



**Brighton & Hove  
City Council**

**BRIGHTON & HOVE CITY COUNCIL**

**SUPPLIER AGREEMENT**

**FOR THE PROVISION OF ADULT SOCIAL CARE SERVICES IN  
CONNECTION WITH SUPPORTED ACCOMMODATION,  
COMMUNITY SUPPORT SERVICES AND DAY OPPORTUNITIES**

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**SCHEDULES**

- 1. Definitions
- 2. Service Specifications
- 3. Individual Service Agreement
- 4. The Supplier Entry Guide

This Agreement is dated the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

It is between:

**BRIGHTON & HOVE CITY COUNCIL** of King's House, Grand Avenue, Hove BN3 2LS (referred to in this Agreement as 'the Council', 'we' or 'us') and

**SUPPLIER**, a company registered in England & Wales, company number [ ] whose registered office address is (referred to in this Agreement as 'Supplier' or 'you').

### **BACKGROUND**

- A. The Council placed a contract notice in the Official Journal of the European Union on 29 January 2016 inviting Suppliers to participate in a Dynamic Purchasing System ("DPS") for the procurement of adult social care services in connection with supported accommodation, community support services and day opportunities, in the administrative area of the City of Brighton & Hove
- B. In accordance with Regulation 34 of the Public Contracts Regulations 2015, the Council has used the Restricted Procedure to establish a DPS.
- C. The Council has contracted with *adam* HTT Limited t/a *adam* (the "technology provider") to provide a web-based software system namely *sproc.net*, or such other technology as agreed between the parties from time to time (the "Application"), to procure services via the DPS as set out in the PCR 2015, and for such services to be transacted as further set out in this Supplier Agreement.
- D. The Supplier submitted a request to participate in the DPS and has satisfied the accreditation and enrolment criteria and on this basis the Council wishes to admit and the supplier has agreed to join the DPS on the terms set out in this Agreement.
- E. The Council will admit all applicable Suppliers admitted to the DPS to submit an offer for each applicable Requirement within time limit specified by the Council.
- F. The Council intends to enter into an Individual Service Agreement with the supplier submitting an offer which best meets the Requirement and its award criteria.

G. For the avoidance of doubt there will be no obligation for the Council to accept any offer made in response to the advertisement of a Requirement.

IT IS AGREED as follows

## **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meaning set out in Schedule 1 (Definitions).

1.2 Unless the context makes it clear that this is not what is intended, any reference in this Agreement to:

1.2.1 the feminine includes a reference to the masculine and vice versa;

1.2.2 the singular includes a reference to the plural and vice versa;

1.2.3 a person includes a reference to an individual or a firm, partnership, company, or corporation;

1.2.4 a 'clause' or a 'schedule' means a reference to a clause or schedule of this Agreement.

1.3 The headings in this Agreement are for ease of reference only and do not affect its interpretation.

1.4 Any reference in this Agreement to any enactment, order, regulation or other similar instrument is to be taken to mean a reference to any such enactment, order, regulation or other similar instrument which is in force for the time being. This includes (for as long as they are in force):

1.4.1 any amendments or modifications to any such enactment, order, regulation or other similar instrument; and

1.4.2 any re-enactment of any such enactment, order, regulation or other similar instrument.

## **2. SCOPE OF SUPPLIER AGREEMENT**

2.1 This Supplier Agreement governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier

indicated its agreement to the terms on submission of its application to be admitted to the DPS.

2.2 In the event of a conflict between the terms of any of the Documents forming this Agreement, then the documents shall take precedence in the following order:

- a) The Individual Service Agreement;
- b) The Supplier Agreement;
- c) The Self Billing agreement (if the functionality is utilised);
- d) The Supplier Entry Guide.

2.3 The Council may in its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation on the Council to purchase any Services from the Supplier during the Term. Notwithstanding the fact that the Council has followed the procedure set out in this Supplier Agreement or Supplier Entry Guide, the Council shall be entitled at all times to decline to make an award for its Requirement.

2.4 The Council may update the Supplier Entry Guide at any time throughout the Term of the Agreement, provided that the Council provides all suppliers with reasonable advance notice of the changes.

2.5 The Supplier warrants that all information submitted within the Accreditation and Enrolment procedure was correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance with any of the Selection Criteria changes in the course of the Term of the Agreement, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council may in its sole discretion, remove the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Agreement.

2.6 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Agreement, and may perform audit checks of any such or existing Accreditation or Enrolment information.

2.7 The Supplier acknowledges that in entering into this Supplier Agreement no form of exclusivity or volume guarantee is given by the Council for Services from the Supplier and that the Council is at all times entitled to enter into

other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.

- 2.8 Nothing in this Supplier Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Supplier or as constituting either Party as the agent of the other for any purpose whatsoever.
- 2.9 Each party shall bear its own costs in connection with the formation and operation of this Dynamic Purchasing System and any agreement entered into between the Parties in connection therewith.

### **3. THE DPS PROCESS**

#### 3.1 The Council shall:

- 3.1.1 offer all potential suppliers unrestricted, direct access to all appropriate documents, including template contract documents and Selection Criteria by electronic means and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated;
- 3.1.2 give any potential suppliers the opportunity to submit a request to participate in the DPS via the Application. Admission into the DPS is subject to the supplier satisfying the process set out in the DPS Entry Guide.
- 3.1.3 complete the evaluation of a request to participate in the DPS within 10 working days from the date of its submission or such longer period as the Council may determine;
- 3.1.4 invite all applicable suppliers who have been admitted to the DPS to submit an Offer for each applicable Requirement stating the type or part of the Service required and the timescale in which the service is required to be delivered and any Offer made;
- 3.1.5 On acceptance of an Offer which best meets the Requirement and its appropriate award criteria the Council shall enter into an Individual Service Agreement (ISA) with the Supplier of that Offer.

#### 3.2 The Supplier shall:

- 3.2.1 submit all Offers within the Application in accordance with the procedures detailed within the DPS Entry Guide, this Supplier Agreement and as further supplemented by the Requirement ;
- 3.2.2 submit all Offers within the Application no later than the specified deadline. Offers received after the deadline will not be accepted;
- 3.2.3 acknowledge that users of the Application may submit a quality review or summary of the Supplier's performance under this Agreement. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Application shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.

#### **4. INDIVIDUAL SERVICE AGREEMENTS (ISA)**

- 4.1 By entering into an ISA with the Council the Supplier is agreeing to the terms set out in the ISA and also agreeing to these terms and conditions and those contained within the associated schedules.
- 4.2 The form of each ISA will be amended by the Council from time to time, at the Council's discretion.

#### **5. SUPPLIERS OBLIGATIONS**

- 5.1 The Supplier shall ensure that it has the capability to provide the Services in accordance with the terms and conditions of this Agreement and the respective ISA and the Service Specification.
- 5.2 The Supplier agrees that the Council has the power to inspect and examine the performance of the Services and compliance with this Agreement at any premises where any part of the service is being performed.
- 5.3 The Supplier shall be registered and shall remain registered throughout the Term with any relevant Regulatory Bodies.
- 5.4 The Supplier acknowledges that the provision and manner in which the services are provided may be open to change in the future and the Supplier agrees to work with the Council in a spirit of co-operation and good faith to ensure that where it is informed of any proposed changes by the Council such changes are developed and implemented to the Council's satisfaction.



## **6. PAYMENT**

- 6.1 In return for you carrying out your obligations under this contract the Council shall pay the charges as per the ISA to the supplier.6.2 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Contract, the Council shall pay the charges to the Supplier.6.3 The Council shall pay the charges which have become payable within thirty (30) days of the appropriate valid and undisputed Invoice having been raised.
- 6.4 For the avoidance of doubt, the Supplier acknowledges and accepts that the charges due for the Services provided under the Contract shall be paid by the Council.

## **7. PROVISION OF THE SERVICES**

- 7.1 The Services shall commence in accordance with the requirements of the ISA.
- 7.2 The Services shall be provided only to people who live within the City of Brighton & Hove.
- 7.3 You must provide the Services in accordance with your obligations under this Contract and with all the skill, care and diligence to be expected of a competent provider of services of a similar kind to the Services.
- 7.4 In providing the Services you must also comply with:
- 7.4.1 any and all codes of practice, performance ratings and quality standards that are laid down in this Contract or that are issued to you as part of an agreed Variation Notice;
  - 7.4.2 any relevant current and future statutory provisions which apply to the Services;
  - 7.4.3 any changes within any Regulatory Bodies that your Services are subject to; and
  - 7.4.4 our policy and multi-agency procedure on protecting vulnerable adults as set out in clause 12

## **8. SUPPLIER'S STAFF**

- 8.1 The Supplier shall employ sufficiently trained, suitably qualified and experienced staff to ensure that the Services are provided throughout the Term in compliance in all respects with the contract standards.
- 8.2 The Supplier shall ensure that it has sufficient staff to provide the services during any period of staff absence due to sickness, maternity leave, staff holidays or otherwise.
- 8.3 The Supplier shall ensure that the staff employed for the provision of the services shall at all times exercise due care and diligence in the exercise of their duties
- 8.4 The Supplier shall also ensure that the Staff are given appropriate training, instruction and are adequately supervised at all times with regard to the provision of the Services.
- 8.5 The Supplier shall promptly notify the Council in writing (which includes by email) if it becomes aware during the performance of the ISA of any inaccuracies in any information provided by the Council which materially affects its ability to perform the Services or meet any quality standards.
- 8.6 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 8.6.1 questioned about whether they have any convictions or cautions;
  - 8.6.2 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) including, where the Service involves a Regulated Activity, a check against the children's or adults barred list (as the case may be);
  - 8.6.3 not barred from working with children or young people, or vulnerable adults (as the case may be) as a result of those matters;
  - 8.6.4 the Supplier shall monitor the level and validity of the checks under this clause for each member of staff; and shall having regard to the Council's Policy on the Recruitment of Ex-Offenders, not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

8.7 Ongoing training must be provided to maintain and develop knowledge and solution focused skills relating to the issues pertinent to the Service User group. This will include:

- 8.7.1 a full commitment to empowering individuals to lead an independent life;
- 8.7.2 good interpersonal skills and the ability to foster relationships that help Service Users feel valued, whilst maintaining appropriate professional boundaries;
- 8.7.3 conducting needs assessment and planning;
- 8.7.4 the ability to work creatively and flexibly to meet the needs of Service Users;
- 8.7.5 the ability to adopt an assertive, proactive approach to those presenting challenging behaviours or failure to engage;
- 8.7.6 good knowledge of specialist services and services provided by other agencies in the local community;
- 8.7.7 the ability to form strong working relationships and work in partnership with key local statutory and voluntary agencies.

## **9. SERVICES REVIEW**

9.1 We will carry out a Services Review of each of the Services annually or at a time determined by us. We may carry out any of the Services Reviews at a different time either if:

- 9.1.1 you agree; or
- 9.1.2 we are in any way whatever concerned with the provision of the Services upon giving of prior written notice to you to bring forward the review.

9.2 You will fully co-operate with us in carrying out a Services Review and subject to Clause 16 (Data Protection Act) you must make available to us such facilities, information and assistance as we may reasonably require, provided we have given you reasonable notice and provided this does not put you to what you consider, acting reasonably, as unreasonable cost. For example, you must allow our employees or authorised agents access to:

- 9.2.1 your employees; and

9.2.2 all information, reports, financial accounts, documents, records (whether in human or machine readable form) and data which you hold or have access to in each case who or which are relevant to this Contract or the Services.

9.3 You must also allow us to take copies of the information, reports, etc., referred to in Clause 9.2.

9.4 You will be notified in writing of the outcome of each Service Review and will be invited to comment on the service you have received from the Council Officers conducting the review.

9.5 Any information, reports etc. made available to us under this Clause 9 shall be treated by us as Confidential Information and therefore subject to the provisions of Clause 18 Confidentiality.

## **10. COMPLAINTS PROCEDURE**

10.1 You must have a complaints procedure that complies with the requirements of any Regulatory Body to which you are subject, and is updated as required by that Body and is available on request.

10.2 The complaints procedure must make clear that those who remain dissatisfied with the Suppliers response may also access the Council's complaint procedures and will provide information about how to make a complaint to the Local Government Ombudsman.

10.3 You must promote a culture among your staff of welcoming comment and involvement from Service Users and their advocates.

10.4 At the reasonable request of the Council the Supplier must immediately provide the Council with a copy of the Supplier's records relating to complaints made in relation to the Services and the response. Depending on the circumstances, the Council shall be entitled to direct the Supplier as to how any complaint is to be handled and to have sight of the same prior to any response being made.

## **11. SERVICE USER CONSULTATION**

11.1 The Supplier will have a structured framework for consulting Service Users to facilitate engagement with the Service User.

## **12. PROTECTION OF ADULTS AND CHILDREN AT RISK**

- 12.1 The Supplier must have a Safeguarding Policy that reflects the principles and procedures of the Council's Safeguarding Adults Competency Framework.
- 12.2 Staff and volunteers must be trained in this area and made fully aware of this policy and the principles of the policy put into practice in all areas of service delivery. If relevant, a child protection policy must also be operated.
- 12.3 For the purposes of this Contract an adult at risk is a person who as a result of their care and/or support needs is unable to protect themselves from either the risk of, or the experience of, abuse or neglect. This can be in any form, including: physical, sexual, psychological, neglect, self-neglect, financial or material, organisational, modern slavery.
- 12.4 The codes of practice defined in the following documents must be observed:
- 12.4.1 the *Sussex Safeguarding Adults Policy and Procedures*:  
<http://pansussexadultssafeguarding.proceduresonline.com/index.htm>
- 12.4.2 and the Pan Sussex Child Protection and Safeguarding Procedures:  
<http://pansussexscb.proceduresonline.com/index.htm>.
- 12.5 Staff and volunteers must receive training at a level appropriate to their role, in the nature and limits of relationships with service users, in regards to: confidentiality, professional boundaries, gifts and cash handling, mental health issues and working with vulnerable adults. Training in awareness of Safeguarding Adults at Risk must be accessed through a training provider who has been accredited by the Brighton & Hove Multi-Agency Safeguarding Adults Board Training Strategy Sub Group.
- 12.6 The Supplier must have a written Professional Boundaries/Code of Conduct policy that includes procedures to prevent staff from personally benefiting when working with vulnerable people. This may be included within the Staff Conditions or Code of Conduct documents.
- 12.7 In addition the Supplier must ensure all management, staff and/or volunteers providing the service adhere to, and are able to describe, the policies concerning relationships with Service Users and shall be provided with a copy or summary of your policies on Protection from Abuse and Professional Boundaries.

### **13. WHISTLE BLOWING**

- 13.1 The Supplier must ensure that it has a whistle blowing procedure which has been approved by the Council and notified to Service Users.
- 13.2 The Council is authorised as a person to whom staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and will make your staff aware of this.
- 13.3 You agree and declare that any of your staff making a protected disclosure as defined by that Act shall not, as a result, be subjected to any detriment.

### **14. EQUAL OPPORTUNITIES**

- 14.1 You must:
- 14.1.1 operate an equal opportunities policy for as long as this Agreement is in force; and
  - 14.1.2 provide us with a copy of any such policy at our request.
- 14.2 You must use all reasonable endeavours to make sure that your equal opportunities policy complies with all statutory obligations as regards discrimination on the grounds of age, sex, disability, nationality, cultural or ethnic origin, religion or belief, marital or civil partnership status, maternity status, gender reassignment status and sexual orientation in relation to:
- 14.2.1 decisions made by you in the recruitment, training or promotion of staff employed or to be employed in the provision of the Services;
  - 14.2.2 the provision of the Services; and
  - 14.2.3 the carrying out of your obligations under this Agreement.
- 14.3 In providing the Services, you must observe as far as possible the Equality and Human Rights Commission's *Code of Practice on Employment*, (the 'Code'), any updates to the Code, or any code which may replace it.
- 14.4 You must provide us with such information as we may reasonably require in order for us to assess your compliance with the Code.
- 14.5 If any Court or Tribunal, or the Equality and Human Rights Commission (or anybody which may replace the Commission) makes a finding that you have unlawfully discriminated against any person in the provision of the Services then you must:

- 14.5.1 take all necessary steps to make sure that the unlawful discrimination does not happen again; and
  - 14.5.2 notify us in writing of the finding and the steps taken to prevent its reoccurrence.
- 14.6 In providing the Services, you must give appropriate consideration to each Service User's race, nationality, cultural or ethnic background, marital status, age, gender, religion, sexual orientation and disabilities. You will challenge discrimination and prejudice wherever it takes place and assist Service Users to do the same.
- 14.7 In providing the Services you must observe the Council's Equality and Inclusion Policy. The Equality Act 2010 places duties on all public authorities to promote equality. We are required to prepare and publish an Equality Scheme that shows how we plan to do this, through setting out an action plan for improvement and change, together with identifying clear targets so we can measure our progress. In order to meet this 'general duty' we must ensure that, in carrying out our functions as a Council, we take account, in everything that we do, of the need to:
- 14.7.1 Eliminate unlawful discrimination;
  - 14.7.2 Promote equality of opportunity; and
  - 14.7.3 Promote good relations between people of different racial and social groups.
- 14.8 We also have to meet a 'special duty' to ensure our recruitment, selection, training and promotion arrangements, grievance and disciplinary policies and procedures for our employees operate fairly.
- 14.9 We have published the Equality and Inclusion Policy, a document in which we set out what our priorities are for promoting equality, so that we can ensure that we are meeting our legal obligations and that we are aiming to improve the way we provide our services to all sections of the community.
- 14.10 You must help us to meet our duties regarding equal opportunities and agree to provide us with any monitoring information we may reasonably require to ensure this.

## **15. RECORDS AND INFORMATION**

- 15.1 You must compile and maintain such information as we may reasonably require for the purposes of evaluating the Performance Indicators and monitoring outcomes

for Service Users. In addition, you will periodically provide any further information we may reasonably require as a Council to fulfil our contract monitoring and local authority duties.

15.2 You must make available to us the information referred to in Clause 15.1 at 3 monthly intervals starting from the Commencement Date and at such other times as we may reasonably require.

15.3 In addition, at our reasonable request (but subject to Clauses 16 (Data Protection Act) and 18 (Confidentiality)) you must provide us with all other information which we may reasonably require for the purpose of assessing how you are carrying out your obligations under this Agreement and the safety and welfare of the Service Users.

15.4 We may require you to enter into a data sharing agreement in order to comply with the terms of this Agreement and any such agreement will be entered into without additional cost to us.

15.5 All staff involved in entering monitoring information will receive sufficient training and supervision to ensure reports are accurate, complete and consistent across services. Reports must be signed off by the responsible member of staff before submission.

15.6 You must allow the Authorised Officer or any person authorised by the Authorised Officer, including auditors acting on the Council's or government's behalf, at all reasonable times to inspect or witness the provision of the Services and all sources of the information referred to in Clauses 15.1 and 15.3.

15.7 In inspecting or witnessing the provision of the Services we will have proper regard to the nature of the Service being provided.

15.8 You must notify us and seek our written consent in relation to any of the following actions by you:

- 15.8.1 there is a proposed change in who controls the majority of the shares in, or the voting rights amongst shareholders or members of, your organisation;
- 15.8.2 you propose to merge with another organisation;
- 15.8.3 you propose to transfer your engagements to another organisation;
- 15.8.4 you propose to in any way transfer your business to another organisation;



- 15.9 You must immediately notify us if:
- 15.9.1 a change occurs or is anticipated in any funding stream which may negatively affect the capacity or delivery of the Services;
  - 15.9.2 as a result of any misconduct or mismanagement on your part a Regulatory Body directs an inquiry into, or makes an order of any kind in relation to, your affairs; or
  - 15.9.3 any registration which you must maintain in order to provide any of the Services is withdrawn or cancelled or is threatened to be withdrawn or cancelled
- 15.10 We shall have the right to terminate this Contract or our use of any Service or part thereof with immediate effect by giving you written notice thereof if one or more of the events set out in Clauses 15.8 or 15.9 above occur, without our written consent and/or notification as the case may be.

## **16. DATA PROTECTION ACT**

- 16.1 In relation to all Personal Data you shall at all times comply with all applicable legislation including the Data Protection Act 1998 as a data controller if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Act 1998 covering the data processing to be performed in connection with the Services.
- 16.2 You shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the geographic area of the European Union.
- 16.3 You shall not disclose Personal Data to any third parties other than:
- 16.3.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for you to carry out the Services; or
  - 16.3.2 to the extent required under a court order or by virtue of a legal requirement
- 16.4 Provided that disclosure under Clause 16.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 16 and that you shall give notice in writing to us of any disclosure of Personal Data you or a sub-contractor is required to make under Clause 16.3.1 immediately it becomes aware of such a requirement.

- 16.5 You shall bring into effect and maintain all 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 staff having access to the personal data.
- 16.6 We may, at reasonable intervals, request a written description of the technical and organisational methods employed by you in order to comply with our obligations under Clause 16.5. Within 30 days of such a request you shall supply written particulars of all such measures detailed to a reasonable level such that we can determine whether or not it is compliant with the Data Protection Act 1998.
- 16.7 You shall be liable for and shall without any limit indemnify and keep us indemnified against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of a breach by you of your obligations under this clause, including those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Act 1998 by you or your representatives.

## **17. HEALTH AND SAFETY**

- 17.1 You must comply with the requirements of the Health and Safety at Work Act 1974 and any other legal provisions pertaining to the health and safety of your staff, key workers, Service Users and others who may be involved in or affected by the performance of the Services.
- 17.2 For as long as this Agreement is in force you must have in place a health and safety policy which complies with all statutory requirements and at our request supply us with a copy.
- 17.3 You must be able to demonstrate you have effective arrangements in place for health and safety management. Assessment through schemes such as CHAS, Safe Contractor, OHSAS 18001 or other schemes recognised through the Safety Schemes In Procurement (SSIP) body are accepted by Brighton & Hove City Council as effectively meeting this requirement.
- 17.4 You must ensure that all persons involved in the provision of the Services, including any persons providing the Services on behalf of the Service Provider, are sufficiently competent and receive sufficient training and are provided with appropriate equipment and systems of work so as to ensure

so far as is reasonably practicable their health and safety and the health and safety of the Service User and any other persons who may be affected by the way in which the provision of the Service(s) is undertaken.

17.5 You must ensure that a Risk Assessment is undertaken by an appropriately trained and competent person before the commencement of any works on the Premises or other planned disruption to the Services. You will organise and plan for the control of hazards arising from such activities, proportionate to the level of the risks involved. Works must be effectively managed and supervised, and adequate training must be provided in order to minimise, so far as is reasonably practicable, all risks to staff, Service Users, contractors, and any other persons who may be affected. You must supply us with copies of the Risk Assessments and any associated plans at our request.

## **18. CONFIDENTIALITY**

18.1 Each party:

18.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

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

18.2 You shall take all necessary precautions to ensure that all Confidential Information obtained from us under or in connection with the Agreement:

18.2.1 is given only to such of your employees and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

18.2.2 is treated as confidential and not disclosed (without prior approval) or used by any employees or such professional advisors or consultants otherwise than for the purposes of the Agreement.

18.3 Where it is considered necessary in our opinion, you shall ensure that your employees, agents, professional advisors or sub-contractors are aware of your Confidentiality obligations under this Agreement. You will ensure that

any sub-contract entered into that is necessary for carrying out its functions under the Agreement have a similar confidentiality clause that in no way denigrates your liabilities or obligations or those of any sub-contractor or the true intention of this Condition.

18.4 You shall not use any Confidential Information you receive from us other than for the purposes of the Agreement.

18.5 The provisions of Clauses 18.1 to 18.4 shall not apply to any Confidential Information received by one party from the other:

- 18.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
- 18.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 18.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 18.5.4 which is independently developed without access to the Confidential Information; or
- 18.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Condition 20 (Freedom of Information).

18.6 Nothing in this Condition shall prevent us:

- 18.6.1 disclosing any Confidential Information for the purpose of:
  - 18.6.1.1 the examination and certification of our accounts; or
  - 18.6.1.2 any examination pursuant to Section 6 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which we have used its resources; or
  - 18.6.1.3 disclosing any Confidential Information obtained from you to any person engaged in providing any services to us for any purpose relating to or ancillary to the Agreement provided that in disclosing information under this sub-paragraph we disclose 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.

18.7 Nothing in this condition shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of intellectual property rights.

18.8 In the event that you fail to comply with this condition, we reserve the right to terminate the Agreement by notice in writing with immediate effect.

## **19. FREEDOM OF INFORMATION ACT**

19.1 You recognise that the Council is subject to legal duties which may require the release of Information under FOIA or the Environmental Information Regulation 2002 or any other applicable legislation or codes governing access to Information and that we may be under an obligation to provide Information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

19.2 You shall and shall procure that your sub-contractors shall:

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

19.2.2 provide us with a copy of all Information in your possession or power in the form that we require within five Working Days (or such other period as we may specify) of us requesting that Information; and

19.2.3 provide all necessary assistance as reasonably requested by us to enable us to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

19.3 We shall be responsible for determining at our absolute discretion whether the Confidential Information and/or any other Information:

19.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

- 19.3.2 is to be disclosed in response to a Request for Information, and in no event shall you respond directly to a Request for Information unless expressly authorised to do so by us.
- 19.4 You acknowledge that we may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose information:
- 19.4.1 without consulting with you, or
- 19.4.2 following consultation with you and having taken your views into account
- 19.5 You shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 19.6 You acknowledge that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that we may nevertheless be obliged to disclose Confidential Information in accordance with Clause 18.
- 19.7 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information and we shall be responsible for determining in our absolute discretion whether any part of the Contact or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA.
- 19.8 Notwithstanding any other term of this Agreement, you give your consent for us to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form we decide.

## **20. INSURANCE**

- 20.1 For as long as this Agreement is in force you must take out and maintain as a minimum the insurances set out in Clause 20.3. You must also ensure that any of your sub-contractors who are providing any or all of the Services on your behalf take out and maintain equivalent insurances, as a minimum.
- 20.2 All insurances must be taken out and maintained with a reputable insurance company.

20.3 The insurances referred to in Clause 20.1 are as follows:

20.3.1 employers liability insurance in a minimum amount for each and every claim, act or occurrence or series of claims, acts or occurrences in the minimum amount of [£10 million];

20.3.2 public liability insurance in a minimum amount of [£10m] for each and every claim, act or occurrence or series of claims, acts or occurrences; and

20.4 You must provide us with a copy of the policy schedule for the insurances referred to in Clause 20.3 at our request together with evidence that the insurances are in force. Whilst normally, we shall not ask for such schedules or evidence more than once in each Financial Year, we reserve the right to do so if we consider it reasonably necessary.

20.5 If we are of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with Clause 20.3 then you must rectify (or if applicable, ensure that the sub-contractor rectifies) the position as soon as possible.

20.6 If you do not (or where applicable if the sub-contractor does not) rectify the position as soon as possible then we shall be entitled to do so on your, or your sub-contractors, behalf.

20.7 If we do then you must pay us an amount equal to the sum which we certify as being the cost to us in arranging the insurances concerned, together with a sum equal to 10% of the cost of such insurances as a contribution to our administrative costs and overheads.

20.8 If you do not pay such amount within a reasonable period of our demanding it then we may recover the amount as a debt.

## **21. YOUR LIABILITIES AND INDEMNITIES**

21.1 You must fully and promptly indemnify us against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'our losses') which we suffer as a result of any negligence, Default or breach of statutory duty on your part in carrying out your obligations under this Agreement or on the part of any person you employ or engage to carry out your obligations under this Agreement.

21.2 You will not be liable to indemnify us as set out in Clause 21.1 to the extent that our losses are due to any negligence, Default or breach of statutory

duty on our part, or on the part of any of our employees acting in the course of their employment.

21.3 Your liability for any of our losses which relate to death, personal injury or data protection shall be unlimited.

## **22. OUR LIABILITIES AND INDEMNITIES**

22.1 We must fully and promptly indemnify you against all direct (but not indirect or consequential) losses, damages, costs, expenses, liabilities, claims or proceedings, whether these arise under statute or common law, (together referred to as 'your losses') which you suffer as a result of any negligence, Default or breach of statutory duty on our part in carrying out our obligations under this Agreement or on the part of any person we employ or engage to carry out our obligations under this Agreement..

22.2 We will not be liable to indemnify you as set out in Clause 22.1 to the extent that your losses are due to any negligence, Default or breach of statutory duty on your part, or on the part of any of your employees acting in the course of their employment.

22.3 Our liability for any of your losses which relate to death or personal injury shall be unlimited.

22.4 Otherwise our liability for your losses shall be limited to the annual value of this Agreement in respect of each and every claim.

## **23. DEFAULTS, AND SUSPENSION DEFAULTS**

23.1 If you commit a Default then we will be entitled to serve on you a Default Notice. This will be without prejudice to any other right or remedy which may be available to us, either under this Agreement or at law.

23.2 If we serve on you a Default Notice which relates to a Default which can be put right then on receiving such a Default Notice, you will take the action specified in the Notice, within the timescale set out, at your own cost.

23.3 You will be entitled to apply the provisions of Clauses 23.1 and 23.2 to us except that if the Default concerned is a failure to pay you the Contract Price on



time then we must make you such late payment within 10 Working Days of the Default Notice being served.

23.4 If there is any disagreement between us as to whether a Default has occurred and/or about the action required to be taken and/or the timescale

within which the action is to be taken, then either of us can refer the matter for resolution, in accordance with Clause 28 (Dispute Resolution).

## **24. PERSISTENT DEFAULT**

24.1 If you commit a Persistent Default or fail to put right a Default within the timescale set out in the Default Notice concerned then;

24.2 if the Persistent Default or the failure to put right a Default relates to a particular Service we will be entitled to terminate the application of this Agreement to the Service concerned by giving you not less than three months written notice; or

24.3 if we consider (acting reasonably) that the Persistent Default or failure to put right a Default within the timescale concerned relates to the way in which you carry out your obligations generally we will be entitled to terminate this Agreement as a whole by giving you not less than three months written notice; or

24.4 if we consider (acting reasonably) that the Persistent Default or failure to put right a Default within the timescale concerned relates to the way in which you carry out your obligations in relation to a particular type of Service, we will be entitled to terminate the application of this Agreement to the type of Services concerned by giving you not less than three months written notice.

## **25. SUSPENSION**

25.1 If the Default is a Serious Default (and if it is, the Default Notice must say so) then we will be entitled to arrange for a competent person (which may be one of our employees) to carry out an investigation into the Serious Default.

25.2 If we consider (acting reasonably) that:

25.2.1 the Serious Default is of such seriousness; or

25.2.2 there is a continuing threat to the health, safety or welfare of any or all of the Service Users

25.3 such that in either case it is not appropriate for you to carry on providing any or all of the Services then we will also be entitled to serve on you a Suspension Notice.

25.4 If we serve a Suspension Notice then:

25.4.1 you will cease providing the Service(s) set out in the Suspension Notice from the date specified in the Suspension Notice; and

25.4.2 we will be entitled either to provide some or all of the Service(s) or employ another person to do so on our behalf for as long as the Suspension Notice is in force.

25.5 We will ensure that any investigation is carried out as quickly and as reasonably as possible. We will make available to you a copy of the report of the investigation's findings as soon as possible after it has been made available to us. You will co-operate fully in the conduct of any such investigation.

25.6 If you have been served with a Suspension Notice then as soon as possible after we have received the report of the investigation we shall consider (acting reasonably) whether or not you are to resume provision of the suspended Service(s).

25.7 If we consider that you are to resume provision of some or all of the suspended Service(s) then we will serve on you a Resumption Notice which shall set out the Service(s) to be resumed and the date upon which they are to be resumed.

25.8 We will be entitled to set out in the Resumption Notice such conditions relating to your resumption of the Service(s) as may be reasonable.

25.9 You will resume the provision of the suspended Service on the date and subject to any conditions set out in the Resumption Notice.

25.10 If we consider that you are not to resume provision of some or all of the suspended Service(s) then:

25.10.1 we will be entitled to give you notice terminating the application of this Agreement to the Service(s) concerned, with immediate effect; or

25.10.2 if we consider, acting reasonably, that the findings of the investigation reflect on your ability to carry out the Services generally, we will be entitled to give you notice terminating this Agreement as a whole, with immediate effect.

25.11 During any period of suspension we may at our discretion continue to pay you the Contract Price but if we give you notice of termination, either in accordance with Clause 25.10.1 or 25.10.2, you must repay us all sums we

have paid you during the period of suspension which relate to the suspended Services concerned. If you do not repay us these sums within 20 Working Days of any notice of termination, then we will be entitled to recover these sums as a debt.

25.12 Following service of a Resumption Notice if we have not already done so we will pay you a reasonable proportion of the Contract Price for the period during which the Service(s) were suspended.

## **26. TERMINATION**

26.1 In the event of the following we will be entitled to give you notice terminating this Agreement, with immediate effect:

26.1.1 you are an individual and you are declared bankrupt, or a bankruptcy petition is filed against you at court, or you attempt to make or make a composition or arrangement for the benefit of your creditors; or

26.1.2 you are a corporate body and you have a receiver or liquidator appointed over you; or you make any voluntary arrangement with your creditors or become subject to an administration order; or

26.1.3 you commit or cause the commission of any criminal offence in providing the Services (except for any minor offence or minor traffic offence); or

26.1.4 you have misrepresented material information in relation to the award of the Agreement to you or the provision of the Services.

26.2 If we terminate this Agreement or its application to a particular Service under Clause 27 then:

26.2.1 you will continue to provide the Services during the period of notice unless we request otherwise;

26.2.2 we shall be entitled:

26.2.2.1 to retain any monies owed to you under this Agreement until you have paid all monies owed to us under this Agreement; or

26.2.2.2 to deduct any such monies owed to us under this Agreement from the monies owed to you under this Agreement

26.2.2.3 in either case without prejudice to the provisions of Clause 35 (**Recovery of Sums Due**).

26.3 Either of us may terminate:

26.3.1 this Agreement; or

26.3.2 its application to a particular Service by giving not less than three months written notice.

26.4 Such period of notice can be shortened if:

26.4.1 on three separate occasions in any period of 12 months (whether consecutive or not) we or you have correctly served on the other party a Default Notice;

26.4.2 we or you have committed a Default which is a substantial breach of any material term of this Agreement; or

26.4.3 the Council's corporate priorities change and there is an urgent need for the provision of alternative services and/or the monies provided by central government no longer cover the provision of Services under this Agreement.

26.5 If we or you terminate this Agreement or its application to a particular Service under Clause 26.3 then you will continue to provide the Services during the period of notice unless we request otherwise.

26.6 If this Agreement or its application to a particular Service is terminated, whether under Clause 23 (Defaults, and Suspension Defaults) or this Clause 26, then:

26.6.1 the provisions of Clause 31 (Information and Retendering) shall apply; and

26.6.2 we must continue to pay you the Contract Price throughout the notice period (whether or not we have requested you to stop providing the Service(s) during such period).

26.7 You may not terminate an ISA without giving 28 days written notification

to us giving reasons why the ISA is being terminated except that either party may terminate an ISA with immediate effect where it is agreed

- 26.7.1 the Service User's needs may no longer be met;
- 26.7.2 where there is potential for significant harm to the Service User, member of staff or other person using the service;
- 26.7.3 in cases of death;

## **27. FORCE MAJEURE**

27.1 If either one of us fails to carry out our respective obligations under this Agreement as a result of force majeure then whichever one of us is affected shall not be liable under this Agreement for such failure.

27.2 This is subject to the proviso that whichever one of us is affected shall have given the other notice that such failure is the result of force majeure within 10 Working Days of such failure occurring.

27.3 If an event of force majeure occurs then we shall meet with you to discuss how best you can continue to provide the Services until the force majeure event ceases, which may include our providing you with assistance, where possible.

27.4 In this clause 'force majeure' means:

- 27.4.1 acts of war;
- 27.4.2 acts of God;
- 27.4.3 decrees of Government;
- 27.4.4 riots;
- 27.4.5 civil commotion; and
- 27.4.6 any event or circumstance which is both beyond the control of whichever one of us is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.

27.5 For the avoidance of doubt 'force majeure' shall not include any labour dispute between you and your staff or the failure to provide the Services by any of your sub-contractors.

## **28. DISPUTE RESOLUTION**

28.1 If there is a dispute between you and us concerning the interpretation or operation of this Agreement then either one of us may notify the other that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.

28.2 If after 28 Days (or such longer period as both of us may agree) of the date of the notice referred to in Clause 28.1 the dispute has not been resolved then either one of us may notify the other that it wishes the dispute to be referred to a meeting of a Chief Officer of ours, (or a person appointed by her to act on her behalf) and a senior officer of yours, to resolve, negotiating on the basis of good faith.

28.3 If after 28 Days (or such longer period as both of us may agree) of the date of the notice referred to in Clause 28.2 the dispute has not been resolved then either one of us may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.

28.4 If we and you do not agree on the identity of the Mediator then either one of us may request CEDR to appoint one.

28.5 The procedure in the Model Procedure will be amended to take account of:

28.5.1 any relevant provisions in this Agreement; or

28.5.2 any other agreement which we and you may enter into in relation to the conduct of the mediation ("Mediation Agreement").

28.6 Both of us must:

28.6.1 use our best endeavours to ensure that the mediation starts within 20 Working Days of service of the notice referred to in Clause 28.3 and

28.6.2 pay the Mediator's fee in equal shares (unless you can show us that this would cause you serious financial difficulty in which case we shall pay the Mediator's fee).

28.7 Any agreement we reach with you as a result of mediation shall be binding on both of us, as set out in the Model Procedure, but if the dispute has not been settled by mediation within 10 Working Days of the mediation starting then either one of us may commence litigation proceedings (but not before then).

28.8 Neither one of us shall be precluded by Clause 28.7 from taking such steps in relation to court proceedings as we or you (as the case may be) may deem necessary or desirable to protect our respective positions. This shall include:

28.8.1 issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and

28.8.2 applying for interim relief.

28.9 The use of the dispute resolution procedures set out in this Clause 28 shall not delay or take precedence over the provisions for termination set out in Clauses 23 (Defaults, and Suspension Defaults) and 26 (Termination).

## **29. VARIATIONS TO THE AGREEMENT**

29.1 A variation to this Agreement (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both of us.

29.2 If either one of us wishes to vary this Agreement then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it. The Variation may but will not be limited to amendments to the scope of the services, to the contract monitoring and compliance practices and procedures, the payment mechanism and to take account of efficiencies and developments in best practice in the delivering of the services.

29.3 The Council may vary the Agreement to extend the Term by giving at least three months notice in writing in advance of the end of the Term on the same terms and conditions.

29.4 If either one of us receives a Variation Notice except as provided for in 29.4 then within 28 Days of receipt it shall notify the other whether or not it agrees to the variation and if not, the reasons.

## **30. WAIVER**

30.1 If either one of us fails to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.

30.2 If either one of us waives a Default on the part of the other then this shall not constitute a waiver of any future Default.

30.3 No waiver shall be effective unless it is:

30.3.1 expressly stated to be a waiver;

30.3.2 in writing; and

30.3.3 signed by the Authorised Officer or Contract Manager as appropriate.

### **31. INFORMATION AND RETENDERING**

31.1 Subject to Clauses 16 (Data Protection Act) and 18 (Confidentiality), at our reasonable request, you must provide us with such information and data as we may reasonably require to enable us to prepare the necessary documentation to appoint another person to provide the Services in your place.

31.2 The requirement set out in Clause 31.1 does not include any information or data which we consider commercially sensitive.

31.3 Subject to Clauses 16 (Data Protection Act) and 18 (Confidentiality), you shall co-operate with us (at our reasonable request) to secure (as necessary) the continuity of the Service, its orderly winding up, the administration of any recoupment provision and other exit and succession arrangements as may be relevant and appropriate to enable us to appoint another provider.

### **32. TUPE**

32.1 If the provision of the Service involves a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) you shall (without prejudice to your general TUPE obligations)

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32.1.1 Consult with recognised trade unions and/or employee elected representatives and for this to take place as soon as possible so as to ensure that employee consultations are meaningful.

32.1.2 Maintain existing conditions of employment, including rates of pay.

32.1.3 Provide a broadly comparable pension scheme for the transferring employees and shall advise us as to how you will or have complied with your obligation to provide pensions broadly comparable to the existing pensions of transferring employees together with details the steps that will be put in place so as to enable those employees to enforce their pension rights.



- 32.1.4 Assume liability in respect of claims for redundancy, unfair dismissal and all other claims relating to existing employees who transfer over to you.
- 32.2 For the purposes of these TUPE conditions, “Employees” means the person or persons employed by you whose work (or any part of it) is work undertaken for the purposes of this Agreement.
- 32.3 You shall indemnify and keep indemnified the Council or any alternative provider against all losses, liabilities, claims, costs, expenses and demands whatsoever arising from or in consequence of any failure to supply information or consult in accordance with the Directive or any failure on your part to supply or the late supply of, or the inaccuracy or incompleteness of the information [as referred to below].
- 32.4 You shall indemnify and hold harmless the Council against all losses, costs awards, liabilities and expenses (including reasonable legal fees) and demands arising out of the award of the Agreement, arising from change or proposed change to the terms and conditions of all or any of the Employees where such change or proposed change is as a result of the transfer of Employees or any of them to you where such change occurs or will occur on or after one minute past midnight of the Commencement Date.
- 32.5 You shall comply with the following provisions relating to the supply of information
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- 32.5.1 At any time during the last 12 months of the Term or immediately on notice of termination or intended termination being given by either party you shall within 24 days comply with any request by the Council for the disclosure of information regarding your Employees employed, at that time, or previously in or about the provision of the Services (including information required to check there has been compliance with Clause 32.1) collectively called the “TUPE Information” for the purpose of facilitating the Council in re-letting the Agreement or otherwise securing the continued provision of the Services.
- 32.5.2 Such information shall contain such detail as is necessary to enable any Prospective Tenderer for the provision of some or all of the Services to assess their potential costs and liabilities (both ongoing and one off) at that time;
- 32.5.3 We may disclose TUPE Information to any Prospective Tenderer and shall, if requested in writing by you to do so, ensure that prior to such

disclosure the Prospective Tenderer undertakes not to disclose (unless required by law to do so) the information to any other person other than a person who -

32.5.3.1 is a servant or agent (including legal adviser) of the Prospective Tenderer; and

32.5.3.2 has undertaken not to disclose the information unless required by law to do so.

32.5.4 Where TUPE Information has been provided, you shall –

32.5.4.1 inform us of any change to the information provided or provide if requested, any new or further TUPE Information not previously provided;

32.5.4.2 use your best endeavours to clarify any matter upon which clarification is requested by the Council; and

32.5.4.3 use your best endeavours to co-operate with any reasonable request made by us concerning the TUPE Information or your Employees

within 24 days of any such change, discovery of new information, or receipt of such request.

32.6 For the purposes of this clause “TUPE Information” shall include but shall not be limited to written details of:

32.6.1 The total number of Employees employed by you whose work (or any part of it) is work undertaken for the purposes of this Agreement.

32.6.2 In relation to each Employee who falls within the scope of this clause:

32.6.3 The Employee’s age and gender (so that pension entitlements can be calculated and provided for);

32.6.4 The Employee’s salary, length of service, and contractual period of notice, any pay settlement covering future dates which has already been agreed by you, and any redundancy entitlement; and all other terms which are required by statute to be contained in an employee’s particulars on employment.

32.6.5 Details of any collective contract including any terms incorporated in individual contracts of employment;

- 32.6.6 Details of all benefits monetary or otherwise and whether expressed to be contractual or not;
  - 32.6.7 Details of any outstanding or potential liability for past breaches of such contracts;
  - 32.6.8 Any outstanding or potential statutory liability (for example any claim for unfair dismissal or under non-discrimination legislation);
  - 32.6.9 Any other outstanding or potential liability requiring to be met by the Prospective Tenderer if his tender is accepted; and
  - 32.6.10 Any grievances or disciplinary issues or employment tribunal claims over the previous two years.
- 32.7 For the purposes of this clause “Prospective Tenderer” means a person who has been or is to be involved to submit a tender in relation to the provision of works or services of a similar type to any of those provided by you.
- 32.8 You shall also provide us with such other information as we may so require in relation to your Employees notwithstanding that this goes beyond the information required to be provided under TUPE.
- 32.9 You shall not, during the last 12 months of the Contract Period or following notice of earlier termination or review or variation, substitute, appoint or transfer to or remove from the performance of the Services any personnel without the prior written consent of the Council or materially add to the workforce numbers or increase or vary the employment benefits beyond those arising from normal annual reviews.
- 32.10 Whether or not TUPE applies you shall indemnify the Council and any subsequent alternative provider in relation to all claims, awards, damages and other liabilities of whatever nature, (including costs incurred in relation to defending such claims and any costs awarded against the Council or subsequent alternative provider(s) in relation to any claim made by any of the Employees or any recognised trade union on their behalf at any time in which the Employee was employed by you; which relate to any of the following :
- 32.10.1 any variation on your part to any term or condition of the Contract of Employment of any of the Employees;
  - 32.10.2 any failure on your part to provide to the Employees or any of them benefit of whatever nature including broadly comparable pension provision and make all due payments;

- 32.10.3 any failure on your part to make any payment of salary, sick pay, holiday pay, or redundancy pay, income tax and/or national insurance contributions when due in respect of the Employees or any of them;
- 32.10.4 any circumstances in which the Council has requested the removal from the Contract of any Employee and such request has not been complied with or an appointment has been made of an individual without the prior written consent of the as required by clause immediately above;
- 32.10.5 any act or omission of any legal obligation on your part prior to the termination of the Contract;
- 32.10.6 any claim by any Employee arising out of any personal injury or injury at work of whatever nature at any time by any of the Employees;
- 32.10.7 any claim by any of the Employees arising as a result of any act or omission by you from the Commencement Date whether in contract or in tort or under statute (including any European Union Directives or other requirements and orders) including without limitation, claims for unfair dismissal, equal pay, unlawful deduction of wages, sex or race, religion/belief, age disability, discrimination, equal pay issues, whistleblowing complaints or otherwise.

### **33. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

33.1 Neither one of us intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

### **34. NOTICES**

34.1 Any notice or other communication under this Agreement must be in writing and can only be sent by:

- 34.1.1 recorded delivery post; or
- 34.1.2 personal delivery; or
- 34.1.3 electronic transmission except where notices or other communication are required to be signed

34.2 All notices and communications must be sent to the Authorised Officer. For the purposes of sending written notice or other communication by recorded delivery post, personal delivery or electronically to the Council.

34.3 If our postal address or email address changes, we must notify you in accordance with this Clause 34.

34.4 All notice and communications will be sent by us to the Contract Manager. For the purposes of sending written notice or other communication by recorded delivery post, personal delivery or electronically to you, the postal address and email address are set out in Clause 8.

34.5 If your postal address or email address changes, you must notify us in accordance with this Clause 34.

34.6 Subject to Clause 34.7, all notices and communications shall be deemed to have been served:

34.6.1 if posted, two Working Days after the date when posted;

34.6.2 if personally delivered, on the date of delivery;

34.6.3 if sent by email, when received in the inbox

34.7 Notwithstanding Clause 34.6, if by applying its provisions a notice is deemed to have been served on a day which is not a Working Day or it is not received between the hours of 9am to 5pm on a Working Day then it shall be deemed to have been served on the next immediately following Working Day.

### **35. RECOVERY OF SUMS DUE**

35.1 If either one of us owes the other money under this Agreement, then the one who is owed the money may set off any such sum against any money it subsequently owes to the other under this Agreement.

### **36. LAW AND JURISDICTION**

36.1 This Agreement shall:

36.1.1 be governed by and shall be construed in accordance with English law; and

36.1.2 be subject to the exclusive jurisdiction of the Courts of England and Wales, to which both of us shall submit.

**37. SEVERABILITY**

37.1 If one or more of the provisions of this Agreement are or become to any extent invalid or unenforceable under any applicable law then the remainder of this Agreement shall continue in full force and effect.

37.2 If this happens then both of us shall enter into good faith negotiations to amend the provision concerned in such a way that as amended, it is valid and enforceable and to the maximum extent possible, carries out both our original intent.

**38. REMEDIES CUMULATIVE**

38.1 Any remedy or right which either of us may exercise in relation to a Default committed by the other shall be in addition to, and shall be capable of being exercised without prejudice to, all other rights and remedies available to either of us.

**39. OUR FUNCTIONS AS A LOCAL AUTHORITY**

39.1 Nothing in this Agreement shall prejudice or affect our rights, powers, duties and obligations in relation to the exercise of our functions as a local authority.

**40. HUMAN RIGHTS ACT 1998**

40.1 In the performance of the Agreement you shall comply with the provisions of the Human Rights Act 1998 in all respects as if it were a public body within the meaning of the Act. You shall indemnify or keep us indemnified against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of any breach by you in respect of this clause.

**41. REVOCATION FOR CORRUPTION**

41.1 The Council may revoke the Deed and recover from the Supplier the amount of any loss arising from such revocation if the Supplier or an employee of the Supplier as shall have undertaken a Prohibited Act.

**42. BUSINESS CONTINUITY**

42.1 The Council is a Category 1 responder for the purposes of the Civil Contingencies Act 2004. As such we and all parties with whom we contract are subject to the full set of civil protection duties in cases of emergency. It defines an emergency as:

42.1.1 an event or situation which threatens serious damage to human welfare;

42.1.2 an event or situation which threatens serious damage to the environment;  
or

42.1.3 war, or terrorism, which threatens serious damage to security .

42.2 You will make available your emergency plans and business continuity management arrangements available for inspection by us upon reasonable notice.

42.3 In the event of an Emergency you will make every effort to continue your provision of all Services under this Agreement. Depending upon the nature of the Emergency however, should you be unable to continue the provision of those Services in consultation with the Authority, you should act in accordance with the provisions of Clause 27 (Force Majeure).

### **43. CONCLUSION OF AGREEMENT**

43.1 When this Agreement ends you must give us, or to any person we may specify, all data, information, files, records, documents and the like (in whatever format they may be held) which we supplied to you for the purposes of this Agreement or which were produced or augmented by you in connection with the carrying out of your obligations under this Agreement.

43.2 Unless we authorise you to do so, or you are required at law to do so, you must not retain any copies of the information etc. referred to in Clause 43.1.

43.3 Clause 43 is subject to the provisions of Clauses 16 (Data Protection Act) and 18 (Confidentiality).

### SCHEDULE 1 -

#### **Definitions**

When they are used in this Contract, the terms and expressions set out below in the first column have the meanings set out in the second column.

“Accreditation and Enrolment”	Means the evaluation of requests to participate received from suppliers and the admittance to the DPS of suppliers that fulfil the Council’s Selection;
“Application”	Means the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as agreed between the Parties;

“Authorised Officer”	Means the person we appoint to exercise our rights and powers under this Contract. This will not limit in any way either our rights or our obligations;
“Charges”	Means the value of the payments made to the Supplier relating to ISAs awarded in accordance with the provisions of this Agreement;
“Confidential Information”	Means information obtained from or relating to either you or us, or our or your business or our or your affairs, servants, agents or employees, or any information regarding the Service Users;
“Contract Manager”	Means the person you have appointed to exercise your rights and powers under this Contract. This will not limit in any way either your rights or your obligations;
“Contract Price”	Means the amount that we will pay you for the Services;
“Day/s”	Means Monday to Sunday inclusive;
“Default”	Means any failure, either on our part or yours to carry out our respective obligations under this Contract. For the avoidance of doubt this includes but is not limited to denial of access to information, misrepresentation of material information linked to performance indicators or otherwise, provision of copies of insurance certificates and similar;
“Default Notice”	Means a notice setting out the nature of the Default committed and, if the Default can be put right, the action required to put it right and the timescale within which it is to be put right. Any such timescale must be reasonable in all the circumstances;
Dynamic Purchasing System or “DPS”	the dynamic purchasing system operated via the Application, which applies the procurement methodology provided for by Regulation 34 PCR, as amended from time to time;
“Expiry Date”	Means 13 March 2020 unless an extension is agreed or the Agreement is otherwise terminated;
“Financial Year”	Means a period of 12 months from 1 April in one year to 31 March in the next;
“FOIA”	Means Freedom of Information Act 2000;
“Individual Service Agreement”	Means the Parties’ acceptance of the Supplier’s final Offer in response to the Council’s corresponding Requirement incorporating the terms of this Supplier Agreement and the ISA;



“Mediator”	Means an individual who is appointed in accordance with Clause 28 to mediate between you and us if we are in dispute;
“Offer”	Means the Supplier’s tender for the desired Services in response to the Council’s Requirement
“Open for Offers”	Means the period during which time the Supplier can create and submit their Offer within the Application;
“PCR”	Means the Public Contract Regulations 2015, as amended from time to time;
“Performance Indicators”	Means such indicators and performance monitoring information as are set out in the Specification or separately notified by us for the purpose of monitoring this Agreement;
“Persistent Default”	Means where you have committed more than two Defaults during any consecutive period of 6 months, whether or not these are the same Defaults or different Defaults and even if you put the Default right each time;
“Prohibited Act”	<p>Means Offering, giving or agreeing to give any officer of or person employed by or on behalf of the Council any gift or consideration of any kind as an inducement or reward:-  for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council ;  or  for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council  entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment therefore have been disclosed in writing to the Council :- committing any offence:-  under the Bribery Act 2010 or Section 117(2) Local Government Act 1972;  under laws creating offences in respect of fraudulent acts;</p>

at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council ; or

defrauding or attempting to defraud or conspiring to defraud the Council;

“Regulatory Body”	Means a body which is established either by statute or in some other way and to whose regulatory powers either one of us (or both of us) are subject. However, this does not include any body of which membership is voluntary;
“Replacement Services”:	Means services that are identical or substantially similar to any of the Services to be provided the Supplier, which the Council receives in substitution by a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of a Service Agreement with the Supplier.
“Requirement”:	Means a detailed specification and request for individual services made by the Council via the Application.
“Resumption Notice”	Means a notice referred to in Clause 25.7;
“Selection Criteria”	Means the requisite criteria that a supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment into the DPS.
“Serious Default”	Means a Default on your part which in our reasonable opinion materially prejudices the health, safety or welfare of Service Users.
“Service User”	Means a person who receives or who may receive the Services that you are to provide under this Contract.
“Services”	Means the Services described in the Specifications and the ISA.
“Services Review”	Means a review of the Services carried out by us in accordance with Clause 9;

“Signature Document”	Means the signed document between Council and the Supplier which constitutes the Parties’ agreement to this Supplier Agreement and the creation of the overall Contract.
“Staff”	Means the persons who are employed or deployed by the Supplier to provide the Services; all persons employed by the Supplier to perform its obligations under the Service Agreement together with the Supplier’s servants, agents, volunteers, suppliers and subcontractors used in the performance of its obligations under the ISA and this Service Agreement.
“Supplier Agreement”	the terms and conditions set out in this document.
“Supplier Entry Guide”	the entry guide issued by the Council detailing the operation of the DPS.
“Suspension Notice”	Means a notice we serve on you under Clause 25.2 which sets out details of the Services which are to be suspended whilst we carry out an investigation into a Serious Default;
“Technology Provider”	Means Technology Provider: the owner and provider of the Application, <i>adam</i> HTT Limited t/a <i>adam</i> (registered company #07718565), who shall also act as the Council’s payment agent;
“Term”	Means the period from 14 March 2016 to 13 March 2020 unless an extension has been agreed;
“TUPE Regulations”	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Variation”	Means unless the context otherwise requires a variation to this Contract or to the Services, made in accordance with Clause 29;
“Variation Notice”	Means a notice served in accordance with Clause 29;
“we”	Means not only the person referred to at the start of this Contract as ‘we’ but also any person to whom we may assign this Contract and any person who takes over our statutory functions. Unless the context otherwise requires, ‘us’ shall also be taken to refer to ‘we’;

“Working Days”

Unless otherwise agreed with you in writing, means between 9:00am and 5:00pm Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays;

“you”

Means the person referred to as ‘you’ at the start of this Agreement.