

**Cambridgeshire County Council**

**CONTRACT FOR THE PROVISION OF HOME AND COMMUNITY  
SUPPORT SERVICES IN CAMBRIDGESHIRE**  
**CONTRACT REF: DN243347**

**BETWEEN**

**CAMBRIDGESHIRE COUNTY COUNCIL**

**AND**

**[THE NAME OF THE SUCCESSFUL PROVIDER WILL BE  
INSERTED UPON AWARD]**

**THIS IS THE CONTRACTUAL DOCUMENTATION CONTAINING THE CONDITIONS OF  
CONTRACT, SPECIFICATION (SCHEDULE 1) AND OTHER SCHEDULES TO THE CONTRACT**

**PROVISION OF HOME AND COMMUNITY SUPPORT SERVICES  
FOR CAMBRIDGESHIRE COUNTY COUNCIL  
CONTRACT REF: DN243347**

**1. FORM OF AGREEMENT**

**THIS AGREEMENT dated the first (01<sup>st</sup>) day of November 2017**

is made between

**CAMBRIDGESHIRE COUNTY COUNCIL** ("the Council") of SHIRE HALL, CASTLE HILL, CAMBRIDGE CB3 0AP

and

**[Insert Provider's Registered Name]**, ([Company/Charity] Registration Number [ ]) situate at [ ] ("the Provider");

**[Insert Provider's registered name, registration number and address above. This must all correlate with Companies House, Charity Commission or other governing body records and be consistent with the information the Provider's provided in the Tender Response Document. Any discrepancies must be addressed before contract award. If the Provider does not have a Registered Number because of the type of organisation then this reference will be removed.]**

together referred to as "**the Parties**".

**BACKGROUND**

- 1.1. CCC sought tenders for the provision of Home and Community Support Services in accordance with the Dynamic Purchasing System established on 01<sup>st</sup> November 2017 ("DPS").
- 1.2. The Service Provider is appointed to the DPS and has submitted a tender to CCC for the supply of those services and in accordance with the procedure set out in the DPS, CCC has accepted the Service Provider's tender.
- 1.3. CCC appoints the Service Provider and the Service Provider accepts the appointment to provide the services in accordance with the provisions of this agreement.
- 1.4. The Provider agrees that it is and will continue throughout the Term of this Agreement and any Service Order to comply with the Mental Health Act 1983, Human Rights Act 1998, Children's Act 1989, Care Standards Act 2000, Children's Act 2004, Mental Capacity Act 2005, Care Quality Commission (Registration) Regulations 2009, Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, Children's Safeguarding, Deprivation of Liberty Safeguards, The Care Act 2014 and or any other Law to deliver the Services.
- 1.5. This Agreement sets out the award and Service Order Procedure for Services which may be required by CCC, the main terms and conditions for any Service Order by way of call-off which CCC may conclude, and the obligations of the Provider during and after the Term of the Agreement.
- 1.6. It is the Parties' intention that there will be no obligation for CCC to award any Service Order under this Agreement during its Term.

**IT IS AGREED THAT:**

2. This Form of Agreement with the following attached documents will together form the Contract Documents:

Conditions of Contract

- Schedule 1 - Service Specification
- Schedule 2 - Project-Specific and Optional Conditions
- Schedule 3 - Performance Monitoring and KPIs
- Schedule 4 - The Council's Policy Statements
- Schedule 5 - Payment Schedule
- Schedule 6 - Tender Response Document
- Schedule 7 - Call off terms and Service Order Form
- Schedule 8 - Any other relevant correspondence (including any pre- and post-tender correspondence)

3. The Contract effected by the signing/execution (as appropriate) of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior contracts, negotiations, representations or understandings whether written or oral.
4. The Provider shall provide the Services in accordance with the provisions of the Contract and subject to this, the Council shall make to the Provider the payments provided by the Contract for Services provided in accordance with the Contract.

**IN WITNESS whereof the parties have signed this Agreement the day and year first set out above:**

**SIGNED ON BEHALF OF  
CAMBRIDGESHIRE COUNTY COUNCIL by**

**SIGNED ON BEHALF OF  
CAMBRIDGESHIRE COUNTY COUNCIL by**

Signature

Signature

Name

Name

Title

Title

**SIGNED ON BEHALF OF  
[Insert Provider's Registered Name]  
acting by:**

.....  
Director/Partner

.....  
Director / Partner/Company Secretary\*  
[\*Please delete as appropriate]

## CONDITIONS OF CONTRACT

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## CONDITIONS OF CONTRACT

### A. DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS

<b>“Action Plan”</b>	has the meaning set out in Clause 36.13;
<b>“Affected Party”</b>	means a party affected by a Force Majeure Event;
<b>“Annex”</b>	(if used) means an annex to Schedule 2 of the Contract;
<b>“Basic Disclosure”</b>	means a Basic Disclosure check carried out through Disclosure Scotland, which is required where a Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;
<b>“Best Value Duty”</b>	means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty continuously to improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;
<b>“Bribery Act”</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any related guidance or codes of practice issued by the relevant government department;
<b>“Business Continuity Plan”</b>	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;
<b>“Change in Control”</b>	any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988;
<b>“Commencement Date”</b>	means the date specified in Clause 3.1, which is the first date on which the Provider is obliged to provide the Services to the Contract Standard;
<b>“Conditions of Contract”</b>	means these terms and conditions of contract plus any Project-Specific and Optional Clauses;
<b>“Confidential Information”</b>	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is

stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;

**“Continuous Improvement Plan”**

means the plan at Clause 4.6;

**“Contract”**

means these Conditions of Contract, the form of agreement to which they are attached and all other attached schedules;

**“Contract Manager”**

means the representative appointed by the Council or that representative’s delegate appointed under Clause 6;

**“Contract Period”**

means the period during which this Contract shall remain in force and effect pursuant to Clause 3 and shall be the Initial Term as may be extended in accordance with Clause 3;

**“Contract Standard”**

means that standard set out in Clause 4.1;

**“Council”**

has the meaning attributed to it in the form of agreement to which these Conditions are attached;

**“Council Data”**

means

- (i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Provider or provided to the Provider for processing under this Contract which at all times shall remain the property of the Council which shall include without limitation copies of any retention schedule produced by the Provider in order to comply with the Data Protection Act; or
- (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;

**“Council’s DBS Umbrella Body”**

means the Council’s HR Safe Staffing Team responsible for the advice, processing and storage of Criminal Records Checks;

**“Council’s Equipment”**

means all equipment, parts, materials, articles and/or mechanisms provided by the Council for use in connection with the Services;

**“Council’s Premises”**

means any premises, services and facilities owned by the Council or for which the Council has legal responsibility;

**“Criminal Records Checks”**

means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012,

- Enhanced Disclosure with a Barred List Check
- Enhanced Disclosure without a Barred List Check
- Standard Disclosure
- Basic Disclosure



<b>“Critical Performance Default”</b>	means a Performance Default which significantly or materially affects the Provider’s provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;
<b>“DBS Check(s)”</b>	means a Criminal Records Check(s) on individuals carried out through the DBS;
<b>“DBS Update Service”</b>	means a service available through the DBS, where an individual has subscribed for the update service for free, instant online checks to be carried out by an employer on individuals to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;
<b>“Default Notice”</b>	means a notice issued under Clause 36.7;
<b>“Disclosure &amp; Barring Service (“DBS”)</b>	means the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;
<b>“Disclosure Scotland”</b>	is an executive agency of the Scottish Government, providing criminal records disclosure services by way of a Basic Disclosure check for employers and voluntary sector organisations;
<b>“Dispute Resolution Procedure”</b>	means the procedure set out in Clause 40 of this Contract;
<b>“DPA”</b>	means the Data Protection Act 1998;
<b>“District Boundaries”</b>	designated geographical area in which the Provider will be required by CCC to accept referrals and deliver the Services;
<b>“Eastern Region ADASS Members”</b>	means those local authorities who are members of ADASS (Association of Directors of Adult Social Services in England), namely as at the Commencement Date (but may vary during the life of the Contract): Bedford Borough Council, Cambridgeshire County Council, Central Bedfordshire Council, Essex County Council, Hertfordshire County Council, Luton Borough Council, Norfolk County Council, Peterborough City Council, Southend Borough Council, Suffolk County Council and Thurrock Borough Council;
<b>“Enhanced Disclosure With Barred List Check”</b>	means a type of Criminal Records Check, which includes a check of the DBS barred list and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;
<b>“Enhanced Disclosure without</b>	

**Barred List Check"**

means a type of Criminal Records Check, which includes an enhanced disclosure check without a barred list check that is required where a Provider is engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations;

**"Equalities Legislation"**

means all Law which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending Legislation concerning the same;

**"Fellow Provider"**

means any other provider engaged to carry out works or provide services to the Council;

**"Force Majeure Event"**

means any of the following events that materially affecting the performance by a Party of its obligations under this Contract: fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;

**"Infringement"**

has the meaning attributed to it in Clause 18;

**"Initial Term"**

means the date specified in Clause 3.1;

**"Intellectual Property Rights"  
"IPR"**

means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**"Key Performance Indicators"**

means the key performance indicators as defined and set out in Schedule 3;

**"Law"**

means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972,

bylaw, regulatory policy, guidance or industry code, judgment of a UK court or the European Court of Justice, or directives or requirements of any Regulatory Body of which the Provider is bound to comply. Any reference to "Legislation" shall be construed accordingly;

**"Local Government Ombudsman"**

means a local commissioner (known as the Local Government Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;

**"Non-Critical Performance Default"**

has the meaning set out in Clause 36;

**"PAMMS"**

means the regional provider assessment and market management solution application;

**"PAMMS Assessment"**

means an assessment of the Provider's performance undertaken by or on behalf of the Council in line with PAMMS;

**"Party"**

means a party to this Contract and "Parties" shall be construed accordingly;

**"Performance Default"**

- any negligent act or omission; and/or
- any breach of contract; and/or
- any failure by the Provider properly to perform any of the obligations, terms and Clauses of the Contract including (without limitation) any failure to perform the Services to the Contract Standard;

**"Performance Mechanism"**

means that document set out at Schedule 3;

**"Performance Targets"**

means any specified targets (including those identified as part of any PAMMS Assessment) or the Key Performance Indicators against which the Provider's performance in providing the Services shall be measured and which are set out in the Performance Mechanism or the Specification;

**"Provider"**

means the party identified as such in the form of agreement to which these Conditions are attached;

**"Provider's Authorised Representative"**

means such person nominated in writing by the Provider to act as the Provider's representative in relation to this Contract and approved by the Contract Manager;

**"Provider's Equipment"**

means all equipment, parts, materials, articles and/or mechanisms provided by the Provider for use in the provision of the Services;

**"Provider's Premises"**

means any premises owned by the Provider or for which the Provider has legal responsibility;

<b>“Provider’s System”</b>	any computer or IT system used in the provision of the Services;
<b>“Pre-Existing IPR Rights”</b>	means any Intellectual Property Rights vested in or licensed to the Council or the Provider prior to or independently of the performance by the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
<b>“Price”</b>	means the price for the Services as identified in Schedule 5; if a payment mechanism is not agreed between the Parties and identified in Schedule 5, the Price is that set out in the Tender Response Document at Schedule 6;
<b>“Prohibited Act”</b>	has the definition at Clause 26.4;
<b>“Project-Specific and Optional Clauses”</b>	means any clauses at Schedule 2;
<b>“Property Rights”</b>	has the meaning attributed to it in Clause 18;
<b>“Replacement Provider”</b>	means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;
<b>“Request”</b>	shall have the meaning specified in Clause 23;
<b>“Reserve”</b>	means any amount of the Price issued to the Provider which is in surplus during the preceding quarter(s) under this Contract;
<b>“Service(s)”</b>	means the Services to be provided pursuant to this Contract, more particularly described in the Specification and Service shall be construed accordingly;
<b>“Service User(s)”</b>	means the beneficiary or recipient of the Services, including without limitation any member of the public;
<b>“Specification”</b>	means the description of the Services to be provided under this Contract appearing in Schedule 1;
<b>“Staff”</b>	means all persons employed or engaged by the Provider to perform this Contract together with the Provider’s servants, suppliers, agents, volunteers and sub-providers used in the performance of this Contract and/or the provision of the Services;
<b>“Standard Disclosure”</b>	means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974

(Exceptions) Order 1975 and the role does not required an enhanced DBS check;

**“Sub-Contract”**

means a contract between the Provider and a Sub-providers;

**“Sub-provider”**

means an organisation appointed by the Provider or with whom the Provider contracts to provide part of the Services and any of that organisation’s providers who may be providing any of the Services;

**“SVG”**

Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);

**“Tender Response Document”**

means the Provider’s proposal to meet the Specification setting out the methods to be used by the Provider to provide the Services under this Contract as set out in Schedule 6 (Tender Response Document);

**“VAT”**

means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;

**“Variation”**

means any change to:

- (i) the terms and Conditions of Contract or Schedules
- (ii) the Services or any of them
- (iii) the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract;

**“Warning Notice”**

has the meaning attributed to it in Clause 36.16;

**“Working Day”**

means Monday to Friday excluding public and bank holidays in England and Wales;

**“Working Hours”**

means 0900 to 1800 on any Working Day unless otherwise agreed in writing by the Parties.

## **2. INTERPRETATION OF THIS CONTRACT**

- 2.1. Except as otherwise expressly provided, the documents comprising this Contract are to be taken as mutually explanatory of one another.
- 2.2. Any references to any Act of Parliament or other Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.
- 2.3. Headings are included for ease of reference only and shall not affect the construction or interpretation of any provision to which they refer.
- 2.4. The expression ‘person’ used in this Contract shall include (without limitation) any individual partnership, local authority or incorporated or unincorporated body.

- 2.5. In this Contract, the masculine includes the feminine and the neuter and vice versa; the singular includes the plural and vice versa.
- 2.6. References to Clauses or Schedules shall be to Clauses and Schedules of this Contract.
- 2.7. Any undertaking hereunder not to do any act or thing shall be deemed to include an undertaking not to permit or allow the doing of that act or thing where that permission or allowance is within the control of the Provider.
- 2.8. Any reference to a month or day shall unless otherwise specified shall be to a calendar month or day respectively.
- 2.9. Words preceding “include”, “includes” or “including” shall be construed without limitation to the words which followed those words.
- 2.10. In the event of any inconsistency or conflict between the main body of this Contract and the Schedules, the order or precedence as set out below shall prevail:
- (a) The Conditions of this Contract and the Project-Specific and Optional Clauses;
  - (b) Schedule 1 (Service Specification);
  - (c) Remaining Schedules of this Contract with the exception of Schedule 6 (Tender Response Document)
  - (d) Schedule 6 (Tender Response Document) including any clarification questions issued by the Council and responses provided by the Provider) save that where Schedule contains any higher or more onerous commitments, standards or obligations in which case those commitments, standards or obligations will prevail.

**B. THE SERVICES AND PERSONNEL**

**3. DURATION OF CONTRACT**

- 2.1 The Agreement shall take effect on the Commencement Date 01 November 2017 and shall expire on the Expiry Date, which shall be 31 October 2027 unless it is otherwise terminated under Clauses 37, 38 or 39, or otherwise lawfully terminated.
- 2.2 The Provider acknowledges and agrees that termination of a Service Order due to Default by the Provider could lead to the termination of the Agreement, as provided for in Clause 37.

**Pre-Commencement Date Obligations**

- 3.1. Within sufficient time to ensure that the Provider can comply with its obligations under this clause 3 and/or be ready to provide the Services to the Contract Standard from the Commencement Date, the Provider shall arrange a mobilisation meeting if required by either Party which shall be attended by senior representatives of the Provider (including the Provider’s Authorised Representative), any of the Sub-providers (or proposed Sub-providers) in so far as the same will be directly providing any Services, representatives of the Council, representatives of the former

provider (if applicable) and representatives of such Fellow Providers, if any, as the Council shall determine necessary.

- 3.2. At the pre-commencement meeting the Parties shall agree a plan for the implementation of the Services and handover necessary for the smooth, seamless and successful transition of the Services from any former provider to the Provider on the Commencement Date. Such a plan shall be agreed in writing by the Contract Manager and the Provider's Authorised Representative.
- 3.3. The Provider shall liaise with Fellow Providers to ensure that any handover and contract mobilisation is carried out successfully. In addition, the Provider shall arrange and attend as many meetings with the Council, the former provider and any Fellow Providers as are reasonably necessary for the successful handover and mobilisation of the Services.
- 3.4. To the extent that the Provider has not already done so, the Provider shall carry out, or provide to the Council's satisfaction, as soon as reasonably practicable after the Commencement Date:-
  - 3.4.1. proof of insurances held;
  - 3.4.2. measures to ensure that the Provider, its Sub-providers, Staff and agents are fully familiar with the provisions of the Contract, their obligations under the Contract, the Council's computer systems (if applicable) and the identities of all relevant Fellow Providers;
  - 3.4.3. actions necessary to comply with its obligations under TUPE (if applicable); and
  - 3.4.4. the identities, positions and responsibilities and contact details of all relevant Staff including, in particular, the Provider's Authorised Representative and authorised delegates.
- 3.5. The Council shall, prior to the Commencement Date:-
  - 3.5.1. notify to the Provider in writing the name and contact telephone number of the Contract Manager as at the Commencement Date and any persons holding such other positions as may be specified in the Specification; and
  - 3.5.2. provide the Provider with such Council Data and information as the Provider may, in the Council's opinion, reasonably require in order for it to commence the Services.
- 3.6. The Council shall provide all reasonable assistance to the Provider prior to the Commencement Date, to include, where possible, the following:-
  - 3.6.1. allowing the Provider to interview appropriate Council staff; and
  - 3.6.2. reporting to the Provider on current issues which may affect the Services.

#### **4. THE SERVICES**

- 4.1. The Provider shall provide the Services during the Contract Period in accordance with the following ("the Contract Standard"):
  - this Contract and in particular the Specification, which forms part of the Contract;
  - in a manner that does not damage the Council's reputation;
  - in accordance with Law;
  - in accordance with best practice;
  - in accordance with the Council's Policy Statements and the Council's Policies;
  - using all due skill care and diligence as would a competent provider carrying out services of the same scope or nature as the Services;

- in accordance with the reasonable instructions of the Contract Manager pursuant to or in connection with the Contract; and
- in cooperation with any other Council providers as required to perform the Services.

In the event of any conflict between these requirements, the highest or most onerous of these shall apply. The Provider shall obtain and maintain for the entire Contract Period such registration with any relevant bodies required by Law in order to provide the Services.

- 4.2. The Provider shall discharge its obligations under this Contract by deploying appropriate, competent, qualified and trained Staff. Except as otherwise specified in this Contract, the Provider shall provide all Staff and a sufficient number of Staff, the Provider's Equipment, information and data and anything else whatsoever required for the provision of the Services within the Contract Price to the standards in Clause 4.1.
- 4.3. The Provider shall provide the Services in a manner that conserves energy, water, wood, paper and other resources to reduce waste and phases out the use of ozone depleting substances and minimises the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.
- 4.4. In recognition of the Best Value Duty, the Parties to this Contract shall work together to identify how the Services can be continuously improved. Reviews shall be conducted in accordance with Clause 17 (Performance Monitoring and Contract Review) and these Conditions of Contract generally. The Provider agrees to co-operate fully and assist the Council at no extra charge in any manner reasonably required by the Council in connection with the Council's performance of this duty. The Provider shall observe and facilitate the Council's request of cost savings. [Where appropriate, a Variation shall then be made in accordance with Clause 16 (Variations and Change Control), provided that such Variation does not constitute a material change to the Contract.
- 4.5. The Council offers no warranties, guarantees or assurances in relation to the volume or value of any work to be carried out by the Provider under the Contract. The Council also reserves the right to omit any part or parts of the Services pursuant to the Variation provisions in Clause 16.

## **5. PROVIDER'S WARRANTIES, RESPONSIBILITY AND KNOWLEDGE**

- 5.1. The Provider warrants and represents that:
  - 5.1.1. it has the full capacity power and authority and all necessary consents to enter into and perform this Contract;
  - 5.1.2. it is not and has not been in the three (3) years prior to the Commencement Date in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal accounting or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
  - 5.1.3. it has not committed a Prohibited Act at all in connection with the Tender Response Document or generally within the five (5) years immediately before the Commencement Date;
  - 5.1.4. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with the tendering process, and this Contract are true, complete and accurate in all respects;



- 5.1.5. it has in all respects complied with the conditions of tendering set out in the invitation to tender, including, without limitation, not doing any of the acts or matters prohibited by such conditions of tendering [Not used];
  - 5.1.6. it has made its own enquiries and has satisfied itself as to the accuracy and adequacy of any information whatsoever supplied to it by or on behalf of the Council and all other matters relating to the Contract including, without limitation, the Contract Documents, any employment issues and/or the application of TUPE and the Price;
  - 5.1.7. it is of sound financial standing and is not aware of any circumstances (other than such circumstances as expressly disclosed by the Provider when submitting the Tender Response Document) that may adversely affect such financial standing in the future;
  - 5.1.8. it has or has made arrangement to ensure that it will have sufficient working capital, skilled Staff, equipment, machinery and other resources available to it in order to carry out the Services in accordance with the Contract Standard;
  - 5.1.9. it has obtained or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Contract Period obtain and maintain all further and necessary consents, licences and permissions to enable it to carry out the Services;
  - 5.1.10. it has made its own investigations and research in relation to and has fully satisfied itself of the nature of the Services so as to assess the full scope and volume of the work involved in performing the Services to the Contract Standard;
  - 5.1.11. it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract; and
  - 5.1.12. it will not at any time during the Contract Period or at any time thereafter claim or seek to enforce any lien, charge or encumbrance over any property of whatever nature aimed or controlled by the Council and which is for the time being in the possession of the Provider.
- 5.2. The Provider shall be deemed to have examined the documents constituting the Contract, including the Conditions of Contract, the Specification and the other Schedules and to have satisfied itself before tendering as to the correctness and sufficiency of its tender submission to cover all its obligations under this Contract and for all matters and things necessary for the proper completion of the Services.
- 5.3. The Provider shall be responsible for the accuracy of all drawings, documentation and information or anything else supplied to the Council by the Provider and the Provider shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein.
- 5.4. The Provider shall alert the Council to the risk or the existence of any reason which may prevent the Provider from performing the Services as required in whole or in part as long in advance (and as fully) as reasonably practicable in the circumstances.

## **6. THE COUNCIL'S CONTRACT MANAGER**

- 6.1. The Council shall appoint a Contract Manager to administer this Contract and act as its representative. The Council may from time to time replace the Contract Manager and shall notify the Provider in writing of this change.
- 6.2. The Contract Manager shall upon written notice to the Provider be entitled to delegate his role to other persons as he sees fit.
- 6.3. Where this Contract authorises the Contract Manager to instruct the Provider, the Provider shall comply with these instructions.

## **7. THE PROVIDER'S AUTHORISED REPRESENTATIVE**

- 7.1. The Provider shall provide in writing the name, telephone number and contact address for the Provider's Authorised Representative who will be the Council's main point of contact for the Provider. The Provider shall not be entitled to remove or replace the Provider's Authorised Representative without the prior consent of the Council, such consent not to be unreasonably withheld or delayed.
- 7.2. The Provider's Authorised Representative must be empowered by the Provider to take decisions in respect of this Contract and must be available to the Council during Working Hours. The Provider's Authorised Representative shall upon reasonable notice attend any meetings relating to the Services at the request of the Council.
- 7.3. The Provider's Authorised Representative must have sufficient knowledge of this Contract and the Services to act as the Provider's main representative.

## **8. STAFF**

- 8.1. The Provider shall ensure that the Staff shall be sufficient in number, be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as:
  - 8.1.1. comply with the relevant provisions of the Contract;
  - 8.1.2. comply with all relevant Law, policies, codes, rules, procedures and standards of the Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Provider by the Contract Manager from time to time; and
  - 8.1.3. enable the Provider to perform its obligations under the Contract during periods of absence of staff due to sickness, parental leave, holidays, training or otherwise; and
  - 8.1.4. comply with the rules, regulatory and statutory requirements in relation to health and safety at work.
- 8.2. The Provider shall be liable for any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.
- 8.3. If and when directed by the Council, the Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Contract to any of the Council's Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Council may reasonably desire.

- 8.4. The Council reserves the right under this Contract to refuse to admit, or withdraw permission to remain on the Council's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 8.5. The Provider shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Provider by the Council for entry to any Council Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Contract Manager's instructions and then only to the extent required for the purposes of providing the Services.
- 8.6. The Provider shall ensure that the Contract Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Council's Premises and shall reimburse to the Council any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.
- 8.7. The Provider shall at all times during the Contract Period provide sufficient supervisory Staff to ensure that Staff are adequately supervised and able to perform their duties to the Contract Standard.
- 8.8. The Provider shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Contract and shall take all reasonable steps to mitigate any impact on the Services. For the avoidance of doubt, industrial action by Staff shall not relieve the Provider of the obligation to provide the Services to the Contract Standard.
- 8.9. The Provider shall not (and shall take all reasonable steps to ensure that no member of Staff shall not) in any circumstances solicit or accept gratuity, tips or any other form of money taking or reward, from any person in connection with the provision of all or any part of the Services other than pursuant to the terms of the Contract.
- 8.10. The commission of any act prohibited by Clause 8.9 by the Provider or any member of Staff will be regarded by the Council as a matter of serious misconduct and, without prejudice to any of the Council's other rights under this Contract or at law:
- 8.10.1. the Council shall be entitled in respect of the commission of any such act by a member of Staff to require the removal forthwith from the provision of the Services such member or members of Staff and the Provider shall comply with this requirement; and
- 8.10.2. the Council shall be entitled in respect of the commission of any act by the Provider to terminate this Contract forthwith or on such period of notice as the Council may decide.
- 8.11. For the avoidance of doubt, Clause 8.10.1 shall operate without prejudice to any rights the Council may have under Clause 37 to terminate this Contract.

#### **Pre-Employment Checks**

- 8.12. The Provider shall carry out appropriate pre-employment checks, prior to the appointment of an individual in connection with the Services, (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory Disclosure and Barring Certificate by the Disclosure and Barring Service, where

relevant). Prior to making any offer of employment, the Provider shall carry out a risk assessment in a form equal to or exceeding the risk assessment forms in accordance with current Government Standards in relation to any non-UK citizen and any UK citizen who requires a Criminal Records Check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.

- 8.13. The Provider shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 8.12 and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 8.14. Without affecting the Provider's rights and obligations as an employer, the Council or the Contract Manager may, to the extent reasonably necessary to protect the standards and reputation of the Council and following consultation with the Provider, request the Provider to remove from the Services or relevant part of it any person or member of Staff (including the Provider's Authorised Representative) and the Provider shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or member of Staff or to the Provider in relation to any such removal, and the Provider shall fully and promptly indemnify the Council in respect of any claims brought by any such person or member of Staff arising from it.
- 8.15. The Provider through monitoring of its compliance with this Clause 8 shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Provider or commits any act which puts or could put users of the Service or the Council at risk.

#### **Offer of Employment**

- 8.16. The Provider shall not, for the Contract Period or a period of twelve (12) months afterwards, employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

#### **9. SAFEGUARDING**

- 9.1. The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.
- 9.2. The Provider must have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this Clause B. The Provider shall comply with the Council's Adult and Child Safeguarding procedures in relation to this Clause B details of which are available on the Council's Website.

- 9.3. The Provider should fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds current Government standards. The Provider is required to pay the full cost of any such registration and related costs. The Provider acknowledges that the Council has legal responsibilities under the SVG and that the Provider must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this Clause B as the Council shall reasonably require. The Provider shall carry out repeat the checks specified in this Clause B.3 on every three (3) year anniversary from the Commencement Date. If it is a requirement of the Contract for the Staff member to be registered with the DBS Update Service, the Provider shall be responsible for ensuring that the Staff member maintains their annual subscription of the DBS Update Service.
- 9.4. The Provider shall nominate and name a designated senior officer or manager and make arrangements during the provision of the Services under this Contract to ensure that it complies with the provisions of the SVG.
- 9.5. The designated senior officer or manager referred to in Clause B.4. above shall comply with the provisions of *"Working together"* for safeguarding children, young people and adults in dealing with allegations of abuse made against the Provider's employees who work with children, young people and adults. The Provider shall have in place a safeguarding policy, which is equal to or exceeds the Safeguarding Policy referred to in Appendix Four (*Safeguarding Policy*) (except where a conflict arises between the Safeguarding Policy with the Conditions and/or the Specification, in which case the order of precedence of documents specified in Clause 1 of the Contract shall apply).
- 9.6. The Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this, the Provider shall ensure that suitable references reflecting the Staff member's suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process. All Staff members proposed for the Service shall be subject to an appropriate Criminal Records Check, which should be carried out and results obtained prior to the Staff member being employed in connection with the Service. Should an adverse entry be revealed as a result of the Criminal Records Check and/or should any convictions including those that would otherwise be spent under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 be revealed, the Provider shall notify the Contract Manager of these immediately. The Council shall have a right to veto the employment or engagement of any Staff member proposed for the Service as a result of the adverse entry/convictions, but not unreasonably or vexatiously.
- 9.7. The Provider shall use one of the following methods for the advice, processing and storage of each Criminal Records Check:
- 9.7.1. through the Council's DBS Umbrella Body; or
  - 9.7.2. by the Provider directly (if DBS registered); or
  - 9.7.3 through an external DBS umbrella body.
- 9.8. The Provider shall comply with and observe all relevant Law in relation to Criminal Records Checks and follow all recommendations and general guidance issued including by any Central Government Department on Criminal Records Checks and carrying out Criminal Records Checks in relation to any person engaged in a role that meet the previous definition of Regulated Activity

as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations, when deciding whether the outcome of the Criminal Records Check is satisfactory and whether the individual concerned is suitable to carry out the role in connection with the Services.

- 9.9. The Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number, level of Criminal Records Check and the date the disclosure was made. The Provider shall store the record of the disclosure securely within the Provider's organisation in accordance with the Data Protection Act 1998 and DBS Code of Practice. The Provider warrants to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member's name engaged or appointed in connection with the Services.
- 9.10. If visits are taking place as part of the recruitment process, potential staff of the Provider must be accompanied by a member of Staff at all times and the checks specified in Clause 8 shall have been completed by the Provider prior to such visits taking place.
- 9.11. The Provider must have a robust system which evidences that when Staff are suspended or dismissed and safeguarding children and/or vulnerable adults guidance including government guidance is followed and relevant professional bodies informed in the event of non-compliance. The Provider will ensure that it has appropriate procedures in place that support:
- 9.11.1. the immediate reporting to the Contract Manager of concerns and details of any incidents and/or convictions in relation to Staff members; and
- 9.11.2. other action necessary to support the Council's policies, including the possible mandatory participation in child protection meetings and actions.
- 9.12. The Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.
- 9.13. The Provider must provide evidence of robust and effective complaints and whistle-blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
- 9.14. If abuse of an individual is taking or has taken place or is suspected the Provider must comply with the "duty to refer" by immediately notifying the Contract Manager and/or safeguarding children and adults lead of the Council as well as the Provider's safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. The Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the "Duty to Refer" section of the DBS website.
- 9.15. The Provider shall obtain consent of each Service User to forward the Service User's records to the Council on termination or expiry of the Contract.

#### **Requests for Information from the Disclosure and Barring Service (DBS)**

- 9.16. The Council shall be entitled under its duty to the DBS to respond to requests from the DBS for further information already held by the Council in relation to the Staff.
- 9.17. The Provider shall respond to requests from the Council within a reasonable time about Criminal Records Checks in relation to the Staff and shall cooperate with the Council to enable the Council to comply with its duty to the DBS.
- 9.18. Failure by the Provider to comply with the safeguarding provisions of this clause 9 shall entitle the Council to terminate the Contract in accordance with Clause 37.

## **10. PROVIDER'S EQUIPMENT**

- 10.1. Notwithstanding the provisions of this Clause 10, the Provider shall ensure that throughout the Contract Period it supplies or makes available and maintains in good condition and in working order and within the Prices all such resources and equipment as may be necessary for the proper provision of the Services to the Contract Standard including, without limitation, Staff, labour, machinery, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and vehicles (the "Provider's Equipment").
- 10.2. The Provider shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Provider's Equipment is properly maintained and replaced when necessary.
- 10.3. Any vehicles used in the performance of the Contract shall be maintained by the Provider in a safe condition, must be fully insured and must be certified as roadworthy.
- 10.4. Any specialist equipment used in the performance of the Contract shall be maintained by the Provider in accordance with the manufacturer's instructions, and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.
- 10.5. The Provider shall be responsible for the security, insurance and storage of the Provider's Equipment and the Council shall be under no liability in respect thereof including where the Provider's Equipment is used and/or stored on Council Premises save where any damage or loss is caused to the Provider's Equipment by the acts or omissions of the Council.
- 10.6. The Provider shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner or that this information is provided to the Contract Manager.
- 10.7. The Provider shall keep all hazardous Provider's Equipment provided for use by the Provider under proper control and safekeeping and shall ensure that all Provider's Equipment is properly and clearly labelled.

## **11. USE OF COUNCIL PREMISES/ COUNCIL EQUIPMENT**

- 11.1. The Provider may be permitted access to some of the Council's Premises from time to time in connection with the provision of the Services at the Council's sole discretion. The Provider will use the Council's Premises only in connection with the proper performance of the Services and will ensure that its Staff and Sub-providers and agents use the Council Premises, only for such purpose.
- 11.2. The Provider shall ensure that the Council Premises it uses are left clean and tidy at all times.
- 11.3. Access to or use of any of the Council Premises by the Provider or any of its Staff will not create a tenancy of any nature whatsoever in favour of the Provider or its Staff or agents.

- 11.4. In the event that, and to the extent that, the Provider is to provide all or any part of the Services from its own premises, the Provider shall ensure that such premises are safe, secure and suitable for the provision of the Services. Any Council Equipment or Council Data situated at the Provider's premises shall be clearly marked the property of the Council. The Provider shall afford the Council access upon reasonable notice to inspect the Provider's premises including any security, fire protection and disabled access systems. The Provider shall not provide all or any part of the Services nor store any Council Data at any premises which have not been approved by the Contract Manager.
- 11.5. The Provider shall use the Council Equipment solely in connection with the provision of the Services and shall make good any damage to the Council Equipment caused by the Provider, its Sub-providers, Staff, servants or agents. Any damage shall be remedied by the Provider in accordance with the reasonable instructions of the Contract Manager and all costs incurred in complying with this Clause shall be borne by the Provider. The Provider shall inform the Contract Manager immediately of any act of vandalism or damage to the Council Equipment observed by the Provider or its Staff or Sub-providers and the Provider shall use its reasonable endeavours to ensure that the vandalism or damage ceases and to ascertain the identity of the perpetrators and to inform the Contract Manager immediately and the police or fire brigade, if appropriate, of the same.
- 11.6. The Council does not guarantee, warrant or give any assurances as to the age or state of repair or suitability for use in the Service of any item of Council Equipment and the Provider hereby acknowledges that it has carried out its own due diligence including inspections of such equipment and has satisfied itself as to the condition and suitability of each item of such equipment for use in the provision of the Service and accordingly the Provider shall not be relieved from any liability in relation to any failure to provide the Service or any part of it where such failure is caused by a failure in of or the unsuitability of any Council Equipment.
- 11.7. The Provider shall be responsible for the maintenance of the Council Equipment at its own expense except where it is stated in the Contract Documents that any such maintenance shall be carried out at the Council's expense. In such circumstances, and for the avoidance of doubt, the Council shall be entitled to cease to maintain any item of Council Equipment when it considers, in its absolute discretion that such Council Equipment has reached the end of its useful life and is no longer economically viable to maintain.
- 11.8. Unless expressly stated to the contrary in the Contract Documents, the Council shall not be obliged to replace any item of Council Equipment and if it does not replace any such item the Provider shall make such arrangements as are necessary including the provision of Provider's Equipment to provide the Service in accordance with this Contract without the relevant piece of Council Equipment.
- 11.9. The Council's Equipment shall remain the property of the Council and shall be delivered up to the Council at the end of the Contract Period or earlier termination except insofar as it has reached the end of its useful life and has been disposed of. Any item of equipment which was not Council Equipment shall remain the property and responsibility of the Provider or relevant third party and shall not, unless expressly provided to the contrary in the Contract Documents, be delivered up to the Council at the end of the Contract Period.

**C. FINANCIAL ARRANGEMENTS**

**12. PRICES AND PAYMENT**

- 12.1. Subject to the Provider fulfilling its obligations under the Contract and in consideration of the Provider properly performing the Services, the Council shall pay to the Provider the Price, which



shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this Contract.

12.2. If and to the extent that the Price (or any part thereof):

12.2.1. is an annual sum it shall accrue on a daily basis and shall be payable to the Provider monthly in arrears;

12.2.2. is payable by reference to

12.2.2.1. a schedule of rates; and/or

12.2.2.2. the quantity of service provided during a given period

it shall be paid on receipt of a correct and undisputed invoice which specifies the relevant rate or rates and the quantity of service provided during the period or periods to which the invoice relates; and

12.2.3. is payable on completion of milestones specified in this Contract it shall be payable upon receipt of a correct and undisputed invoice which:

12.2.3.1. specifies the milestone or milestones to which it relates;

12.2.3.2. specifies the amount due in respect of such milestone or milestones; and

12.2.3.3. is accompanied by suitable documentary evidence which demonstrates and confirms that relevant milestone or milestones have been completed in accordance with this Contract.

For the purpose of Clause 12.2.3.3 suitable documentary evidence shall be such evidence as is specified in this Contract or where no such evidence is specified such evidence as the Council acting reasonably shall specify.

12.3. Invoices under this Clause 12 shall be uniquely numbered and shall contain all appropriate references including the Council's official order number and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required to substantiate the invoice.

12.4. Payment of the Price shall be made within 30 (thirty) calendar days of receipt of a correct and undisputed invoice by automated payment mechanism (BACS). Payment is deemed to have been made when the Council transmits payment for processing to its BACS Bureau and the Provider accepts that if a non-working day falls near the transmission of payment, this may extend the period before the payment will arrive in the Provider's account.

12.5. The Council shall be entitled to any discount for prompt payment specified in the Tender Response Document. Any discount for prompt payment will be applicable from the date of receipt by the Council of the correct and undisputed invoice submitted by the Provider.

12.6. The Council will endeavour to identify to the Provider any invoices it disputes and believes to be incorrect (and the reasons why this is the case), in which case the Provider shall submit a replacement correct invoice as soon as practicable. It shall however be the entire responsibility of the Provider to submit a correct and undisputed invoice in a timely fashion in accordance with this Clause, and the Council shall bear no responsibility or liability for any losses the Provider may incur as a result of its failure in respect of this responsibility. The Council shall not have any obligation to pay any incorrect or undisputed invoices, in whole or in part under this Clause 12.

12.7. In addition, in the event that the Council believes that part of an invoice is correct but that the remainder is incorrect and/or disputed, the Council reserves the right where it is possible to do

so (but shall be under no obligation) to separate out those parts of the invoice and pay the correct part only, in which case, the Council shall inform the Provider of this, identifying clearly the part to which payment relates and the reasons why the remainder is incorrect and/or disputed.

#### **12.8. VAT**

12.8.1. All sums payable under this Contract are exclusive of VAT or any tax replacing it.

12.8.2. If this Contract or anything in it gives rise to a taxable supply for Value Added Tax purposes by the Provider to the Council under Law from time to time in force, on the production of a valid Value Added Tax invoice, the Council will pay the Provider a sum equal to that Value Added Tax in addition to the Price or any other consideration.

12.9. Without prejudice to any other rights or remedies of the Council whether in contract, tort, or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from the Price:

12.9.1. pursuant to Clause 36;

12.9.2. where the Provider has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or Fellow Provider;

12.9.3. where the Council has suffered financial loss by virtue of the Provider overpaying a third party including, without limitation, where the Provider in the course of carrying out its obligations under the Contract makes an overpayment of salary or makes duplicate credit payments.

12.10. Any disputes in relation to invoices or payment may be referred to the Dispute Resolution Procedure as set out in Clause 40.

12.11. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:

12.11.1. provisions having the same effect as Clause 12.4 of this Contract; and

12.11.2. a provision requiring the sub-provider to include in any Sub-Contract which it awards provisions having the same effect as Clause 12.4 of this Contract.

12.11.3. Without prejudice to any other of its rights in this Contract, the Council shall be entitled to receive evidence from the Provider of the existence of such provisions and that they are complied with by the parties to the Sub-Contracts.

#### **13. THE PRICE THROUGHOUT CONTRACT PERIOD**

13.1. Save where as a result of the application of any other provision in this Contract, the Provider shall not be offered the opportunity to re-submit their Price for the duration of the Contract Period.

13.2. The Price may be reviewed on an annual basis, such Price review shall be carried out in accordance with the formula set out in 13.3 Price Review Formula

13.3. Price Review Formula

$(100\% \times \text{increase in pence in living wage}) + (£3 \times \text{CPI indicator}) = \text{Generic uplift}$
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$(75\% \times \text{increase in pence in living wage}) + (£6 \times \text{CPI indicator}) = \text{Specialist uplift}$   
 [up to a maximum annual uplift of 70p in either category].

- 13.4. The Service Provider may request an adjustment to the Price provided that:
- 13.4.1. There is a maximum of one (1) request per annum;
  - 13.4.2. Any request is made in writing;
  - 13.4.3. Documentary evidence is presented to support such a request;
  - 13.4.4. The request follows the formula specified in **Clause 13.3** Price Review Formula
  - 13.4.5. The change to Price does not constitute a material change to the Contract.
- 13.5. Any request made under **Clause 13.2** must be received by the Contract Manager for consideration at least three (3) months prior to the annual anniversary of the Commencement Date. If approved by the Council the adjustment to the Price will come into effect [on the annual anniversary of the Commencement Date] and will remain fixed for twelve (12) months.
- 13.6. When considering a request under **Clause 13.2** the Council will have regard to the following:
- 13.6.1. The general level of competitiveness of the market as any price adjustments agreed during the Contract Period should result in prices equally competitive in the current situation as at the time of tender.

#### **14. RECOVERY OF SUMS DUE**

- 14.1. Wherever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of this Contract), the Council may deduct that sum from any sum then due, or which at any later time may become due to the Provider under this Contract or any other contract with the Provider.
- 14.2. Any overpayment by the Council to the Provider shall be recoverable by the Council.
- 14.3. The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has obtained the prior written approval of the Council to such deduction.

#### **D. CONTROL OF THIS CONTRACT**

#### **15. ASSIGNMENT AND SUBCONTRACTING**

- 15.1. The Provider shall not sub-contract the whole of the Services. The Provider shall not sub-contract a part of the Services without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 15.2. If the Provider should sub-contract the provision of any part of the Services to any person, neither that nor the Council's consent to that subcontracting under 15.1 above shall relieve the Provider from any liability or obligation under this Contract and the Provider shall be responsible for the

acts, defaults or neglect of any Sub-provider or agents in all respects as if they were the acts, defaults or neglect of the Provider.

- 15.3. Where the Council has consented to the use of a Sub-provider or Sub-providers, such Sub-contract(s) shall reflect the same terms of this Contract and for the avoidance of doubt the Sub-contract(s) shall not contain any terms which are incompatible and/or conflict with this Contract.
- 15.4. The Council may, as a condition of giving its consent under Clause 15.1 require the Provider to procure from that Sub-provider any direct warranties, indemnities or guarantees from that Sub-provider in relation to their provision of the Service and performance of their obligations under the Sub-Contract. For the avoidance of doubt, this may also include a requirement for the Sub-Provider to grant licences or sub-licences in favour of the Council in respect of any land, premises, Intellectual Property Rights or software which are necessary to provide or which benefit from the Services.
- 15.5. The Provider shall not be entitled to assign, novate or otherwise transfer the Contract or its rights and obligations thereunder without the prior written consent of the Council and such consent shall be at the absolute discretion of the Council.
- 15.6. The Provider shall not without the prior written consent of the Council change or replace any sub-provider that it has appointed to provide any part of the Services. Any consent required from the Council in accordance with this Clause may be withheld at the Council's absolute discretion.
- 15.7. Any breach by the Provider of Clauses 15.1 to 15.6 shall constitute a substantial and material breach of Contract by the Provider.
- 15.8. The Council may, in its absolute discretion, novate or assign this Contract or any part thereof and will give written notice of any such novation or assignment to the Provider. This Clause in this Contract executed by the Provider shall stand as the Provider's consent to any such novation or assignment.
- 15.9. In the event the Council consents to any assignment, sub-contracting, novation or other arrangement under this Clause 15, it shall be entitled to require and the Provider shall pay the reasonable administrative and legal costs to the Council of formalising this change, including without limitation relating to the new contractual relationship between the Council and the Provider or any third party. For the avoidance of doubt, any such costs may be set-off pursuant to Clause 14 from sums due to the Provider.

## **16. VARIATIONS AND CHANGE CONTROL**

- 16.1. Subject to Clause 16.2 no Variation shall be effective unless it is recorded in writing and signed by duly authorised representatives of the Council and the Provider and accordingly neither the Council nor the Provider shall implement a variation other than one which is in accordance with this Clause 16.1. Notwithstanding the Council reserve the right to increase the scope of services offered under the DPS over the course of the Contract period.

### **Council Variations**

- 16.2. The Council may by notice in writing to the Provider, from time to time, require minor and/or non-substantial changes to the Services, the way the Services are provided or any of the Contract Documents; such changes shall not be nor be considered to be a Variation to this Contract nor shall the Prices be affected thereby.

- 16.3. The Council may propose a Variation by giving written notice to the Provider ("the Council Variation Notice").
- 16.4. The Council Variation Notice shall:
- 16.4.1. set out the Variation required in sufficient detail to enable the Provider to calculate and provide an estimate of any adjustment to the Prices in accordance with Clause 16.6 below (the "Estimate");
  - 16.4.2. state the date on or by which the Council wishes the Variation to be implemented.
- 16.5. The Council shall consult with the Provider with respect to the Variation, and the Provider shall provide the Council on or before the date falling ten (10) Working Days after the date of the Council Variation Notice with a reasonable Estimate of the increase or reduction in the Prices (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Council Variation Notice.
- The Estimate**
- 16.6. The Estimate shall be accompanied by a reasonably detailed breakdown of the manner in which the Estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change together with any information which the Council may reasonably require including without limitation breakdowns of price and supporting material for the purpose of satisfying the Council that the proposed revised price is fair and reasonable.
- 16.7. To the extent it is possible to do so the Estimate shall be calculated:
- 16.7.1. using the rates and prices in the Tender Response Document (as they may have been revised in accordance with this Contract); or, where it is not possible to calculate the adjustment using such rates and prices;
  - 16.7.2. based on rates and prices that represent the market price current at the date on which the Council Variation Notice is issued.
- 16.8. The Estimate shall include a statement of the Provider's opinion on:-
- 16.8.1. any impact on the provision of the Services;
  - 16.8.2. any amendment required to the Contract and/or any Contract Documents as a result of the change in the Services;
  - 16.8.3. any capital expenditure that is required or no longer required as a result of the change in the Services.
- 16.9. As soon as practicable after the Council receives the Estimate, the Parties shall discuss and attempt to agree the issues set out in the Estimate. In such discussions the Council may:
- 16.9.1. agree the Estimate in which case the Variation shall be implemented in accordance with the Council Variation Notice; or
  - 16.9.2. modify the Council Variation Notice in which case the Provider shall as soon as practicable and in any event not more than fourteen (14) days after receipt of such modification, notify the Council of any consequential changes to the Estimate.
- 16.10. If the Parties cannot agree on the effects and consequences of the Estimate then the dispute will be resolved in accordance with the Dispute Resolution Procedure.
- 16.11. As soon as practicable after the effects and consequences of the Estimate have been agreed or otherwise determined pursuant to Clause 16.10 the Council shall:-
- 16.11.1. confirm in writing the Estimate (as modified) or;
  - 16.11.2. withdraw the Council Variation Notice;

- 16.12. If the Council does not confirm in writing the Estimate (as it may have been modified) within 30 days of the Estimate being agreed in accordance with Clause 16.9 or determined pursuant to Clause 16.10 above then the Council Variation Notice shall be deemed to have been withdrawn.

**Provider Variations**

- 16.13. If the Provider wishes to introduce a Variation to the Services it must serve a notice on the Council ('the Provider Variation Notice').
- 16.14. The Provider Variation Notice must:-
- 16.14.1. set out the proposed Variation in sufficient detail to enable the Council to evaluate it in full;
  - 16.14.2. specify the Provider's reasons for proposing the Variation;
  - 16.14.3. request the Council to consult with the Provider with a view to deciding whether to agree to the Variation and, if so, what consequential changes the Council requires as a result;
  - 16.14.4. include an Estimate in accordance with Clause 16.6;
  - 16.14.5. indicate if there is any date by which a decision by the Council is critical.
- 16.15. As soon as reasonably practicable after the Council receives the Provider Variation Notice the Parties shall meet to discuss the issues in such notice. During such discussions either Party may propose modifications to the proposed Variation.
- 16.16. If the Council accepts the Provider Variation Notice (with or without modification) the relevant Variation shall be implemented by any date specified in the Provider Variation Notice or in the event that it is not practicable for any reason to implement the Variation by such date it shall be implemented by such other date as the Parties acting reasonably may agree.
- 16.17. If the Council rejects the Provider Variation Notice it shall not be obliged to give its reasons for such a rejection.
- 16.18. Unless the Council's acceptance of the Provider's proposed Variation specifically agrees to an increase in the Prices, there shall be no increase in the Prices as a result of a Variation proposed by the Provider.
- 16.19. If the Variation proposed by the Provider causes or will cause the Provider's costs or those of one of its Sub-providers to decrease, there shall be a corresponding decrease in the Prices.
- 16.20. Neither Party shall be entitled to reject any Variation which has been proposed to enable the provision of the Services to conform to a change in law.

**17. PERFORMANCE MONITORING AND CONTRACT REVIEW**

- 17.1. Contract review meetings will be held between the Provider's Authorised Representative and the Contract Manager at regular intervals specified in advance by the Council and monitoring visits shall also take place in order to monitor the Provider's performance both on this Contract as a whole and against any Performance Targets.
- 17.2. The Council may undertake monitoring visits with other strategic partners including other Eastern Region ADASS Members and local clinical commissioning groups.
- 17.3. The Council shall wherever possible provide five (5) Working Days' notice of monitoring visits but reserve the right to make unannounced monitoring visits at any time (in which circumstances the Council shall respect the rights of any Service Users who may be receiving Services at the time of an unannounced visit).

- 17.4. The Provider shall afford all necessary resources and facilities to allow the Council to carry out its contract reviews (including procuring the attendance of the Provider's Authorised Representatives at such meetings), monitoring visits (including PAMMS Assessments) and any further reasonable methods which the Council undertakes to assess the Provider's performance and contract compliance. The Provider shall provide all reasonable cooperation, facilitation and information required at no additional cost to the Council.
- 17.5. The Provider shall monitor and report to the Council its performance against any Performance Targets and provide all information required therein in the format required and detailed in Schedule 1 Service Specification. This includes the requirement for the Provider to use PAMMS to prepare and update Actions Plans in Clause 36.
- 17.6. The Council shall be entitled to make deductions or other adjustments to the Contract Price as a consequence of the Provider's performance against the Performance Targets and as provided for in the Performance Mechanism.
- 17.7. The Council may elect, at its own cost, to undertake its own performance monitoring at any stage for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Provider will use its reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Provider of the outcome of the performance monitoring exercise, and (without prejudice to the Council's other rights under this Contract) the Provider shall have due regard to the Council's findings in relation to the future provision of the Services.

## **18. INTELLECTUAL PROPERTY RIGHTS**

- 18.1. The Provider hereby expressly acknowledges that the Council alone has (subject to such third party rights as may at any time be notified to the Provider by the Council ) exclusive ownership and ultimate control of:
- 18.1.1. the format and content of the documentation comprising the Contract;
  - 18.1.2. the Council's logos, insignia and letter heads;
  - 18.1.3. Council Data however and wherever stored and processed by the Provider; and
  - 18.1.4. any Intellectual Property Rights pertaining to any of the above.
- (collectively the "Property Rights").
- 18.2. Any goodwill pertaining to or arising from the use of the Property Rights shall at all times ensure and accrue to the exclusive benefit of the Council absolutely.
- 18.3. The Provider shall at the request of the Council promptly execute such documents and take or desist from such action as the Council may require in order to assure to the Council the full benefit of its Property Rights and/or to confirm the Council's title thereto.
- 18.4. The Council hereby licences the Provider to use the Property Rights solely:
- 18.4.1. to the extent and upon the terms provided by this Contract; and
  - 18.4.2. for the purposes of performing the Services for the Council.
- 18.5. The Provider shall notify the Council on becoming aware of:
- 18.5.1. any information prejudicial to, and/or actual, threatened or suspected complaint or proceedings brought by any third party (including, without limitation, by any user or recipient of the Services) in any way connected with the Services and relating to the Council, the Provider or its Sub-providers or any Fellow Provider; or

- 18.5.2. any actual, threatened, attempted or suspected infringement by any third party of any of the Property Rights including (without limitation) any seizure of or other interference with Council Data (an "Infringement").
- 18.6. The Provider shall use its best endeavours to assist, co-operate with and follow the instructions of the Council in relation to any Infringement, including (without limitation) in protecting and/or defending the Property Rights against any infringing party and, at the Council's request or the request of the Council's insurers, the Provider shall entrust the conduct of any proceedings in relation to any such Infringement to the Council.
- 18.7. Save for any Pre-Existing Intellectual Property Rights owned by the Provider, all Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions and/or other material produced or developed by the Provider in connection with provision of the Services shall vest in and be the property of the Council provided that in the event that any such Intellectual Property Rights do not vest in the Council by operation of law, the Provider shall execute or cause to be executed, including by any employee or agent of its any and all deeds, documents and acts required to assign such Intellectual Property Rights to the Council.
- 18.8. Neither Party shall acquire Pre-Existing IPR Rights of the other Party.
- Intellectual Property Rights Indemnity**
- 18.9. The Provider warrants to the Council that:
- 18.9.1. it has not given and will not give permission to any third party to use any of the material to which Clause 18.1 relates nor any of the Intellectual Property Rights in such material; and
- 18.9.2. neither the provision of the Services by the Provider nor its receipt by the Council will infringe the Intellectual Property Rights of any third party.
- 18.10. The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any claim by any third party that their Intellectual Property Rights have been infringed by the provision of the Services or anything supplied, created or done by the Provider in connection with such provision.
- 18.11. The Provider waives any moral rights in relation to any materials it creates in connection with the provision of the Services to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such material or other materials, infringes the Provider's moral rights.

## **19. ICT AND COMPUTER SYSTEMS**

- 19.1. In relation to any computer system which the Provider uses in connection with its provision of the Services ("Provider's System"), the Provider shall ensure that such computer system is at all times throughout the Contract Period such as to enable the Provider to comply with its obligations under the Contract and in particular (but without limitation) to perform the Services to the Contract Standard. Should the Council so require, the Provider shall ensure that such computer system is capable of being rendered compatible with and is in all respects capable of interfacing with the Council's relevant computer system.
- 19.2. The Provider shall ensure that at all times during the Contract Period (and until any computerised Council Data has been returned to the Council in accordance with the provisions of the Contract) it has in place adequate and robust business continuity and disaster recovery procedures that are in accordance with good data management and security practice and that shall include as a



minimum undertaking a full back up of all Council Data at least once per day so that in the event of the partial or total failure of the Provider's computer system the Provider shall be able to continue to provide the services without interruption and comply with its remaining obligations under this Clause 19.

- 19.3. The Provider shall ensure that any licences in relation to software to be used in connection with the provision of the Services allow for the software to be tested by the Council on a machine and at a location to be determined by the Council and allow the Council to so test all such software before it is used operationally by the Provider if it so requests.
- 19.4. The Provider shall ensure that throughout the duration of this Contract it has in place a good quality robust firewall and virus protection software so as to guard against any virus, worm, Trojan horse, logic bomb, time bomb, back door, trap, disabling device, malicious code, or other contaminants or similar form of code intended (or having that effect) to cause harm, damage, or to prevent or restrict the use of any computer system or Council Data.
- 19.5. The Council shall, free of charge, either in hard copy or in computerised form (as appropriate) provide the Provider with such Council Data as is necessary in its opinion for the Provider to perform the Services.

## **20. AUDIT AND MONITORING RIGHTS**

- 20.1. The Provider shall permit or procure permission for any authorised representative of the Council (including such other nominated officer and/or the Council's internal auditors and external auditors) to have reasonable access for audit and monitoring purposes to information, documents, data, systems, the Provider's Premises or the Provider's Equipment used in the provision of the Services and any information, documents, reports, Sub-providers and their staff, assets or information, or anything else reasonably required for inspection by the Council and/or its authorised representatives.
- 20.2. Access shall include (without limiting the generality of the foregoing):
  - 20.2.1. reasonable access to the Staff who are engaged in the provision of the Services;
  - 20.2.2. inspection of the materials, premises and arrangements being made by the Provider to comply with its obligations under this Contract;
  - 20.2.3. access to the Provider's Premises and any other locations where the Services are being provided; and
  - 20.2.4. access to such financial and other records kept as part of the provision of the Services by the Provider as may be reasonably required from time to time by the Council to enable the Council to verify the sums due and payable under the terms of this Contract and how the Services are being provided. The Provider shall keep and maintain for a period of 12 years after the end of the Contract Period, or a longer period as may be agreed between the Parties, full and accurate records of this Contract including Services provided under it, all expenditure reimbursed by the Council and all payments made by the Council. For the avoidance of doubt this Clause 20 is in addition to any legal requirement and does not negate the need for any such retention of records.
- 20.3. Access may be at any time without notice, provided there is good cause for access without notice, and provided that the Contract Manager shall comply with all reasonable requirements of the Provider for the purpose of protecting the confidentiality of the information of third parties, and

no information will be divulged to any third party save in pursuance of statutory or other legal obligations.

- 20.4. The Council reserves the right to jointly with the Provider audit or monitor the performance of a Sub-provider.

## **21. RECORDS**

- 21.1. The Provider shall maintain current and accurate records of all work carried out in the provision of the Services and shall ensure that these records shall be available for inspection by an authorised representative of the Council at all reasonable times in accordance with Clause 20. Such records shall be Council Data and shall be provided to the Council in such searchable and identifiable form as the Council may request at any stage during the Contract Period.
- 21.2. The Provider shall maintain security safeguards against the destruction or loss or unauthorised use or alteration of records irrespective of the storage media which are under the Provider's control as part of the Services including the Council Data. Such safeguards shall include an obligation on the Provider to ensure that access to records is only obtained by such Staff as may be specifically designated by the Contract Manager and access to records by Staff is provided only as necessary in connection with the provision of Services.
- 21.3. If any records are accidentally or wilfully destroyed otherwise than by the Council or on the authorisation of the Council and in the event that the Provider does not have in place a method for reinstatement or replacement of such records, within seven (7) Working Days of receipt of a notice from the Council and without prejudice to the Council's other rights at law, the Provider shall reimburse the Council's reasonable costs in restoring such records and/or the Council Data such costs are to be accounted for during the term of this Contract by way of rebate in subsequent invoices for the sums paid pursuant hereto.

## **22. PUBLICITY**

- 22.1. Except with the prior written approval of the Council, the Provider shall not make any press announcements or publicise this Contract or any part thereof in any way.
- 22.2. The Provider shall take reasonable steps to ensure the observance of the provisions of Clause 22 by all of its Staff.
- 22.3. The Council shall have the right to publish the results of the Provider's ratings on the PAMMS' public portal and elsewhere and to publicly share information in relation to these ratings (and the Provider acknowledges that such information is not confidential information).

## **E. FREEDOM OF INFORMATION CONFIDENTIALITY AND DATA PROTECTION**

### **23. FREEDOM OF INFORMATION**

- 23.1. The Provider acknowledges that the Council is subject to the requirements under the Freedom of Information Act 2000 ("FOIA") and the Environment Information Regulations 2004 ("EIR") and shall cooperate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR ("Request(s)").

- 23.2. The Provider shall give reasonable assistance to the Council to comply with the FOIA and EIR. The Provider shall not do any act either knowingly or recklessly that would cause the Council to be in breach of the FOIA and/or the EIR.
- 23.3. In particular, the Provider shall supply all such information to the Council (together with reasonable assistance to locate the same) which is needed by the Council to comply with its obligations under the FOIA and EIR within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Council must comply with as specified in the FOIA and/or EIR (as appropriate).
- 23.4. The Provider shall advise the Council of any requests for information received by the Provider where the information requested is subject to the Services provided under this Contract and shall follow the Council's access procedures in fulfilling the request.
- 23.5. The Provider shall be required to follow all Council processes and procedures that provide for compliance with the FOIA and EIR where information held is subject to the Services.
- 23.6. Without prejudice to the generality of its obligations under this Clause 23, the Provider shall:
- 23.6.1. transfer any Request for Confidential Information that it or its sub-contractors receive, to the Contract Manager of the Council as soon as practicable after receipt and in any event within two (2) Working Days following receipt of the Request; and
  - 23.6.2. provide the Council with a copy of all information in its or its Staff members' possession or power that the Council reasonably considers relevant to the Request and in the form that the Council requires as soon as practicable and in any event within five (5) Working Days following receipt of the Council's request for that information (and any follow-up information required by the Council thereafter within two (2) Working Days following receipt of the Council's follow-up request);
  - 23.6.3. The Provider will forward to the Council immediately any Requests it directly receives.
- 23.7. In the event that the Council or the Provider receiving a request for information pursuant to Clause 23.6 reasonably believes that any information required to be disclosed by the Council is exempt from the provisions of the FOIA the Provider may notify the Council accordingly, specifying the reasons for the belief that the information is exempt, such notification to be given within two (2) Working Days of the date on which the Request for information is received.
- 23.8. In the event that the Provider notifies the Council in accordance with Clause 23.7 the Council shall acting in good faith consider the reasons given by the Provider and following such consideration shall either:
- 23.8.1. withdraw its request in the event that it agrees the information is exempt; or
  - 23.8.2. confirm its request in which case the Provider shall provide the information so requested within such period as may reasonably be specified by the Council.
- 23.9. Subject to the provisions of Clause 24 the Council shall have the discretion to disclose any information which is the subject of this Contract to any person who makes a request under the FOIA and/or EIR and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the FOIA and/or EIR.

- 23.10. When exercising its right under Clause 23.9, the Council shall consult the Provider and may take account of any reasonable suggestions made by the Provider, however the final decision as to whether any information shall be withheld or disclosed shall lie with the Council.

## **24. CONFIDENTIALITY**

- 24.1. The Parties to this Contract each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Services and any Service Users.

- 24.2. Each Party:

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

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

The Provider shall ensure that in the event its Staff are in receipt of any of the Council's Confidential Information, such Staff are under the same legal obligations and undertakings in respect of such Confidential Information as those imposed on the Provider under this Clause.

- 24.3. The Provider and/or its Staff shall not use any Confidential Information it receives from the Council otherwise than in providing the Services in accordance with this Contract.

- 24.4. The foregoing restriction set out in Clause 24.3 relating to Confidential Information shall not apply to:

24.4.1. information which at the time of disclosure is generally available to the public other than by breach of this Clause 24 by the Council and/or Provider;

24.4.2. information which is in possession of the disclosing party (without restrictions) before the date on which the disclosing party received that information as a result of or in connection with this Contract;

24.4.3. information which is required to be disclosed by Law and/or compliance with a Court order; and

24.4.4. information which is reasonably required by any person engaged in the performance of their obligations in relation to the Contract for the performance of those obligations.

- 24.5. The Council shall not disclose information, which has been forwarded to it by the Provider and designated by the Provider as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of the Tender Response Document.

24.5.1. Clause 24.5 is without prejudice to -:

24.5.1.1. any other provision in Regulation 21 of Public Contract Regulations 2015, including the obligations relating to the advertising of awarded contracts and

the provision of information to candidates and tenderers set out in Regulations 50 and 51 of the Public Contracts Regulations 2015 respectively;

- 24.5.1.2. the purpose of the examination and certification of the Council's accounts;
- 24.5.1.3. the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Council has used its resources;
- 24.5.1.4. any government department or any other contracting authority (as defined in the Public Contracts Regulations 2015). All government departments or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting authorities on the basis that the information is Confidential Information and is not to be disclosed to a third party which is not part of any government department or any contracting authority;
- 24.5.1.5. the Council to complying with its legal responsibilities to allow the re-use of public sector information under the Re-Use of Public Sector Information Regulations 2005.
- 24.5.1.6. any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 24.6. The Provider shall take all necessary steps to enable the Council to comply with its obligations under the Re-Use of Public Sector Information Regulations 2005.

## **25. DATA PROTECTION**

- 25.1. For the purposes of this Clause 25, "Processing", and "Data Controller" shall each have the meanings ascribed to them in the Data Protection Act 1998 ("the DPA"). "Personal Data" means personal data as defined in the DPA which is either supplied to the Provider by the Council or is obtained by the Provider in the course of performing its obligations under the Contract.
- 25.2. The Provider shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.
- 25.3. In relation to any Personal Data the Provider shall be the Data Processor and the Council shall be the Data Controller and a Data Processor.
- 25.4. The Provider shall not Process Personal Data except as necessary for the performance of its obligations under this Contract or in accordance with instructions issued from time to time by the Council.
- 25.5. The Provider shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 25.6. The Provider shall not disclose Personal Data to any third parties other than:-
  - 25.6.1. to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Provider to carry out the Services; or
  - 25.6.2. to the extent required under a court order;

provided that disclosure under Clause 25.6.1 is made subject to the Personal Data being used only for the purposes of that sub-clause in accordance with the provisions of the DPA and that the Provider shall give notice in writing to the Council of any disclosure of Personal Data it is required

to make under Clause 25.6.2 **Error! Reference source not found.** as soon as it is aware of such a requirement.

- 25.7. The Provider shall bring into effect and maintain all necessary technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of persons having access to the Personal Data.
- 25.8. The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Provider. Within twenty one (21) days following the date of such request, the Provider shall supply written particulars of all such measures sufficiently detailed for the Authority to be able to determine whether or not, in connection with the Personal Data, the Provider is complying with its obligations under this Contract.
- 25.9. The Provider shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 25 by the Provider and/or any act or omission of any Sub-provider.
- 25.10. Providers are required to comply with the requirements of the Data Protection Act. (DPA). The General Data Protection Regulations are due to supersede the DPA in 2018. Providers will be required to comply with the requirements of the new legislation once it is in place. Providers, when required, will need to provide evidence of compliance with these regulations.
- 25.11. Providers shall sign up to the NHS Information Governance Toolkit by 31st March 2018. Providers are required to have completed Level 1 and Level 2 by November 2018 and will maintain Level 2 compliance from then onwards.
- 25.12. Emails sent to and from the NHS must be protected to the UK Government Secure Email Standard, to ensure that sensitive and confidential information is kept secure. The current Secure Email Standard (SCCI1596) establishes the minimum security requirements for email systems in health, public health and adult social care.

#### **F. ADDITIONAL STATUTORY OBLIGATIONS AND REGULATIONS**

##### **26. BRIBERY, CORRUPTION AND FRAUD**

- 26.1. The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 26.2. The Provider shall take all reasonable steps to prevent any fraudulent activity (including but not limited to the submission of inaccurate, incomplete, misleading or falsified management information) by the Staff, the Provider (including its shareholders, members and directors) and/or any of the Provider's suppliers, and including in connection with the receipt of monies from the Council.
- 26.3. The Provider shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act as defined in Clause 26.4 below.
- 26.4. The following constitute a Prohibited Act:
  - (a) directly or indirectly to offer, promise or give any person

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

26.5. The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.

26.6. The Provider shall have an anti-bribery policy.

26.7. If any breach of this Clause 26 is suspected or known, the Provider must notify the Council immediately.

## **27. EQUAL OPPORTUNITIES**

27.1. The Provider shall comply with Equalities Legislation in its performance of the Services.

27.2. The Provider shall:

- 27.2.1. not discriminate against any person or for any reason within the meaning and scope of Equalities Legislation;
- 27.2.2. comply with any official guidance and codes of practice in relation to promoting equality in employment and the provision of services;
- 27.2.3. have an equal opportunities policy approved by the Council
- 27.2.4. take all reasonable steps to secure the observance of this Clause 27 by its Staff employed in connection with the Contract; and
- 27.2.5. provide such information as the Council may reasonably require for the purpose of assessing the Provider's continued compliance with this Clause 27 (Equal Opportunities) and to assist in the Council's reporting obligations in respect of equal opportunities.

27.3. If a Court, tribunal or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) shall make a serious finding of unlawful discrimination against the Provider in connection with similar services to the Services performed in the United Kingdom such that the Council would acting reasonably find it impossible to continue in contract with the Provider without a real and significant risk to its reputation, the Council shall –

27.3.1. have a right to terminate the Contract pursuant to Clause 37 or

27.3.2. shall be entitled to require all reasonable steps from the Provider to mitigate such risks and ensure that any repetition of the circumstances leading to the finding are not repeated.

## **28. HEALTH AND SAFETY**

28.1. The Provider shall at all times comply with the Health and Safety at Work etc Act 1974 and all other Law relating to the health and safety of employees and others who may be affected by the Provider's acts or omissions in providing the Services under this Contract.

28.2. The Council reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Provider is, in the reasonable opinion of the Council, in contravention of the Health and Safety at Work Act 1974 and all relevant Law relating to health and safety and provisions within this Clause 28.

## **29. WHISTLEBLOWING**

29.1. The Provider confirms that the Provider's Authorised Representative is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 ("PID Act") and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the Staff will be made aware of this provision. The Provider further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.

29.2. The Provider shall review its Whistleblowing policy and procedure on an annual basis and discuss and review with the Contract Manager and shall reflect the Council's Whistleblowing Procedure and Guidance which can be found in the Council's Website.

## **30. HUMAN RIGHTS ACT 1998; MODERN SLAVERY ACT 2015**

30.1. In the performance of the Services the Provider shall comply with the Human Rights Act 1998 as if it was a "Public Authority" within the meaning of the Human Rights Act 1998 and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations.

30.2. The Provider undertakes, warrants and represents that:

(a) neither the Provider nor any of its officers, employees, agents or sub- contractors has:

(i) committed an offence under the Modern Slavery Act 2015 (a "MSA Offence");

(ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

(b) it shall comply with the Modern Slavery Act 2015;



- (c) its responses to any Council modern slavery and human trafficking due diligence questionnaire are complete and accurate; and
- (d) it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-providers have, breached or potentially breached any of Provider's obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations.

30.3. Any breach of clause 30.2 by the Provider shall be deemed a material breach of the agreement and shall entitle the Council to terminate the agreement in accordance with Clause 37.2.2.

## **G. INSURANCE AND INDEMNITY**

### **31. INSURANCE**

31.1. Without prejudice to the general indemnity given at Clause 32 (Liability and Indemnity) and without thereby limiting its responsibilities under this Clause 31 (Insurance) the Provider shall take out and maintain as a minimum the following insurance cover with a reputable insurance company -

#### **Public Liability Insurance**

31.1.1. Public liability insurance of a minimum of 5million pounds (£5,000,000) in respect of each and every claim;

#### **Employers Liability Insurance**

31.1.2. Employers' liability insurance of a minimum of 10 million pounds (£10,000,000) in respect of each and every claim or such greater sum as at any time during the Contract Period is required by statute;

#### **Professional Indemnity Insurance**

31.1.3. Professional indemnity insurance in respect of the Provider's obligations under the Contract in an amount of not less than 5 million pounds (£5000,000) for each and every claim;

#### **Medical Malpractice Indemnity Insurance**

31.1.4. Adequate Medical malpractice indemnity insurance in respect of the Provider's obligations under the Contract if required.

and which insurances shall continue in place for a period of twelve (12) years from the final date on which the Services are provided under this Contract.

31.2. In the event that such insurance cover required by this Clause 31 ceases to be available to the Provider at all or on commercially reasonable rates, the Provider shall notify the Council immediately and the parties shall acting reasonably consider alternative arrangements. In the event that there are no alternative arrangements that are acceptable to the Council, the Council shall be entitled to terminate the Contract under Clause 37.

- 31.3. The Provider shall supply to the Council at the commencement of the Contract forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Provider's insurance policies comply with Clauses 31.1.1, 31.1.2 and 31.1.3.
- 31.4. Where this is possible for the type of insurance cover, the insurance policies shall contain an indemnity to principal clause in favour of the Council.
- 31.5. If the Provider fails to comply with the requirements of this Clause 31, then without prejudice to the Council's other rights under this Contract in respect of such breach, the Council shall be entitled to obtain equivalent insurance cover for the Services on behalf of the Provider and shall be entitled to recover from the Provider as a debt those reasonable costs of obtaining and maintaining such cover.

## **32. LIABILITY AND INDEMNITY**

- 32.1. Neither party shall exclude or limit its own liability for:-
- 32.1.1. death or personal injury caused by its negligence, or that of its own personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors); or
  - 32.1.2. acts of fraud or fraudulent misrepresentation by it or its personnel or staff (including its employees, servants, suppliers, agents, volunteers and sub-contractors); or
  - 32.1.3. breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 32.1.4. any other matter where such limit or exclusion is not permitted under Legislation.
- 32.2. The Provider shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, its employees and agents against all liabilities, demands, proceedings, actions, damages, costs (including legal costs), losses, claims, charges, expenses and any other liabilities whatsoever in any way arising out of or in connection with the Services and/or this Contract and including but not limited to -:
- 32.2.1. any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider;
  - 32.2.2. the Provider's failure to provide all or any part of the Services in accordance with the Contract or at all;
  - 32.2.3. any breach by the Provider of any of the provisions of the Contract;
  - 32.2.4. the use or occupation by the Provider of any of the Council's Premises;
  - 32.2.5. the use by the Provider of the Council's Equipment; and
  - 32.2.6. any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Provider.

- 32.3. The liability set out in Clause 32.2 shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services so far as the management of, or instructions issued to, such third parties is the responsibility of the Provider.
- 32.4. To the extent that such liability has been caused by the default or negligence of the Council or its employees or agents, the Provider's liability under this Clause 32 shall be reduced accordingly.
- 32.5. Subject to Clause 32.1, the Council's liability under this Contract shall be limited to the annual value of each [Service Order/Call Off] The Council's liability for any indirect or consequential losses shall, subject to Clause 32.1 be excluded.

#### **H. REMEDIES FOR POOR PERFORMANCE AND TERMINATION**

##### **33. FORCE MAJEURE**

- 33.1. No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and for that reason it is prevented from carrying out all or a material part of its obligations under this Contract by that Force Majeure Event.
- 33.2. On the occurrence of a Force Majeure Event, the Party affected shall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 33.3. Within forty-eight (48) hours, 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 facilitate the continued performance of this Contract.
- 33.4. If the Force Majeure continues for more than thirty (30) days the Council shall be entitled to terminate this Contract under Clause 37.
- 33.5. This Clause 33 does not affect the Council's rights to terminate this Contract set out in Clause 37.

##### **34. BUSINESS CONTINUITY**

- 34.1. The Provider shall provide no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan capable of acceptance by the Council which shall ensure that the Provider can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Council.
- 34.2. The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Contract Manager.
- 34.3. The Provider shall review and assess the Business Continuity Plan every twelve (12) months and produce a report to the Council of the success or failure. If the Council is not at that time satisfied with the Business Continuity Plan provided by the Provider, the Provider shall be required to take all reasonable steps to improve the Business Continuity Plan to the Council's satisfaction.
- 34.4. Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Provider.

## **35. COMPLAINTS**

- 35.1. The Provider shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which is in accordance with the Local Government Ombudsman guidance on a complaints system, which shall be approved by the Council from time to time.
- 35.2. The Provider shall notify the Contract Manager within ten (10) Working Days (or sooner if the urgency or significance of the complaint justifies it) if it receives any complaints in relation to the Services with details of how the Provider proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Contract Manager within the time specified by the Contract Manager, the Contract Manager may take action in accordance with Clause 36.

## **36. DEFAULTS AND REMEDIES**

### **Remedies Available to the Provider**

- 36.1. **Interest**
- 36.2. In the event that any undisputed invoice correctly rendered by the Provider remains unpaid by the Council after 30 (thirty) days the Provider shall notify the Council in writing giving the Council 15 (fifteen) further calendar days to pay such an invoice. If the invoice remains unpaid, the Provider shall be entitled to charge interest from the date on which the 15 day period expired at a rate of 2% above the base lending rate published by the Bank of England. The Parties agree that this Clause constitutes a substantial remedy for the purposes of the Late Payments of Commercial Debts (Interest) Act 1998.
- 36.3. **Relief from Liability**
- 36.4. The Provider shall not be liable to the Council for a Performance Default to the extent that it is directly caused by a breach of contract by the Council or Fellow Provider provided that the Provider has notified the Council in writing as soon as it has come to the Provider's attention that such an event has or will occur.
- 36.5. **Termination by Provider**
- 36.6. Without prejudice to the Provider's rights pursuant to this Clause 36, if the Council commits a repudiatory breach of contract, the Provider shall be entitled to terminate the Contract by notice in writing provided it first notifies the Council in writing of the breach of contract, stating its intention to issue a termination notice and giving the Council a period to remedy the breach, such period being reasonable in the circumstances and, in any event not less than 20 (twenty) Working Days or such other longer period as may be reasonable in the circumstances having regard to the nature and effect of the breach. If the Council remedies the breach within such period the Provider shall not be entitled to accept the repudiation and/or terminate the Contract.

### **Remedies available to the Council:**

#### **Performance Defaults**

- 36.7. In the event of a Performance Default the Council shall issue a Default Notice to the Provider which shall state on its face whether, in the reasonable opinion of the Contract Manager, the Performance Default is either a Critical Performance Default or Non-Critical Performance Default.

For the avoidance of doubt, a single Default Notice covering more than one Performance Default may be issued validly under this Clause 36.7 and further a PAMMS Assessment finding of “poor” for the Provider is a Critical Performance Default and a finding of “needs improvement” is a Non-Critical Performance Default and this Clause 36 shall be applied accordingly.

- 36.8. If the Provider disputes whether a Performance Default is a Critical Performance Default, the matter shall be referred to the Dispute Resolution Procedure and if the dispute remains unresolved, to the Courts.

#### **Critical Performance Defaults**

- 36.9. In the event that a Default Notice states that a Performance Default is a Critical Performance Default, it shall also state how and by when the Provider, at its own expense, shall remedy, make good or mitigate the Performance Default. Such action and time period shall be fair, reasonable and commensurate with the nature of the Critical Performance Default and the effect that such Critical Performance Default had or continues to have on the provision of the Services and the services provided by Fellow Providers.
- 36.10. On receipt of a Default Notice stating that the Performance Default is a Critical Performance Default, the Provider shall take the action required by the Default Notice at its own cost and expense within the time period set out in the Default Notice. The Provider shall, in addition, attend a meeting with the Contract Manager to discuss the Performance Default and the Provider shall give an assurance in writing to the Contract Manager.
- 36.11. If the Provider considers that the time and/or measures stated in the Default Notice to remedy, make good or mitigate a Critical Performance Default are unreasonable or impossible to comply with, the Provider shall notify the Contract Manager within 24 hours of receipt of the Default Notice and the Parties shall attend a meeting at a chief officer and director level to discuss the matter and to agree a time period in which and measures by which the Critical Performance Default shall be remedied, made good or mitigated. Thereafter, if unresolved, the matter shall be referred to the Dispute Resolution Procedure that the Critical Performance Default shall be remedied, made good or mitigated within the time scale set out in the Default Notice.
- 36.12. If the Provider fails to remedy a Critical Performance Default within the time period set out in the Default Notice (or subsequently agreed or determined) the Council may serve a Warning Notice in accordance with Clause 36.16 below.

#### **Non-Critical Performance Defaults**

- 36.13. If a Default Notice states that a Performance Default is a Non-Critical Performance Default (‘Non-Critical Default Notice’), the Provider shall, if requested to do so, prepare a plan (an “Action Plan”) setting out the steps which the Provider shall take to ensure that the Performance Default is remedied, and does not occur again, and the reasonable timescale within which the Action Plan shall be implemented. The Provider shall prepare and submit the Action Plan to the Council within ten (10) Working Days, or such other time limit as specified by the Council, of receipt of the Default Notice.
- 36.14. The Action Plan shall be submitted to the Contract Manager for his approval via PAMMS which shall not be unreasonably withheld or delayed. The Contract Manager shall be entitled to specify amendments to the Action Plan which the Provider shall incorporate. The Provider shall pay to the Council the costs of preparation of any such amendments made by the Council or the costs of preparation of the Action Plan itself or any parts of it in the event that the Action Plan is not submitted (or only submitted partially) by the Provider within the timescale specified by the

Council. The Provider shall implement the approved Action Plan and performance by the Provider will be monitored and measured in accordance with the Action Plan by both parties via PAMMS.

- 36.15. Failure to submit or comply with an Action Plan shall constitute a Critical Performance Default for the purposes of this Clause 36. The only exception to this is in respect of PAMMS Assessments which identifies certain non-compliances by a provider with an Action Plan as a Non-Critical Performance Default. In the event of any doubt, inconsistency or conflict then the Council (acting reasonably) shall at its absolute discretion have the final say in respect of whether any non-compliance by the Provider with an Action Plan shall constitute a Critical Performance Default or a Non-Critical Performance Default.

#### **Escalation**

- 36.16. If:

- 36.16.1. the Provider fails to remedy a Non-Critical Performance Default in accordance with an Action Plan; or
- 36.16.2. the Provider fails to remedy a Critical Performance Default in accordance with the Default Notice ('Critical Default Notice') or as subsequently agreed or determined; or
- 36.16.3. any Critical Performance Default having been remedied, occurs again; or
- 36.16.4. more than 2 (two) Critical Default Notices or 8 (eight) Non-Critical Default Notices or 1 (one) Critical Default Notice and 4 (four) Non-Critical Default Notices (in each case not necessarily relating to the same breach or failure) have been issued to the Provider in any continuous 6 (six) month period;

then the Contract Manager shall be entitled to serve a warning notice (a "Warning Notice") on the Provider. The Warning Notice shall state on its face that it is a Warning Notice and shall set out the measures which the Contract Manager requires the Provider to take to ensure that the Performance Default or Performance Defaults are remedied, do not occur again and the time scales within which the Provider is to effect such measures. The Provider shall comply with the terms of the Warning Notice.

- 36.17. In the event that the Contract Manager serves more than 2 (two) Warning Notices within any continuous 18 (eighteen) month period or the Provider fails to remedy a Warning Notice within the specified timescales, the Council shall be entitled to terminate the Contract in whole or in part in accordance with the provisions of Clause 37 ("Termination").

#### **36.18. Other Remedies**

- 36.19. In addition to the matters set out above, if the Provider commits a Performance Default (whether a Critical Performance Default or Non-Critical Performance Default) the Council shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute or otherwise, to take all or any of the following measures:

- 36.19.1. withhold any further payments or instalments of the Price until the Provider has remedied, or mitigated the Performance Default as stated in a Default Notice or Warning Notice;

- 36.19.2. require the Provider to suspend performing the Services without compensation until the Provider has remedied or mitigated the Performance Default as stated in a Default Notice or Warning Notice;
- 36.19.3. stop making new placement of Service Users with the Provider until satisfactory resolution of the Performance Default in accordance with this Clause 36;
- 36.19.4. terminate existing placements of Service Users with the Provider either permanently or temporarily until satisfactory resolution of the Performance Default in accordance with this Clause 36 where, in the sole opinion of the Council, it is most appropriate for the care of the Service User to do so;
- 36.19.5. deduct from any future payment to the Provider or from any future instalment of the Price or recover as a debt due any reasonable, justifiable and demonstrable losses, costs and expenses of the Council or any Fellow Provider suffered directly as a result of the Provider's Performance Default together with an administration charge of 10% of such sum or sums. If there is any dispute between the Council and the Provider as to the amount of such deduction, the matter shall be referred to the Dispute Resolution Procedure; and
- 36.19.6. remedy the Performance Default itself or engage a third party to do so to recover from the Provider by way of deduction from the Price or otherwise the reasonable cost that the Council incurs in so doing.

## **37. TERMINATION**

- 37.1. The Council may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Contract in whole or in part if any one of the events set out in Clause 37.2 occurs.
- 37.2. The events are:
  - 37.2.1. if the Provider commits a Prohibited Act or otherwise breaches Clause 26 (Bribery, Corruption and Fraud);
  - 37.2.2. if the Provider breaches Clause 30.2;
  - 37.2.3. if an express right to terminate has arisen under Clause 36;
  - 37.2.4. if the Provider:-
    - 37.2.4.1. ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Council would adversely affect the delivery of the Services;
    - 37.2.4.2. undergoes a Change in Control;
    - 37.2.4.3. suffers one or more of the following:
      - 37.2.4.3..1. the appointment of a liquidator, receiver, administrative receiver or administrator;
      - 37.2.4.3..2. insolvency or winding up within the meaning of relevant Legislation;

- 37.2.4.3.3. having substantial distress attachment execution or other legal process levelled enforced, sued or threatened upon any of its property;
- 37.2.4.3.4. the suspension of any publicly offered equities;
- 37.2.4.3.5. the freezing of substantial assets or
- 37.2.4.3.6. any other event of incapacity rendering the Provider unable or potentially unable to carry out its obligations under the Contract and/or to meet any liability which may arise through the Provider's negligence or breach of contract;
- 37.2.4.4. has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Provider's affairs approved in accordance with the Insolvency Act 1986;
- 37.2.4.5. has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- 37.2.4.6. commits a serious and material breach of contract;
- 37.2.4.7. fulfils those conditions under the Performance Mechanism which entitle the Council to terminate the Contract;
- 37.2.4.8. commits a serious breach of Clauses 8 (including the commission of any act by Staff contrary to Clause 8.9), 24, 25, 28;
- 37.2.4.9. loses any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Contract;
- 37.2.4.10. commits an act or omission which means it would now be excluded from the procurement process for this Contract on a mandatory exclusion ground as specified in Regulation 57(1) of the Public Contracts Regulations 2015;
- 37.2.4.11. the majority of shares carrying a right to vote in the Provider or its holding or parent company are acquired by a person who is not at the Commencement Date a majority shareholder and the Council has reasonable concerns that it may suffer damage to its reputation as a result of any contractual association;
- 37.2.4.12. fails to comply with the safeguarding provisions of Clause 9; and
- 37.2.4.13. fails on repeated occasions to work with the Council in relation to the PAMMS Assessment or other performance management process.

37.3. If the Contract is determined in part, the Price shall be adjusted to reflect fairly the Services which remain and if the Parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Provider shall not be entitled to recover through the adjusted Price any profit that, but for the Termination, would have accrued to the Provider in respect of the terminated Services.

37.4. The rights of the Council under this Clause 37 and Clause 38 below are in addition and without prejudice to any right that either Party may have for prior breach or to any right the Council may have against the Provider for the breach, default, negligence or event leading to the Termination.

37.5. The remedies of the Council under this Clause (and Clause 38 below) may be exercised successively in respect of any one or more defaults by the Provider.



### **Break Clause**

- 37.6. In addition to its rights of termination under the Contract, the Council shall be entitled to terminate this Contract by giving to the Provider not less than six (6) months advance notice to that effect in which case the provisions of Clause 38 only shall apply. No further compensation or remedy shall be available to the Provider.

### **Termination where the Court Declares this Contract Ineffective**

- 37.7. In the event that this Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which the Provider was awarded this Contract (a "Legal Challenge"), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Legal Challenge, which may include varying some or all of the Contract and/or terminating the Contract in whole or in part.
- 37.8. In the event that this Contract is declared ineffective by a court of competent jurisdiction –
- 37.8.1. this Contract shall be terminated and the provisions of Clause 39 shall apply; and
  - 37.8.2. the Council shall pay to the Provider all sums lawfully due to the Provider in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within 30 days of the receipt by it of a correct invoice for the same from the Provider.
- 37.9. The sums paid to the Provider by the Council under Clause 37.8.2 above shall be in full and final settlement of the Council's liability for any loss and/or expense incurred by the Provider as a result of the Court declaring this Contract ineffective. The Council shall have no further liability to the Provider, including without limitation, in relation to any loss of profit of the Provider.
- 37.10. The Council shall also be entitled to terminate this Contract in the event –
- 37.10.1. this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015; or
  - 37.10.2. the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;

in which case the provisions of Clause 37.8.2 and Clause 37.9 shall apply.

### **38. CONSEQUENCES OF TERMINATION**

- 38.1. If the Contract expires or is terminated in accordance with Clause 37, the provisions of this Clause 38 shall apply.
- 38.2. Upon termination or expiry:
- 38.2.1. the Provider shall forthwith cease to provide the Services;
  - 38.2.2. submit to the Council within seven (7) days of termination or expiry at the Provider's own cost a comprehensive status report which shall be current as at the date of submission relating to the Services;

- 38.2.3. the Provider shall cease to use the Council's Data and hand over to the Council a complete and uncorrupted version of all Council Data and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with Staff, the Council's service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Council (in which event the Council shall reimburse to the Provider the Council's reasonable data conversion expenses) whether such Council Data is on hard copy or on a disk or on any computer systems.
- 38.2.4. the Provider shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with the specific instructions issued by the Council; for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Council retains its Data Controller responsibilities;
- 38.2.5. the Provider shall cease to use and return any Council Equipment (and in the event the Provider fails to comply, the Council may recover possession thereof and the Provider grants a licence to the Council and its authorised representatives to enter (for the purposes of such recovery) any of the Provider's Premises where any such items may be held);
- 38.2.6. the Provider shall vacate any Council's Premises;
- 38.2.7. the Provider shall allow the Council and any new Provider, reasonable right of access to the Provider's and sub-provider's premises, systems, procedures and Staff, where appropriate; and
- 38.2.8. the Provider shall deliver to the Council upon request all information, materials and documents relating to the Services in its possession or under its control or in the possession or under the control of any permitted sub-providers, including any Council Data and in default of compliance with this provision, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter for the purpose of any such recovery any premises of the Provider or its permitted sub-providers where any such documents, information or materials may be held. For the avoidance of doubt, this material identified by this Clause shall be in an identifiable and searchable format (and include metadata) and in such form and medium as the Council may reasonably request.
- 38.2.9. the Council shall immediately cease to be under any obligation to make further payment to the Provider until the costs, loss and/or damage to the Council resulting from or arising out of the termination shall have been calculated.
- 38.2.10. the Council shall have the option to purchase at book value any of the assets or equipment used by the Provider solely in performance of its obligations under this Contract. Where the Council wishes to exercise this option it shall notify the Provider in writing accordingly not less than 28 days following the date on which this Contract expires or is terminated.
- 38.2.11. the Provider shall pay in full and promptly the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Provider during the remainder of the Contract Period to the extent that such cost exceeds

such sums as would have been lawfully payable to the Provider for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Provider or any of its Staff;

38.2.12. the Provider shall continue to make the Provider's System available to the Council for as much time as is reasonably necessary for the Services to be transferred back to the Council or to a third party and for the Council Data to be successfully migrated to the Council's systems or the systems of a third party. The Provider shall give all such assistance as is reasonably required by the Council to ensure a smooth, successful and seamless transition of the Services and conversion and migration of the Council Data. Insofar as such assistance is required after the Contract has been terminated or expires, the Council shall pay the Provider's reasonable costs and expenses. For the avoidance of doubt, the Provider's compliance with the provisions of this Clause shall include, inter alia, assistance by the Staff, access to the Provider's Systems and the provision of information and documentation.

38.3. If the Provider is unable or fails to provide the Services or any part thereof in accordance with this Contract, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Provider under the Contract or shall be recoverable from the Provider by the Council as a debt. The Council's right under this Clause 38.3 shall be without prejudice to any other rights or remedies which it may possess.

38.4. The Council shall be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination of the Contract, to deduct the same from any sum or sums which would but for Clause 37 have been due from the Council to the Provider under the Contract or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Contract have been calculated and after taking into account any deduction made or to be made by the Council from any sum or sums which would but for Clause 37 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt or alternatively, the Council, subject to Clause 14, shall pay the Provider any balance due to the Provider;

38.5. Expiry or earlier termination of this Contract shall not affect the continuing rights and obligations of the Parties under Clauses 1, 2, 5, 18, 20, 21, 23, 24, 25, 31, 32, 37, 38 and 39 or under any other provision of this Contract that is expressed to survive expiry or termination or is required to give effect to expiry or termination or the consequences of such expiry or termination.

38.6. When the total costs, loss and/or damage resulting from or arising out of such Termination as is referred to in this Clause 38 have been calculated and deducted so far as practicable from any sum or sums which would but for Clause 38 have been due to the Provider, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Provider any balance shown as due to the Provider.

## **39. EXIT AND HANDOVER ARRANGEMENTS**

39.1. The Provider shall not charge the Council or any Replacement Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this Clause 39 on expiry or earlier termination (or for complying with any other provisions in Clause 38 above upon termination or expiry).

- 39.2. The plan for the orderly handover of the Services to the Council or its Replacement Providers following termination or expiry of this Contract shall include compliance by the Provider of the provisions specified in Clause 38.
- 39.3. The Provider shall forthwith upon the request of the Contract Manager, supply to the Council any information reasonably specified by the Council as being necessary for the re-tendering of this Contract.
- 39.4. On giving written notice to the Provider and after twelve (12) months of the date of the expiry or earlier termination of this Contract unless the individual is responding to a job advert the Council shall have the right:
- 39.4.1. to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Council and the Provider agrees that if such person accepts such offer the Provider shall release such person from any contractual restriction with it which such acceptance may otherwise contravene; and
  - 39.4.2. to require the Provider to provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Council may reasonably require to enable the Council to provide the Services in-house or to procure their provision by a Replacement Provider.

#### **TUPE Compliance on Termination**

- 39.5. During the twelve (12) months prior to the expiry or termination of the Contract or after the Council has given notice to terminate this Contract and within twenty eight (28) Calendar Days of being so requested to do so, the Provider shall fully and accurately disclose to the Council any and all information in relation to all persons engaged in providing the Service including:
- 39.5.1. a list in electronic format of each employee employed by the Provider in the provision of the Service including each employee's start date;
  - 39.5.2. a list of agency workers, agents and independent Providers engaged by the Provider in the provision of the Services;
  - 39.5.3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of each employee included in the list to be provided under Clause 39.5.1; and
  - 39.5.4. the terms and conditions of employment of each Transferring Employee; their age and identity; the information that must be included in the employee's written statement of employment particulars under s.1 of the Employment Rights Act 1996; information on any disciplinary procedure taken in relation to the employee or grievance procedure taken by the employee within the previous two (2) years in relation to which the ACAS code of practice on disciplinary and grievance procedures applies; information on any Court or tribunal claim brought by the employee against the transferor within the previous two (2) years and any potential claim against the transferee arising out of the employee's employment with the transferor; information about any collective agreements that will have effect after the transfer in relation to the Transferring Employee.

- 39.6. During the twelve (12) months prior to the end of the Contract Period or where notice to terminate this Contract for whatever reason has been given, the Provider shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
- 39.6.1. vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
  - 39.6.2. materially increase or decrease the number of employees employed in connection with the Services;
  - 39.6.3. increase the remuneration of employees;
  - 39.6.4. assign or re-deploy any employee employed in connection with the Services to other duties unconnected with the Services; or
  - 39.6.5. otherwise improve terms and conditions of employment of any of its employees without economic justification towards the end of the Contract Period with a view to discouraging other potential bidders.

**I. GENERAL PROVISIONS**

**40. DISPUTE RESOLUTION PROCEDURE**

- 40.1. The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt bona fide discussion first between the Contract Manager and the Provider's Authorised Representative. Failure to agree a settlement within three (3) Working Days shall result in the dispute being escalated to both Parties' managerial level appropriate to the dispute in question. In the event that such a dispute is not resolved within three (3) Working Days, thereafter it shall be escalated to each Parties' appropriate director for resolution. The respective directors shall meet within four (4) Working Days to resolve the dispute. Failure to reach a settlement shall invoke the rest of this Clause 40.
- 40.2. Nothing in this Clause 40 shall prevent the Parties from seeking from any Court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 40.3. If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 the dispute may be referred to mediation pursuant to the procedure set out in Clause 40.5.
- 40.4. The performance of this Contract by the Provider shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff shall comply fully with the requirements of this Contract at all times.
- 40.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- 40.5.1. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he/she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

- 40.5.2. The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 40.5.3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 40.5.4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be confirmed in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 40.5.5. Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the agreement without the prior written consent of both Parties.
- 40.6. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 40.7. Unless agreed otherwise in any mediation each Party shall bear its own costs of such mediation.

#### **41. NOTICES**

- 41.1. Except as otherwise expressly provided within this Contract, no notice from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 41.2. Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, signed for special delivery post) such letters shall be addressed to the other Party in the manner referred to in Clause 41.3. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. Notices under the Contract may not be sent or received by email.
- 41.3. For the purposes of Clause 42.2, the address of each Party shall be as follows:

- 41.3.1. The Council:

**CAMBRIDGESHIRE COUNTY COUNCIL ("the Council") of SHIRE HALL, CASTLE HILL,  
CAMBRIDGE CB3 0AP**

- 41.3.2. The Provider:

[post title]

[address for service]

- 41.4. Either Party may change its address for service by serving a notice on the other Party in accordance with this Clause 41.

#### **42. LEGAL PROCEEDINGS**

- 42.1. If requested to do so by the Contract Manager the Provider shall provide to the Council within the timescale set by the Contract Manager any relevant information or assistance (including but not limited to documents and statements from the Provider and/or its Staff) in connection with any legal inquiry dispute resolution or Court proceedings in which the Council may become involved or any relevant Council internal disciplinary hearing arising out of the provision of the Services or the Provider's presence on any of the Council's Premises and shall give evidence in such inquiries arbitration or proceedings or hearings.
- 42.2. Where the Provider or any of its Staff becomes aware of any incident accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Contract Manager immediately in writing. Such notification shall include all relevant information to enable the Contract Manager to investigate the matter fully.

#### **43. LOCAL GOVERNMENT OMBUDSMAN**

- 43.1. In the event of a complaint to the Local Government Ombudsman involving activities the subject of this Contract, the Provider shall at its own expense give to the Council and to the Local Government Ombudsman every assistance in the investigation of the complaint.
- 43.2. Where any investigation by the Local Government Ombudsman takes place the Provider shall:
- 43.2.1. provide any information requested in the timescale specified;
  - 43.2.2. attend any meetings as required and permit its Staff to attend;
  - 43.2.3. promptly allow access to an investigation of any documents deemed to be relevant to the investigation and/or the complaint;
  - 43.2.4. allow itself and any Staff deemed to be relevant to be interviewed;
  - 43.2.5. allow itself and any of its Staff to appear as witness in any ensuing proceedings; and
  - 43.2.6. co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of that investigation.
- 43.3. Where any financial redress compensation or award is recommended by the Local Government Ombudsman in the course of or following any investigation, or is agreed to by the Council following a complaint to the Local Government Ombudsman, and which investigation or complaint arises directly or indirectly out of the provision of the Services or any other action or omission by the Provider and/or its Staff then the Council shall be entitled to recover the cost of that financial redress compensation or award from the Provider.

#### **44. AGENCY**

- 44.1. Neither the Provider nor its Staff shall say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council. The Provider shall not be the agent of the Council.
- 44.2. The Provider shall make not any representations or give any warranties to third parties on behalf or in respect of the Council; or bind or hold itself out as having authority or power to bind the Council.
- 44.3. This Contract shall not create any relationship between the Parties of partnership, employment or landlord and tenant.

**45. ENTIRE AGREEMENT**

- 45.1. Except where expressly provided in this Contract this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations communications negotiations and understandings (whether oral or written) concerning the subject matter of this Contract.
- 45.2. Nothing in this Clause 45 is intended to exclude or limit liability for any statement representation or warranty made fraudulently or to any provision of this Contract which was induced by fraud for which the remedies available shall be all those available under the law governing this Contract.

**46. CONFLICT OF INTEREST**

- 46.1. The Provider shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or such persons and the duties owed to the Council under the provisions of this Contract. The Provider will disclose to the Council full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Contract Manager.

**47. LIEN OR ENCUMBRANCE**

- 47.1. The Provider will not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Council, the Council's Equipment and/or on the Council's Premises.

**48. SEVERANCE**

- 48.1. If any term condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term condition or provision shall not affect the validity legality or enforceability of the remaining parts of this Contract.
- 48.2. Pursuant to Clause 48.1, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which as nearly as possible validly gives effect to their intentions as expressed in this Contract.

**49. WAIVER**

- 49.1. The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 49.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 41.
- 49.3. A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**50. THE CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

- 50.1. Save where indicated under any Clause set out in this Contract which relates to TUPE and Pensions, no term of the Contract shall be enforceable by or confer any benefit on any person other than the Parties.



**51. LAW AND JURISDICTION**

- 51.1. The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

**SCHEDULE 1  
SPECIFICATION**

**Refer to attached Section C – Service Specification**

**SCHEDULE 2**  
**PROJECT-SPECIFIC AND OPTIONAL CLAUSES**

**TUPE AND PENSIONS**

**A.1. Application of TUPE**

- A.1.1. The Parties agree that the provisions of the TUPE Regulations will apply to this Contract.
- A.1.2. The Parties agree that, where the identity of a Provider of any of the Service is changed pursuant to this Contract (including on expiry of the Contract Period), the change shall constitute a Relevant Transfer.
- A.1.3. On the occasion of a Relevant Transfer, the Provider shall comply with its obligations under the TUPE Regulations and the Directive in respect of the Transferring Employees.

**A.2. Emoluments and Outgoings**

- A.2.1. The Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of any Relevant Transfer.

**A.3. Pensions**

- A.3.1. The Provider shall or shall procure that any relevant sub-contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer date up to and including the date of the expiry or earlier termination of this Contract.
- A.3.2. The provisions of Clauses A.3, A.4 and A.5 shall be directly enforceable by an affected employee against the Provider or any relevant sub-contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Provider or sub-contractor under those Clauses in his/her own right under Section 1(1) of the Contracts Rights of Third Parties Act 1999.

**A.4. Admitted Body Status to the Local Government Pension Scheme**

- A.4.1. Where the Provider or its sub-contractor (subject to Secretary of State approval for a sub-contractor to become an admitted body) wishes to offer the Eligible Employees membership of the LGPS, the Provider shall or shall procure that it and/or each relevant sub-contractor shall enter into an Admission Agreement to have effect from and including the Relevant Transfer date. The Provider or sub-contractor will bear the cost of any actuarial assessment required in order to assess the employer's contribution rate, Pension Bond value and to establish an opening funding position to be used as the basis for future actuarial valuations, in respect of any Eligible Employee who elects to join the LGPS on or after the Relevant Transfer date.

A.4.2. The Provider shall indemnify and keep indemnified the Council and/or any Replacement Provider and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Provider or its sub-contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract.

A.4.3. The Provider shall and shall procure that it and any of its sub-contractors shall prior to the Relevant Transfer date, obtain any indemnity or Pension Bond required in accordance with the Admission Agreement. The Provider or its sub-contractor will bear the cost of any actuarial assessment required in order to assess the value of the Pension Bond or guarantee, including costs associated with revaluations.

#### **A.5. Provider Pension Scheme**

A.5.1. Where the Provider or its sub-contractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Provider shall or shall procure that any relevant sub-contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer date. Such an occupational pension scheme must be:

A.5.1.1. established no later than three (3) months prior to the date of the Relevant Transfer; and

A.5.1.2. certified by the GAD as providing benefits that are broadly comparable or equivalent to (as appropriate) to those provided by the Legacy Scheme, and the Provider shall produce evidence of compliance with this Clause A.5 to the Council prior to the date of the Relevant Transfer.

A.6. The Council's actuary shall determine the terms for bulk transfers from the LGPS to the Provider's scheme following the Relevant Transfer date and any subsequent bulk transfers on termination or expiry of this Contract. The actuarial fees associated with the determination of terms for bulk transfers from the LGPS will be payable by the Provider.

A.7. The Provider shall and shall procure that each relevant sub-contractor shall:

A.7.1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);

A.7.2. promptly provide to the Council such documents and information mentioned in Clause A.7.1, which the Council may reasonably request in advance of the expiry or termination of this Contract; and

A.7.3. fully cooperate (and procure that the trustees of the Provider's scheme shall fully cooperate) with the reasonable requests of the Council relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Services on expiry or earlier termination of the Contract.

#### **A.9. Provider to inform the Council of any measures**

- A.9.1 The Provider shall within twenty-eight (28) days of receiving a request from the Council, provide the Council with any information which is reasonably necessary concerning any measures (within the meaning of the TUPE Regulations and the Directive) that the Provider intends to take in relation to any Transferring Employee.

#### **A.10. Indemnities**

- A.10.1. The Provider shall indemnify the Replacement Provider from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Provider on or after the date of the Relevant Transfer.
- A.10.2. The Provider shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim or demand by any Transferring Employee arising out of the employment of such employee provided that this arises from any act, fault or omission of the Provider on or after the date of the Relevant Transfer.
- A.10.3. The Provider shall indemnify and hold harmless the Former Provider and/or any Replacement Provider from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Provider) in respect of all or any of the Transferring Employees arising from or connected with any failure by the Provider to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.
- A.10.4. The Provider shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Provider in respect of all or any of the Transferring Employees) arising from or connected with any failure by the Provider to comply with any legal obligation to such trade union, staff associations or other employee representative under the TUPE Regulations or the Directive and, whether any such claim arises or has its origin before on or after the date of the Relevant Transfer.
- A.10.5. The Council shall not be liable under this Clause A in the event that:-
- A.10.5.1. any information provided in Appendix One (*Transferring Employees*) for the purpose of the TUPE Regulations transpires to be inaccurate;
  - A.10.5.2. any employee of the Provider who has transferred to the Provider's employment under the TUPE Regulations brings a claim against the Provider that relates wholly or partially to his or her employment with the Provider; and/or
  - A.10.5.3. at the end of the Contract Period, if the Provider does not secure a further contract with the Council.

#### **A.11. Sub-contractors**

- A.11.1. In the event that the Provider enters into any sub-contract in connection with this

Contract, it shall impose obligations on its sub-contractor on the same terms as those imposed on it pursuant to this Clause A.

- A.11.2. The Provider authorises the Council to use all the information provided in relation to the sub-contract referred to in Clause A.11.1. for the purposes of its business or for informing any potential tenderer for the Services or any part thereof and shall enable and assist the Council and such other persons as the Council may determine to communicate with and meet the Staff and their trade unions or other employee representatives or staff associations as when and where the Council may determine.
- A.11.3. The Council shall treat such information as Confidential Information, save as required by Law, and save that it shall be at liberty to disclose the same (on the like terms as to confidentiality) to any person invited to tender for the provision of the Service in succession to the Provider.
- A.11.4. The Provider warrants that until the handover on the Relevant Transfer Date of the Transferring Employees to the Replacement Provider in accordance with the provisions of this Clause A, it shall provide sufficient Staff to cover provision of the Services and failure to comply with the provision of this Clause shall result in a substantial breach of Contract by the Provider and the Provider shall indemnify the Council against any liability arising from failure to comply with this Clause A.11.4. For the avoidance of doubt, this Clause A.11.4. is without prejudice to any other remedies available to the Council whether under this Contract or otherwise.

In this Clause A, the following terms shall bear the following meanings. All other capitalised terms shall bear the meaning attributed to them in clause 1 of the Conditions of Contract.

<b>“Admission Agreement”</b>	means the agreement in relation to an LGPS pension between the Council and the Provider as required under this Clause A and in the form set out in Appendix Three.
<b>“Appropriate Pension Provision”</b>	in respect of Eligible Employees, either:  (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or  (b) membership or eligibility for membership of a pension scheme, which is certified by the GAD as being broadly comparable to the terms of their Legacy Scheme;
<b>“Eligible Employees”</b>	means the Transferring Employees and /or Transferring Original Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer as cited in the Admission Agreement;
<b>"Directive(s)"</b>	means the EC Acquired Rights Directive 2001/23/EC (as amended);
<b>“Former Provider”</b>	means any contractor who provided services the same as or similar to the Services to the Council immediately prior to the Commencement Date;
<b>“GAD”</b>	means the Government Actuary Department;
<b>“Legacy Scheme”</b>	means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer date;

<b>“LGPS”</b>	means Local Government Pension Scheme made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 (as amended);
<b>“LGPS Regulations”</b>	means the relevant LGPS pension regulations in force at the time this Contract is entered into;
<b>“Pension Bond”</b>	means the bond required for the Admission Agreement in accordance with this Clause A and one of the forms of surety as required under the Local Government Pensions Scheme (Administration) Regulations 2008 (as amended);
<b>“Relevant Transfer”</b>	means a relevant transfer for the purposes of the TUPE Regulations;
<b>"Transferring Employees"</b>	means the employees listed in Appendix One and are: <ul style="list-style-type: none"> <li>(i) all employees who immediately prior to the Commencement Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Provider;</li> <li>(ii) all employees who immediately prior to the Service Transfer Date are assigned to the organised grouping of resources and employees to the Services and which are the subject of transfer in accordance with the Regulations and who shall transfer by the virtue of the application of the Regulations to the Replacement Provider;</li> </ul>
<b>“Transferring Original Employees”</b>	means the employees listed in Appendix Two who previously transferred to the employment of the Former Provider and who will transfer to the employment of the Provider as a result of the application of the TUPE Regulations in relation to this Contract;
<b>“TUPE Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time).

## **B. Mental Capacity Act and Deprivation of Liberty Safeguards**

### **B.1.1 In relation to the Mental Capacity Act 2005 (as amended) (“MCA”):**

- B.1.1 The Service Provider, including its Staff shall comply with the provisions set out in the MCA when delivering Services.
- B.1.2 The Service Provider shall have a clear written policy approved by the Council on its approach to the MCA. The policy may be reviewed by the Council from time to time and shall ensure that any reasonable amendments requested by the Council are incorporated into its diversity policy within twenty one (21) Calendar Days of request by the Council.

- B.1.3 All Staff must be trained at induction to follow the reporting procedures specified in the policy and that training should be updated at least annually
- B.1.4 The Service Provider shall notify the Council immediately where a Service User may lack capacity and a Significant Decision is to be made.

**B.2 In relation to the Deprivation of Liberty Safeguards:**

- B.2.1 The Service Provider shall have regard to the MCA Code of Practice including the supplementary DoL Safeguards Code of Practice in its role as a Managing Authority.
- B.2.2 The Service Provider shall have a clear written policy approved by the Council and reviewed from time to time on its approach to the DoL, which includes but is not limited to the following:
  - B.2.2.1 a clear procedure for the recording of information;
  - B.2.2.2 the process for applying for an Authorisation to the Council;
  - B.2.2.3 the process once a Authorisation request has been made;
- B.2.3 The Service Provider shall appoint a lead contact to act on behalf of the Service Provider for all purposes connected with the MCA and DoL. The Service Provider shall notify the Council of the lead contact details prior to the Commencement Date.
- B.2.4 The Service Provider shall forthwith give notice in writing to the Council of any change in the identity, address, e-mail and telephone numbers of the person appointed as lead contact The Service Provider shall give maximum possible notice to the Council before changing its lead contact.

**C. HEALTHWATCH**

- C.1 The Service Provider shall upon reasonable notice permit or procure permission for the authorised representatives of the relevant Healthwatch to have access to and observe the carrying-on of activities on premises controlled by that Service Provider and provide information to the Healthwatch.

Clause C.1 shall not apply if:

- C.1.1 the presence of the authorised representative on the premises or that part of it would compromise the effective provision of care and support services or the privacy or dignity of any person;
- C.1.2 the authorised representative undertakes viewing or observation on the premises which is not related to the function of Healthwatch;
- C.1.3 it is in a non-communal part of the Service Provider's Premises, is part of the Service Provider's Premises which is a Service User's home or is used as accommodation by employees;
- C.1.4 a request is made to view an excluded activity;



- C.1.5 the request applies to a part of the Service Provider's Premises where care and support services are not provided;
- C.1.6 in the view of the Service Provider's Premises the authorised representative is not acting reasonably and proportionately, or
- C.1.7 the authorised representative does not provide the Service Provider with evidence that they are authorised in accordance with Regulation 4 of the Local Involvement Networks (Duty of Service Providers to Allow Entry) Regulations 2008.

C.2 The Service Provider shall notify the Council within five (5) Working Days after the inspection of any notices served by Healthwatch with respect to the Service Provider, or their Staff.

#### **D. Pre-employment check**

D.1 Where appropriate and subject to the Council's Approval, the Provider may employ Staff where the Service Provider has applied for and received the results of a DBS Adult First check, on the condition that:

- (a) the Staff is not identified on a Barred List;
- (b) all legal requirements are complied with; and
- (c) the Council's Authorised Representative and the Service User are informed.

#### **E. Payment via CONTROCC System**

E.1 Subject to the Provider fulfilling its obligations under the Contract and in consideration of the Provider properly performing the Services, the Council shall pay monthly in arrears to the Provider the Price, which shall be exhaustive of any amounts due to the Provider in respect of its provision of the Services and performance of its obligations under this Contract.

E.2. Payment of the Price shall be made via the Council's Controcc payment system and as such does not require an invoice to be issued. Payments will be made in Monthly in arrears.

E.3. If there is any Reserve from the preceding quarter or twelve (12) months the Provider shall at the Council's sole discretion:

- E.3.1 use such Reserve for the next quarter or quarters within the next twelve (12) months, in which case the Council shall pay the difference between the Reserve and the Price for the next quarter(s); or
- E.3.2 use some or all of the Reserve for re-investment into the Services or any other services as directed by the Council;
- E.3.3 return to the Council any of the Price and/or Reserve within thirty (30) calendar days of a written request from the Council.

E.4. The Council shall be entitled to any discount for prompt payment specified in the Tender Response Document.

E.5. Without prejudice to any other rights or remedies of the Council whether in contract, tort, or under statute, or otherwise, the Council shall be entitled to withhold or reduce, or make deductions from the Price:

- E.5.1. pursuant to Clause 36;
- E.5.2. where the Provider has been overpaid by the Council by virtue of an error or fraudulent conduct by a Council employee, agent or Fellow Contractor;
- E.5.3. where the Council has suffered financial loss by virtue of the Provider overpaying a third party including, without limitation, where the Provider in the course of carrying out its obligations under the Contract makes an overpayment of salary or makes duplicate credit payments.

**E.6. VAT**

- E.6.1. All sums payable under this Contract are exclusive of VAT or any tax replacing it.
- E.6.2. If this Contract or anything in it gives rise to a taxable supply for Value Added Tax purposes by the Provider to the Council under Law from time to time in force, on the production of a valid Value Added Tax invoice, the Council will pay the Provider a sum equal to that Value Added Tax in addition to the Price or any other consideration.

**Disputes relating to the Price and/or Reserve**

- E.7. The Provider shall within thirty (30) calendar days of a request from the Contract Manager for further information in relation to the Services provide such information. If the Contract Manager disputes the Provider's entitlement to any part of the amount claimed the Contract Manager shall notify the Provider in writing that part of the amount (insofar as the Contract Manager is reasonably able to quantify it at that point in time) which the Contract Manager disputes and submit to the Provider such supporting evidence as it may have.
- E.8. Any disputes in relation to payment may be referred to the Dispute Resolution Procedure as set out in Clause 40.
- E.9. The Council may reduce or suspend a quarterly payment in respect of Services where the Provider has either failed to provide or has provided inadequately including failure to achieve any of the KPI's set out in Schedule 3, without prejudice to any other rights or remedies of the Council.
- E.10. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
  - E.10.1. provisions having the same effect as Clause 12.4 of this Contract; and
  - E.10.2. a provision requiring the sub-contractor to include in any Sub-Contract which it awards provisions having the same effect as Clause 12.4 of this Contract.
  - E.10.3. Without prejudice to any other of its rights in this Contract, the Council shall be entitled to receive evidence from the Provider of the existence of such provisions and that they are complied with by the parties to the Sub-Contracts.
- E.11. Clauses 36.1 and 36.2 shall not apply.

**F. EFFICIENCY GAIN PLAN**

- F.1. The Provider shall work with the Council throughout the Contract Period to identify any savings or efficiency gains which may be made in relation to the Services. The Council may require the Provider

to develop an Efficiency Gain Plan containing proposals for the implementation of any schemes or strategies to realise such gains. The Council may require the Provider to implement, review and update the Efficiency Gain Plan from time to time during the Contract Period.

**G. INDEXATION - NOT USED**

**H. COMPENSATION ON TERMINATION FOR CONVENIENCE**

- H.1. If this Clause is required, Clause 37.8 shall be deleted and the following provisions shall apply.
- H.2. In addition to its rights of termination under the Contract, the Council shall be entitled to terminate this Contract by giving to the Provider not less than six months advance notice to that effect in which case the provisions of Clause 38 and this Clause H shall apply.
- H.3. If this Contract is terminated voluntarily pursuant to this Clause H the Provider shall subject to Clause 37.9 be paid the following compensation amounts (applied pro rata if the termination is in part):
- H.3.1 Capital recoupment:  
Nil (£0)
- H.3.2 Redundancies:  
Redundancy payments in respect of any of the Staff engaged solely in providing the Services provided that TUPE does not apply to such Staff and provided that the Provider has used all reasonable endeavours to be expected of a prudent employer in the position of the Provider but without the benefit of this Clause H to mitigate such redundancy payments. This amount shall not include any compensation, costs or damages for any unfair or wrongful dismissal claims by such Staff.
- H.4. The compensation payable under this Clause H shall not include:
- H.4.1 any profit that the Provider would have made or had projected or expected to make during the unexpired period of the Contract;
- H.4.2 any loss which the Provider has not taken all reasonable steps to mitigate; and
- H.4.3 any Sub-Contract breakage costs.

**I. CONTINUOUS IMPROVEMENT PLAN**

- I.1. The Provider's Continuous Improvement Plan in the Tender Response Document shall be developed and implemented to secure continuous improvement in the way in which the Services are provided and shall be reviewed regularly during the Contract Period by the Council in accordance with any provisions specified in the Schedule 3 (Performance Monitoring and KPIs).

**J.1. USE OR OCCUPATION OF COUNCIL'S PREMISES**

- J.1.1. In accordance with this Contract, Schedule 1 (Service Specification) and Schedule 6 (Provider's Tender) (where agreed by the Council and subject to the exclusion of the security of tenure provisions of the Landlord and Tenant Act 1954 (as amended) and the necessary declaration by the Provider as tenant to that effect where applicable) the Provider shall have the use of the Council's Premises subject to the Provider entering into a property related document prepared by the Council:

- J.1.1.1. Where the Council owns the freehold, the Provider shall have use of the Council's Premises as lessee and shall vacate the same on completion, termination or abandonment of this Contract;
- J.1.1.2. Where the Council has a leasehold interest, the Provider shall have use of such land or Premises as under-lessee (notwithstanding that prior agreement shall be sought by the Council from the landlord of the freehold estate for any such grant of a lease) and shall vacate the same on completion, termination or abandonment of this Contract;
- J.1.1.3. Where the Council has user rights, the Provider shall have use of such Council's Premises as the nominated agent of the Council and will have the same user rights as the Council, and shall vacate the same on completion, termination or abandonment of this Contract.

- J.2. Should the Provider require modifications to the Council's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Provider's expense. Ownership of such modifications shall rest with the Council.
- J.3. The Provider shall ensure that its Staff observe and comply with such rules and regulations as may be determined at any time by the Council for the use of the Council's Premises.
- J.4. The Provider shall pay for the cost of making good any damage caused by the Provider and its Staff other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- J.5. The Parties agree that (unless expressly agreed to the contrary) there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Provider or its Staff and that no such tenancy has or shall come into being.
- J.6. Notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use in any manner the Council sees fit any Council Premises.
- J.7. Access to the Council Premises shall not be exclusive to the Provider but shall be limited to such Staff as are necessary to perform of the Services concurrently with the execution of work by others. The Provider shall co-operate free of charge with such others on the Council's Premises as the Council may reasonably require.
- J.8. The Provider shall vacate the Council Premises on the Expiry Date, earlier termination or abandonment of this Contract.

**K. PARENT COMPANY GUARANTEE**

- K.1. For the purposes of this Clause K, the Parent Company Guarantee shall be in the form at Annex Four or a form submitted by the Provider that is in accordance with current standards.
- K.2. The Provider shall provide the Parent Company Guarantee executed by its ultimate parent company or its parent company with substantial UK assets no later than ten (10) days after the Contract Date or the date of request by the Council in the event that during the Contract Period the Provider becomes a subsidiary company of another organisation or in the event that the parent company of the Provider which has previously entered into the Parent Company Guarantee with the Council changes.
- K.3. For the avoidance of doubt, in the event the Council waives its requirements under Clause K.2 above, the Council reserves the right to request that the Provider provides a Parent Company Guarantee at

a later stage during the Contract Period, upon which the Provider shall deliver an executed Parent Company Guarantee within ten (10) days of such a request.

- K.4. The Council shall be entitled to withhold 25% of any sums due under this Contract in the event the Provider fails to comply with this Clause K and for such time as the Provider continues to fail to comply.

**L. PERFORMANCE BOND**

- L.1. For the purposes of this clause L, the Performance Bond shall be a bond in the form at Annex Five.
- L.2. The Provider shall provide the Performance Bond from a bank or insurer strong enough to carry the Performance Bond. The Provider shall provide the executed Performance Bond to the Council no later than 10 days of the Contract Date (or later date if requested in writing by the Council) and failure to do this shall entitle the Council to withhold 25% of any sums due under the Contract for such time until the Provider provides the Performance Bond.
- L.3. In the event the Performance Bond expires before the end of the Contract Period, the Provider shall arrange for a replacement Performance Bond or Bonds which shall be effective from the expiry date of the initial Performance Bond. The provider of any replacement Performance Bond shall be of equivalent financial strength and reputation as the provider of the initial Performance Bond.

**Annexes:**

**Annex One – Transferring Employees**

**Annex Two – Transferring Original Employees**

**Annex Three – Form of Admission Agreement**

**Annex Four – Form of Parent Company Guarantee**

**Annex Five – Form of Performance Bond**

**SCHEDULE 3**  
**PERFORMANCE MONITORING AND KEY PERFORMANCE INDICATORS**

**Please refer to Appendix 1 'Performance Monitoring and Appendix 4 'Monitoring Framework' of Schedule 1 in Section C - Service Specification**

**SCHEDULE 4**  
**THE COUNCIL'S POLICY STATEMENTS**

**Please refer to Section C – Service Specification**

**SCHEDULE 5  
PAYMENT SCHEDULE**

**Please refer to Section G – Pricing Schedule**



**SCHEDULE 6**  
**TENDER RESPONSE DOCUMENT**

**Please refer to Section E - Tender Submission**

**SCHEDULE 7**  
**CALL-OFF TERMS AND SERVICE ORDER FORM**

**Please refer to Section D – Call off Terms and Service Order form.**

**SCHEDULE 8**  
**OTHER RELEVANT CORRESPONDENCE**

**Please refer to Section H – ITT & AND OTHER RELEVANT CORRESPONDENCE**