August 1991, the HFEA has collected a range of information about donors, which it stores on the Register.

The Donor Conceived Register (DCR) is a voluntary contact register which enables people conceived through donated sperm or eggs, their donors and half-siblings to exchange information and, where desired, to contact each other. The register is

available throughout the UK and is intended for anyone who donated in a UK clinic or was conceived following treatment in a UK clinic before August 1991.

The National Gamete Donation Trust currently manage the DCR, linking donors, people conceived by donation and their siblings, ensuring that the appropriate testing, support and advice is available.

The funding of activity in relation to the DCR was previously undertaken by the Department of Health (DH). The responsibility for supporting DCR transferred to HFEA on 1 April 2017.

The requirement and scope of work

The contract is to manage the DCR on the behalf of the HFEA. Services will consist of, but are not limited to, the following

1. Services to registrants:

- DNA testing. Registrants are charged for this service but the DCR will subsidise the cost for those who can't afford it and also fund additional testing where weak matches require confirmation
- Management of the results of DNA testing plus referral to professional counselling if needed/requested
- Advice line for registrants or people considering registering.
- A quarterly newsletter for registrants
- A private social media page such as Facebook for registrants

2. Administration of the DCR:

- Initiatives to publicise the DCR
- Responding to media enquiries and requests from researchers
- Supporting the Registrants' Panel which meets every twice a year

This service will consist of:

- Providing practical information to existing and potential members of the register with any DCR related questions
- Managing the relationship between the DNA testing service and the service provider
- Arranging and carrying out the necessary and appropriate DNA tests required to match donors, donor-conceived people and any donor-conceived genetic half siblings
- Being responsible for ensuring all DNA testing and matching is performed to the highest accuracy possible
- Providing support and guidance both before and during the DNA matching process
- an opportunity for a donor-conceived person to discuss the implications of seeking information or considering/making contact with their donor-conceived genetic sibling(s)

- Facilitating the exchange of information/communication through an intermediary support worker for successful matches
- Dealing with any complaints regarding the DCR

Areas that will affect existing and potential registrants on the DCR:

- Accuracy of DNA testing and matching – managing expectations and transparency of likelihood of matches
- False matches and the implications
- Managing expectations as to time scales of testing and delivery of results
- Motivation for registering and expectations
- Donor's current family situation, whether family members are aware of their donation(s) and how to discuss with family members, if applicable.
- Implications for donor, current/future partner, wider family, existing children and potential children, what to tell them, when to tell them and that the donor's feelings may change over time
- Ensuring the wishes of people are respected when enabling matches to get in touch with each other ie only the contact method they have specified is exchanged on their behalf

The service is to be delivered on a nationwide basis (England, Wales, Scotland and Northern Ireland)

The service provider will be expected to carry out on-going internal monitoring and evaluation of the DNA testing and matching service (to be made available to the HFEA on request), and put in place appropriate service user feedback mechanisms to enable the HFEA to carry out independent annual evaluation of the quality of the service. This will include providing users with a confidential HFEA survey, and details on how to submit it. Both forms of feedback will inform the annual evaluation and possible periodic discussions between the service provider and the HFEA.

Confidentiality and information release

It is important that the service provider understands and can comply with all relevant confidentiality requirements, including the specific requirements of the HFEA Act (1990) in addition to the usual confidentiality and Data Protection provisions, including any new or enhanced requirements introduced by the General Data Protection Regulation (GDPR) when it comes into effect that applies to register information as defined by section 31(2) of the HFE Act 1990, patient records and personal data as defined by the Data Protection Act 1998. The Human Fertilisation and Embryology Act 1990 (as amended) ('the Act') places even greater restraints on the disclosure of data pertaining to people who have used the services of clinics that are regulated by the Authority. Section 33A of the Act prohibits the disclosure of information as defined in section 31(2) of the Act – information commonly referred to by the Authority as register information – except in the limited circumstances prescribed by section 33A(2)(a) to (t). This prohibition applies to the categories of person as set out in section 33A(1)(a) to (g) and includes persons who are engaged to provide services to the Authority and any sub-contractors who may be engaged by

those with whom the Authority has contracted. Disclosure of information falling within section 31(2) in breach of section 33A is an offence under section 41(5) and anyone convicted on indictment is liable to imprisonment, a fine or both.

GDPR

The successful bidder must meet all UK data protection legislation as specified above including GDPR. HFEA standard clauses are being drafted and will be issued ahead of awarding the contract once they are available.

Service outcomes

The HFEA expects the service provider to maintain, develop and run the DCR, providing a high quality service for people affected by donation at a UK clinic pre-1991. They will also be expected to carry out ongoing evaluation and monitoring of the service. In addition, the HFEA will carry out its own evaluation of the service during the course of the contract period.

A high quality service will include having the organisational infrastructure in place to enable suitably qualified and experienced staff to deliver the service to a high standard and to develop good practice in this specific area. These outcomes will be a measure of how effectively the service is being delivered and a significant failure to meet them could result in a premature termination of contract.

Evidence that a high quality service is being provided will include feedback from service users and is expected to demonstrate:

- satisfaction with the level and delivery of: advice; practical and emotional support; information and guidance by DCR support workers and that they have been able to refer them on for other specialist support, if required
- satisfaction with the ease of contacting the service
- satisfaction with the timing and pace of the service
- that staff have treated all parties with respect and understood their needs
- that staff are able to offer a range of options for meeting service users' needs, and have taken the appropriate approach in meeting those needs
- satisfaction with how the intermediary process was managed by the DCR support worker, regardless of whether or not the outcome with the other party was the one they had anticipated or hoped for

The tenderer should ensure that mechanisms are in place to gather this evidence (e.g. by providing service users with a confidential HFEA survey).

An annual meeting will be held with the HFEA to review the service. This will be an opportunity to:

- discuss user feedback and feedback from the service provider and
- to consider any service changes in the light of that feedback.

Please see Appendix A for a full description of issues arising from running the DCR and further service description.

Timescale

- 01 April 2018 launch the service to potential service users

Processes and responsibilities

The HFEA will appoint person of contact to co-ordinate the HFEA's role during the course of the contract. The service will be overseen by the HFEA , to ensure that it is meeting requirements, progressing to plan and that risks are being managed appropriately.

The Contractor shall:

- Appoint a Contract Manager to oversee the work and liaise with/report to the HFEA's person of contact (including an annual meeting with the HFEA to review the service)
- Perform quality assurance on all aspects of the project
- Provide the HFEA with timely and ongoing information relating to the service during the course of the contract.

Contract management and monitoring

The key performance indicators for this Contract shall include, as a minimum:

- The running of the DCR service, provided by suitably qualified and experienced staff within an organisational infrastructure that enables expertise and good practice to develop (as evidenced by all staff achieving satisfactory performance appraisal and their CPD record).
- Evidence that service users have reasonable and timely access to staff for advice and information. For example, an initial response should be provided within 2 working days.
- The ability to provide the service outlined under 'The requirement and scope of work', above.

The Contractor shall:

- Have mechanisms in place to enable the HFEA to monitor the quality of the service provision
- provide quarterly returns on the number of people registered on the DCR and any details of any formal complaints received)
- liaise with the HFEA on the service provided to the HFEA, on request (this should include service user feedback). Liaise with the HFEA on a regular basis and attend an annual review with them to review progress and discuss the service
- submit accurate and timely invoicing

Part 3: Evaluation criteria and weightings

The contract will be awarded to respondents submitting the tender that affords the Authority the highest quality and best value for money service. The evaluation criteria upon which tenders will be judged, and their respective weightings, are set out in this section.

The HFEA will check each tender for completeness and compliance with instructions in this ITT. The HFEA reserves the right to reject any tenders which it considers substantially incomplete, or non-compliant (each tender will be assessed on its own merit, according to the level / importance of omitted or non-compliant content).

The contract will be awarded based on the offer which best meets the following, as well as any other relevant considerations included in the tender:

- The respondent's credibility and track record in delivering similar services. The organisation must have the appropriate infrastructure in place, with effective policies on storage and maintenance of records; data protection; IT safeguards; safeguarding policies for vulnerable individuals; lone working; a business continuity plan and complaints procedures. The tender should also include the principles that underpin their organisation and, relevant evidence of successful work in intermediary work or similar areas. This should include 2 anonymised case studies
- The service must be delivered within HFEA-set timescales and service users made aware of them. For example, enquiries should receive a response within 2 working days.
- Ongoing, regular supervision, both clinical and managerial, must be provided to DCR support workers
- The ability to put in place feedback mechanisms to evaluate their service
- Service users should have reasonable and timely access to staff for advice and information
- The ability to provide the service outlined under 'The requirement and scope of work'

The assessment of tenders shall be based on the following criteria, with the weightings attributed.

CRITERION	WEIGHTING
Technical and Operational Ability	
1. Adequate qualifications and experience of the team and clear leadership of the work. (Person specification of accountable individual within the agency and team members)	20%
2. Organisational capacity to undertake the work given other commitments and contingencies. This will include specific proposals for: (a) how they will carry out the work; ensuring delivery of all the outcomes in the scope of work (and suitability of methods proposed) (b) what processes will be used to ensure the service will be managed and quality maintained. This needs to include monitoring and evaluation of the work	20%
3. A clear understanding of the purpose/ objective of the work and its importance.	20%
Value for Money	
4. Cost of service to HFEA	40%

Part 4: Tenderer information and cost schedule

Tenderer Information

Notes for Completion

1. Your response should be composed of the following parts, as a minimum

Document	Commentary
Contact Details	See note 2 below
Management Summary	See note 3 below
Introduction	See note 4 below
Response to Tenderer Information	See note 5 below. Ensure that you enclose all information requested, eg, CVs of proposed team.
Cost Schedules	See notes for completing cost schedules (notes 20 – 23 below).
Form of Tender	See Part 6

Format and Content of the Proposal

2. Contact Details:
 - contact name, address, telephone and email of person responsible for any queries relative to this bid
3. Management Summary:
 - a concise summary highlighting key aspects of your proposal
4. Introduction:
 - your understanding of this specific requirement.
5. Response:
 - respond to each of the points set out in paragraphs 7– 23 below.
 - when responding
 - provide a concise description of how you propose to meet the requirement and evaluation criteria
 - ensure that your response is cohesively drafted and constructed
6. Other information
 - you may include any further concise and relevant information in support of your proposal.

Method Statement

7. Tenderers must provide a statement detailing how they propose to fulfil the HFEA's requirements and how they meet the evaluation criteria.

Skills and Experience

8. Tenderers must provide the names and full CVs of the team members they propose to use.
9. Tenderers must provide the name of the project manager proposed for the project along with their direct experience.
10. Tenderers must demonstrate that their proposed personnel have direct experience of being involved with similar requirements, fulfilling similar roles.
11. Tenderers must demonstrate that each member of the proposed team have the relevant skills, qualifications and competencies to fulfil their specific role.
12. Tenderer must demonstrate organisational capacity to undertake work.

Plans for delivery

13. The Tenderer must show how they will be capable of performing the contract. Additionally, tenderers are to provide a resource plan which clearly identifies how each element of the HFEA's requirements are to be resourced.
14. As the contract progress, plans for delivering the service made at tender stage may alter slightly. However, your tender must contain a sufficiently detailed plan to enable the HFEA to assess whether it will successfully meet the outcomes required, without the need for any substantial renegotiation or variation to the contract.
15. All plans must state the impact of any known external factors that may have an effect on delivering the service, or on timescales.
16. The tenderer must include a risk register of those risks they see as relevant to the Contract and how they would mitigate and manage that risk profile.

Communication and Management Reporting

17. The tenderer must provide their proposals for communication between the HFEA and the tenderer, including their proposed reporting mechanisms for gathering user feedback on the quality of the service.

Assumptions

18. Your Tender must detail all the assumptions that you have made in preparing this Tender (including pricing assumptions).

Innovation

19. Tenderers must propose any innovative ways of working/methods of delivery that they wish to utilise when delivering this service and how they plan to improve the service over the life of the contract.

Cost

20. Tenderers should indicate the cost of the service to the HFEA on an annual basis. This must incorporate all associated costs of delivering the service (administrative support and supervisory sessions, attendance at training sessions).
21. Tenderers should note that all prices should be exclusive of VAT and that the HFEA aims to make payments within 30 working days of receiving an invoice. A full VAT invoice is to be submitted to the HFEA. Tenderers may be required to justify information supplied in invoices before payment against such invoice is authorised.
22. The prices and rates, which should be fixed, within the tender must be complete and include provision for full compliance by the Tenderer for all the Contract requirements.
23. Rates and Prices must be inclusive of normal office expenses (such as administrative support and other infrastructure costs) and travel and subsistence costs (eg, incurred in the course of providing intermediary services).

Part 5: Administrative instructions

Authorisation

1. The following person is authorised to act as the HFEA's Representative on all matters relating to the Contract.

Dan Howard - Chief Information Officer

2. The HFEA's Representative may authorise in writing other officers to act on their behalf.

Address for payment

3. All invoices shall be sent to the HFEA addressed to:

Finance Department
Human Fertilisation and Embryology Authority
10 Spring Gardens
London
SW1A 2BU

Or via email to:

finance@hfea.gov.uk

Correspondence

4. All correspondence to the HFEA should be sent to:

Sumrah Chohan
Human Fertilisation and Embryology Authority
10 Spring Gardens
London
SW1A 2BU

or sumrah.chohan@hfea.gov.uk

Part 6: Form of tender

Contract for provision of post donor-conception support service

Declaration (To be typed on Tenderer’s letter headed paper)

Dear (DN: insert name of HFEA recipient)

Contract for the operation of the Donor Conceived Register (DCR)

Having examined the Invitation to Tender letter dated 15 December 2017 we do hereby offer to enter into a contract with the HFEA (contract to be supplied by the HFEA). We undertake to keep the tender open for acceptance by the HFEA for a period of thirty (30)* days from the return date.

We declare that this is a bona fide tender, intended to be competitive, and that we have not fixed or adjusted the amount of the tender by, or under, or in accordance with, any agreement or arrangement with any other person. We further declare that we have not done, and we undertake that we will not do, any of the following acts prior to award of this Contract:

- Collude with any third party to fix the price of any number of tenders for this Contract;
- Offer, pay, or agree to pay any sum of money or consideration directly or indirectly to any person for doing, having done, or promising to be done, any act or thing of the sort described herein and above.

*This can be amended as necessary

Unless and until a formal Agreement has been executed by us both, your acceptance of this tender with all its enclosures shall not constitute a binding contract between us. We understand that you are not bound to accept the lowest price, or any, tender.

Name of person duly authorised to sign tenders:

Date:

Name:

in the capacity of:

duly authorised to sign tenders for and on behalf of:

.....
.....

By completing this form and submitting your tender you have agreed that the statements in this Form of Tender are correct.