

DATED: _____ 20____

BRIGHTON & HOVE CITY COUNCIL
and
NHS BRIGHTON AND HOVE CLINICAL COMMISSIONING GROUP
AND
PROVIDER

Provider Agreement
FOR THE PROVISION OF HOME CARE SERVICES FOR ADULTS

Legal Services
Brighton & Hove City Council
Hove Town Hall
Norton Road
Hove
BN3 4QA

Legal Services (Legal Ref)



CONTENTS

| | |
|---|-----------|
| SECTION 1 – PRELIMINARY | 1 |
| 1. SCOPE OF AGREEMENT | 1 |
| 2. DURATION OF DPS..... | 2 |
| 3. AGREEMENT DOCUMENTS | 2 |
| SECTION 2 – THE DPS PROCESS AND SERVICES | 3 |
| 4. DPS PROCESS | 3 |
| 5. PROVISION OF THE SERVICES | 4 |
| 6. QUALITY ASSURANCE | 4 |
| 7. BREACH AND SUSPENSION | 4 |
| 8. CONTINGENCIES AND INABILITY TO PERFORM | 8 |
| 9. SERVICE AGREEMENTS | 8 |
| 10. PROVIDERS OBLIGATIONS | 8 |
| 11. PROVISION OF THE SERVICES | 9 |
| 12. SAFEGUARDING..... | 9 |
| 13. PAYMENT..... | 11 |
| 14. DISPUTED SUMS | 11 |
| 15. INTEREST ON OVERDUE PAYMENTS | 11 |
| 16. SET-OFF | 12 |
| 17. ACCURACY OF PAYMENTS..... | 12 |
| SECTION 3 – REVIEW AND AGREEMENT MANAGEMENT..... | 12 |
| 18. PROVIDER’S MANAGER | 12 |
| 19. SERVICE USER INVOLVEMENT AND CONSULTATION | 12 |
| 20. PERFORMANCE MONITORING | 12 |
| 21. KPIS..... | 13 |
| 22. NOT USED | 13 |
| 23. COMPLAINTS | 13 |
| 24. PROVIDER PERFORMANCE | 13 |
| 25. SERVICES REVIEW | 14 |
| 26. VARIATION | 14 |
| 27. PROVIDER’S RECORDS | 15 |
| 28. PROVISION OF FINANCIAL INFORMATION | 15 |
| 29. STATUTORY AND REGULATORY | 15 |
| SECTION 4 – HEALTH AND SAFETY..... | 15 |
| 30. HEALTH & SAFETY..... | 15 |
| SECTION 5 – PREMISES AND ASSETS | 17 |
| 31. ASSETS | 17 |
| 32. PROVIDER’S PREMISES | 17 |
| 33. RIGHT OF ACCESS | 17 |
| SECTION 6 – WARRANTIES AND INDEMNITIES..... | 18 |
| 34. INDEMNITIES | 18 |
| 35. INSURANCE..... | 18 |
| 36. LIMITATION OF LIABILITY | 19 |
| 37. PROVIDER WARRANTIES | 20 |
| 38. DUE DILIGENCE AND RELIANCE ON REPRESENTATIONS..... | 21 |
| 39. FRAUD AND WHISTLE-BLOWING POLICY | 21 |
| SECTION 7 – INFORMATION AND IPR | 22 |
| 40. CONFIDENTIALITY AND TRANSPARENCY..... | 22 |
| 41. FREEDOM OF INFORMATION | 23 |
| 42. DATA PROTECTION..... | 24 |
| 43. DATA PROCESSOR OBLIGATIONS | 25 |
| 44. COMMISSIONERS’ DATA ON PROVIDER’S IT SYSTEM(S)..... | 28 |

| | | |
|--|--|--------------------|
| 45. | INTELLECTUAL PROPERTY RIGHTS..... | 28 |
| 46. | PUBLICITY | 29 |
| 47. | ACCESSIBLE INFORMATION STANDARD..... | 29 |
| 48. | PROVISION OF INFORMATION TO HEALTHWATCH..... | 30 |
| SECTION 8 – PERSONNEL..... | | 31 |
| 49. | PERSONNEL | 31 |
| 50. | EQUAL OPPORTUNITIES AND HUMAN RIGHTS..... | 32 |
| 51. | TUPE | 33 |
| SECTION 9 – DISPUTE RESOLUTION..... | | 33 |
| 52. | REFERRAL TO OFFICERS..... | 33 |
| 53. | MEDIATION | 34 |
| SECTION 10 – TERMINATION | | 35 |
| 54. | EXPIRY..... | 35 |
| 55. | TERMINATION ON NOTICE..... | 35 |
| 56. | TERMINATION FOR PROVIDER DEFAULT | 36 |
| 57. | TERMINATION FOR BREACH OF WARRANTY OR PROHIBITED ACTS..... | 36 |
| 58. | TERMINATION ON FORCE MAJEURE | 37 |
| 59. | EFFECT OF TERMINATION OR EXPIRY..... | 37 |
| 60. | ANTI SLAVERY..... | 38 |
| SECTION 11 – GENERAL | | 38 |
| 61. | SUCCESSORS..... | 38 |
| 62. | RELATIONSHIP OF PARTIES..... | 38 |
| 63. | CHANGE IN CONTROL..... | 39 |
| 64. | ASSIGNMENT AND NOVATION..... | 39 |
| 65. | SUB-CONTRACTING /AGENCY WORKERS..... | 39 |
| 66. | FORCE MAJEURE | 40 |
| 67. | BUSINESS CONTINUITY PLANNING AND CIVIL CONTINGENCIES..... | 41 |
| 68. | ASSISTANCE IN LEGAL PROCEEDINGS | 41 |
| 69. | PREVENT DUTY | 41 |
| 70. | GOOD FAITH..... | 41 |
| 71. | RIGHTS AND DUTIES RESERVED | 42 |
| 72. | ILLEGALITY | 42 |
| 73. | SURVIVAL..... | 42 |
| 74. | WAIVER | 42 |
| 75. | THIRD PARTY RIGHTS | 42 |
| 76. | NOTICES..... | 43 |
| 77. | CONFLICTS OF INTEREST | 43 |
| 78. | COUNTERPARTS | 43 |
| 79. | LAW OF AGREEMENT AND JURISDICTION | 44 |
| | SCHEDULE A – DEFINITIONS & INTERPRETATION | 1 |
| | SCHEDULE B – OFFICERS | 9 |
| | SCHEDULE C –PRICING CONDITIONS | 10 |
| | SCHEDULE D – SPECIFICATION | 12 |
| | SCHEDULE E – PERFORMANCE MANAGEMENT..... | 13 |
| | SCHEDULE F – AGREEMENT MANAGEMENT | 14 |
| | SCHEDULE G – NOT USED | 16 |
| | SCHEDULE H – STAFF TRANSFER AND PENSIONS | 17 |
| | SCHEDULE I – DATA PROCESSING ACTIVITIES | 24 |
| | SCHEDULE H – DATA SHARING AGREEMENT Template | 26 |

DATED

day of

2020

PARTIES

1. **BRIGHTON AND HOVE CITY COUNCIL** of Hove Town Hall, Norton Road, Hove, BN3 3BQ (“**BHCC**”) (the “**Commissioner**”); and
2. **NHS BRIGHTON AND HOVE CLINICAL COMMISSIONING GROUP** of Hove Town Hall, Norton Road, Hove, BN3 3BQ (“**the CCG**”) (the “**Commissioner**”); and
3. **PROVIDER** (Registered Company Number: [XXXX]) of [ADDRESS] (the “**Provider**”)

BACKGROUND

- A. The Commissioners invited Providers to participate in a Dynamic Purchasing System (“DPS”) for the procurement of Home Care Services for Adults resident in the administrative area of the City of Brighton & Hove by placing a contract notice in the Official Journal of the European Union.
- B. The Council has agreed with Adam HTT Limited trading as *adam* (the “technology provider”) to provide a web-based software system to procure Services via the DPS as provided for in the Public Agreement Regulations 2015 (“PCR 2015”), and for such services to be transacted as further set out in this Agreement.
- C. The Provider submitted a request to participate in the DPS and has satisfied the accreditation and enrolment criteria. The Commissioners now wish to admit and the Provider has agreed to join the DPS on the terms set out in this Agreement.
- D. The Commissioners will invite all applicable Providers admitted to the DPS to submit an offer for each relevant Requirement within the time limit specified in each invitation. The Commissioners intend to enter into a Service Agreement with the Provider submitting an offer which best meets each published Requirement and its award criteria.

SECTION 1 – PRELIMINARY

1. SCOPE OF AGREEMENT

- 1.1 This Provider Agreement governs the relationship between the Commissioners and the Provider in respect of the provision of Services by the Provider to the Commissioners when procured and/or transacted through the DPS. The Provider indicated its agreement to the terms on submission of its application to be admitted to the DPS.
- 1.2 The Commissioners jointly or independently may in their absolute discretion and from time to time, order Services under DPS in accordance with the procedure set out in the Provider Entry Guide. The Provider acknowledges that there is no obligation on the Commissioners to purchase any Services from the Providers admitted to the DPS during the currency of the DPS. Notwithstanding the fact that the Commissioners have followed the procedure set out in this Provider Agreement or Provider Entry Guide, the Commissioners shall be entitled at all times to decline to make an award for their Requirement.

- 1.3 The Commissioners may update the Provider Entry Guide at any time throughout the duration of the DPS, provided that the Commissioners give all Providers reasonable advance notice of the changes.
- 1.4 The Provider 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 Provider's status or compliance with any of the Selection Criteria changes in the course of the Term of the Agreement, then the Provider shall inform the Commissioners immediately and the Provider acknowledges that the Commissioners may in their sole discretion, remove the Provider from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards required of the Provider under this Agreement.
- 1.5 The Commissioners reserve 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.
- 1.6 The Provider acknowledges that in entering into this Provider Agreement no form of exclusivity or volume guarantee is given by the Commissioners for Services from the Provider and that the Council is at all times entitled to enter into other Agreements and arrangements with other Providers for the provision of any or all services which are the same as or similar to the Services.
- 1.7 Nothing in this Provider Agreement shall be construed as creating a partnership or a contract of employment between the Commissioners and the Provider or as constituting a party as the agent of the other for any purpose whatsoever.
- 1.8 Each party shall bear its own costs in connection with the formation and operation of this DPS and any agreement entered into between the Parties in connection therewith.

2. DURATION OF DPS

- 2.1 The DPs shall be in place for a period of 4 years from

3. AGREEMENT DOCUMENTS

- 3.1 The relationship between the Commissioners and the Provider in respect of the provision of Services by the Provider to the Commissioners when procured and/or transacted through the DPS is governed by
 - 3.1.1 The Service Agreement (which shall incorporate the Requirement and the Offer);
 - 3.1.2 Specification (Schedule 4 of the Provider Agreement))
 - 3.1.3 Provider Agreement including all other schedules
 - 3.1.4 Provider Entry Guide.
- 3.2 Where there is any conflict or inconsistency between the documents listed above such conflict or inconsistency shall be resolved according to the order of priority in which the documents above are listed:
- 3.3 The Provider indicated its agreement to the terms on submission of its application to be admitted to the DPS.

SECTION 2 – THE DPS PROCESS AND SERVICES

4. DPS PROCESS

4.1 The Commissioners shall:

- 4.1.1 by electronic means offer all potential Providers admitted to the DPS unrestricted, direct access to all appropriate documents, including template agreement documents and Selection Criteria and to any additional documents relating to the provision of the Services from the date of publication of the contract notice to the date when the system ceases to be operated;
- 4.1.2 give any potential Providers the opportunity to submit a request to participate in the DPS via the Application. Admission into the DPS is subject to the Provider satisfying the process set out in the DPS Entry Guide;
- 4.1.3 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 Commissioners may determine;
- 4.1.4 invite all applicable Providers who have been admitted to the DPS to submit an Offer for each applicable Requirement. The Requirement shall state the type or part of the Services required and the timescale in which the Services are required to be delivered;
- 4.1.5 on acceptance of an Offer which best meets the Requirement and its appropriate award criteria the Commissioner(s) whether individually or jointly enter into a Service Agreement with the Provider of that Offer.
- 4.1.6 where an Offer appears to be abnormally low, require further information from a Provider and may reject that offer if, on being provided with that further information and having taken into account that information and evidence, concluded that the Provider would be unable to provide the Services to the required standard.

4.2 The Provider shall:

- 4.2.1 submit all Offers within the Application in accordance with the procedures detailed within the DPS Entry Guide, this Provider Agreement and as further supplemented by the Requirement;
- 4.2.2 submit all Offers within the Application no later than the specified deadline. Offers received after the deadline will not be accepted;
- 4.2.3 ensure that the Services are provided in accordance with the Requirement, the Service Agreement incorporating the Support Plan and this Provider Agreement and will provide evidence of the compliance on request.

5. PROVISION OF THE SERVICES

- 5.1 The Provider shall at all times during the period of the Service Agreement provide the Services in an efficient, ethical and courteous manner exercising all the reasonable care, skill, prudence and foresight of a competent Provider and in accordance with:
- 5.1.1 the provisions of this Agreement, including all Schedules and Appendices;
 - 5.1.2 all applicable Laws, including regulations and policies made thereunder;
 - 5.1.3 the requirements of the Regulatory Body or Bodies;
 - 5.1.4 Good Industry Practice;
 - 5.1.5 all reasonable instructions of the Commissioners acting in good faith and in accordance with this Provider Agreement;

6. QUALITY ASSURANCE

- 6.1 The Provider shall establish and maintain a documented monitoring system, which evidences how its obligations and responsibilities to Service Users are being met.
- 6.2 The monitoring system shall document the standards required, the method of attaining these, the frequency of reporting and audit procedures and shall have as integral, a method to take account of the views of Service Users, carers and Staff.
- 6.3 A summary annual report will routinely be made available to Service Users and submitted to the Commissioners.
- 6.4 The Provider will review the Service provision and implement actions recommended by the report referred to in Clause 6.3 above.
- 6.5 The Provider shall additionally demonstrate how it will secure continuous improvement in the way in which Services are delivered having regard to a combination of efficiency, economy and effectiveness without increasing the cost to the Commissioners.

7. BREACH AND SUSPENSION

- 7.1 The Commissioners may investigate any case where they believe the Provider has failed or is failing to comply with the provisions of clause 5 (Provision of the Services) in any way (a "Default") and may serve the Provider with a notice in writing setting out the details of the Provider's Default (a "Default Notice"), specifying:
- 7.1.1 the type and nature of the Default that has occurred;
 - 7.1.2 if the Default is one which in the reasonable opinion of the Commissioners is remediable, instructions to the Provider to remedy the Default within a reasonable period of time as determined by the Commissioners; and/or
 - 7.1.3 a request for the Provider to put forward a remediation/rectification programme to rectify a breach or performance failure under this Agreement, specifying actions and improvements required, dates by which they must be achieved and

consequences for failure to do so (“Remedial Action Plan”) which is acceptable to the Commissioners (acting reasonably) to remedy the Default within a reasonable period of time as determined by the Commissioners.

7.2 The provisions of this clause 7 are without prejudice to the Commissioners’ right to terminate this Agreement in accordance with Section 10 (Termination) of this Agreement.

7.3 Remedial Action Plan (RAP)

7.3.1 If a Remedial Action Plan is to be proposed by the Provider and implemented, the Commissioners and the Provider must agree the contents of the Remedial Action Plan within five (5) Working Days (or such other period as the Commissioners shall determine) following the receipt of the notification from the Commissioners pursuant to clause 7.1.3. Once agreed by the Commissioners the Remedial Action Plan shall become part of this Agreement and any failure to adhere to the Remedial Action Plan shall be subject to the provisions of this Agreement.

7.3.2 The Remedial Action Plan must set out:

7.3.2.1 the actions required by the Provider to remedy the failure in question and the date by which each action must be completed;

7.3.2.2 the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and for how long it must be maintained;

7.3.2.3 any agreed reasonable and proportionate financial sanctions or other consequences for the Provider for failing to complete any agreed action and/or to achieve and maintain any agreed improvement (any financial sanctions applying to the Provider not to exceed 10% of the average annual monthly charge for each month in which the Provider fails to deliver the actions and/or improvements set out in the RAP.

7.3.3 The Provider must implement the actions and achieve and maintain the improvements applicable to it within the timescales set out in and otherwise in accordance with, the RAP.

7.3.4 The Commissioners and the Provider must record progress made or developments under the RAP in accordance with its terms on an ongoing basis and report to the Commissioners on progress at the intervals specified in the RAP

7.3.5 If the Provider fails to complete an action required of it, or to deliver or maintain the improvement required by a RAP, then the Commissioners may, at their discretion suspend the delivery of the Services by the Provider in whole or in part in accordance with clause 7.5 (Suspension) or terminate this Agreement in whole or in part forthwith and may invoke the termination provisions in Section 10 (Termination).

7.4 Compliance with a Default Notice

- 7.4.1 If the Provider fails to remedy any Default specified in a Default Notice within the reasonable period specified, the Commissioners may either:
- 7.4.1.1 Issue a further Default Notice at intervals to be determined by the Commissioners until they are satisfied that the Default concerned has been remedied, or
 - 7.4.1.2 following notification to the Provider, take action to rectify the Default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Provider as a debt.
- 7.4.2 In addition to clause 7.4.1, where the failure amounts to a Persistent Breach, or is one which materially and adversely affects the performance of the Services or one which results in material damage to the reputation of the Commissioners or any one of them, notwithstanding that a Default Notice has been issued pursuant to this clause 7, the Commissioners or any one or more of them shall be entitled to suspend the delivery of the Services by the Provider either in whole or in part in accordance with clause 7.5 (Suspension) and/or terminate the Agreement in so far as it relates to Services supplied to a participating authority either in whole or in part forthwith and may invoke the termination provisions in Section 10 (Termination).
- 7.5 Suspension
- 7.5.1 If a Commissioner considers (acting reasonably) that a Default or Persistent Breach is of such seriousness or there is a continuing threat to the health, safety or welfare of any or all of the Service Users such that in either case it is not appropriate for the Provider to carry on providing any or all of the Services, then the Commissioners shall be entitled, by notice in writing, to suspend the Provider (“Suspension”).
- 7.5.2 In the event of Suspension in accordance with clause 7.5.1, the Provider shall cease providing the Services or part thereof (as the case may be) from the date specified in the Suspension Notice issued pursuant to clause 7.5.1 until the conclusion of the Investigation or lifting of the Suspension Notice.
- 7.5.3 The Commissioners may arrange for a competent person (who may be a member of the one of the Commissioners’ Staff) to carry out an Investigation into the default or Persistent Breach.
- 7.5.4 During any period of Suspension, the Commissioners shall be entitled to:
- 7.5.4.1 provide the suspended Services(s) themselves; or
 - 7.5.4.2 engage an alternative Provider to provide the suspended Services;
 - 7.5.4.3 a reduction in the Price to reflect the elements of the Service that are subject to the Suspension.
- 7.5.5 Where the Investigation is being carried out by the Commissioners, the Commissioners shall ensure it is carried out as quickly as possible and will make available to the Provider details of the outcome of the Investigation (in such form

as the Commissioners deems appropriate) as soon as possible after the outcome has been made available to the Commissioners.

- 7.5.6 For the avoidance of doubt, matters relating to the Suspension Investigation shall only be discussed with the investigating officer(s) and shall not be considered as part of review meetings.
- 7.5.7 As soon as possible after the Commissioners have received the outcome of the Investigation, the Commissioners shall determine whether or not the Provider is to resume provision of the suspended Services.
- 7.5.8 If the Commissioners consider that the Provider is to resume provision of some or all of the Services then the Commissioners will serve on the Provider a notice which shall set out the Services to be resumed and the date upon which they are to be resumed (“Resumption Notice”).
- 7.5.9 The Commissioners shall be entitled to set out in the Resumption Notice such conditions relating to the Provider’s resumption of the Services as may be reasonable and appropriate in the circumstances. Any such conditions shall be deemed to be part of this Agreement and subject to all other provisions.
- 7.5.10 If the Commissioners consider that the Provider is not to resume provision of some or all of the suspended Services then the Commissioners shall be entitled to:
- 7.5.10.1 terminate the Agreement in accordance with clause 59 (Termination for Provider Default) with immediate effect; or
 - 7.5.10.2 without terminating the Agreement, provide or procure the provision of any part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Commissioners that the Provider is able to perform the Services to the standard required by this Agreement in a manner which is acceptable to the Commissioners.
- 7.5.11 The Provider shall reimburse the Commissioners any expenses incurred as consequence of a Suspension, which exceed the cost of the delivery of the relevant part of the Services under this Agreement, and such sums shall be recoverable by the Commissioners from the Provider as a debt and may be recovered by way of set-off under clause 16 (Set-off).
- 7.6 Commissioners’ Rights to Rectify Defaults
- 7.6.1 If the Provider fails to remedy the Default specified in and in accordance with the Default Notice or in the event that the Parties are unable to agree a Remedial Action Plan or the Provider fails to carry out the Remedial Action Plan within the agreed timescale the Commissioners may, notwithstanding the other provisions of this clause 7 take action to rectify the Default themselves (including instructing an alternative Provider to rectify the same) and recover the additional costs of doing so from the Provider as a debt and/or invoke the termination provisions in accordance with Section 10 (Termination) of this Agreement.

8. CONTINGENCIES AND INABILITY TO PERFORM

- 8.1 The Provider shall as soon as practicable notify the Commissioning Manager of any circumstance which might prejudice the Provider's ability to perform the Services whether temporarily or permanently.
- 8.2 Subject to clause 69 (Force Majeure) where the Provider is unable to perform any of its obligations under this Agreement then the Commissioners may employ another Provider to provide that part of the Services and recover its additional costs (if any) reasonably and properly incurred in doing so from the Provider.

9. SERVICE AGREEMENTS

- 9.1 Service Agreements will be amended by the Commissioners from time to time, at the Commissioners' discretion to reflect changes in the needs of the Service User, changes in best practice, changes in statutory requirements and changes in the management of the service provision including changes in the charging provisions and by the inclusion of Key Performance Indicators (KPIs).
- 9.2 KPIs may be incorporated in the Specification. The KPIs' will be reviewed, revised and supplemented throughout the duration of the Service Agreement.
- 9.3 These terms and conditions (including as varied from time to time) shall continue to apply to each Service Agreement for the term of the Service Agreement which for the avoidance of doubt may extend beyond the term of this Provider Agreement.

10. PROVIDERS OBLIGATIONS

- 10.1 The Provider shall ensure that it has the capability to provide the Services in accordance with the terms and conditions of this Agreement and the respective Service Agreements and the applicable Service Specification.
- 10.2 The Provider agrees that the Commissioners have the power to inspect and examine the performance of the Services and compliance with the Agreements at any premises where any part of the service is being performed.
- 10.3 The Provider shall be registered and shall remain registered throughout the Term with all relevant Regulatory Bodies.
- 10.4 The Provider shall ensure that Staff and staff of any sub- contractors who deliver Services under this Agreement are
- 10.4.1 paid the Living Wage as set by the Living Wage Foundation;
 - 10.4.2 are paid for time spent in travelling in order to carry out the Services and are reimbursed reasonable travelling expenses including parking charges incurred whilst in the course of delivery of the Services (but not penalty notices or penalties incurred for other traffic infringements).

- 10.5 The Provider acknowledges that the provision and manner in which the services are provided may be open to change in the future and the Provider agrees to work with the Commissioners in a spirit of co-operation and good faith to ensure that where it is informed of any proposed changes by the Commissioners such changes are developed and implemented to the Commissioners' satisfaction.

11. PROVISION OF THE SERVICES

- 11.1 The Services shall commence in accordance with the Requirements of each Service Agreement.
- 11.2 The Services shall be provided only to people who live within the City of Brighton & Hove.
- 11.3 In providing the Services the Provider must comply with:
- 11.3.1 any applicable codes of practice, performance ratings and quality standards and any relevant current and future statutory provisions which apply to the Services;
 - 11.3.2 any changes required by the Regulatory Bodies that the Services are subject to; and
 - 11.3.3 the policy and multi-agency procedure on protecting vulnerable adults and children as set out in clause 12 (Safeguarding).

12. SAFEGUARDING

- 12.1 The Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 12.2 The Provider must have systems and procedures in place to safeguard adults, children and young people from abuse, exploitation and neglect.
- 12.3 The Provider shall have internal procedures in place, and ensure its Staff are appropriately trained to respond effectively, efficiently and professionally to safeguarding concerns relating to all Service Users to whom they provide the Services.
- 12.4 The Provider shall co-operate with representatives of the Commissioners in any investigation carried out in relation to the Commissioners' statutory duties and where within scope non-statutory duties including in respect of safeguarding vulnerable adults and children.
- 12.5 The Provider must, unless otherwise agreed with the Commissioners in writing (subject to the Law):
- 12.5.1 respond, where applicable, to all requirements and enforcement actions issued from time to time by any Regulatory Body;
 - 12.5.2 consider and respond to the recommendations arising from any audit, Investigation or any investigation arising as a result of the death of a Service User.

- 12.6 The Provider shall adopt Safeguarding Policies and Procedures and such policies and procedures shall comply with the Sussex Safeguarding Adults Policy and Procedures (currently edition 4), as amended from time to time. All Parties shall work together to ensure that such Safeguarding Policies and Procedures are kept under regular review and updated during the Agreement to the satisfaction of the Commissioners. The Provider shall provide evidence to the Commissioners that it is addressing any safeguarding concerns by no later than five (5) Working Days following a written request of the Commissioners.
- 12.7 The Provider shall hold copies of, and ensure that it and its Representatives are familiar with and follow, the Sussex Safeguarding Adults Policy and Procedures, currently edition 4, <http://sussexsafeguardingadults.procedures.org.uk/> produced by the Safeguarding Adults Boards of Brighton & Hove City Council, East Sussex County Council and West Sussex County Council (and any future amended versions of this policy) and the Sussex Child Protection and Safeguarding Procedures. A copy of these documents, or details on where these documents can be accessed, shall be held by managers in all local offices and the Provider must ensure that all Staff are appropriately trained on, are aware of and follow the policy and procedures, including their responsibility to report concerns to the Commissioners respective adults' and/or children's services departments.
- 12.8 The Provider's measures to safeguard Services Users shall include, but shall not be limited to:
- 12.8.1 Robust employment procedures including the taking of references and Disclosure and Barring Service checks;
 - 12.8.2 Robust procedures and guidelines for the management of activities which could present risks of abuse;
 - 12.8.3 Safeguarding procedures compatible with the policies and procedures detailed in clause 12.6 above, with a clear statement of rights and zero tolerance of abuse;
 - 12.8.4 A clear and well publicised whistle blowing policy and procedure and code of conduct for Staff;
 - 12.8.5 Policies and procedures that clearly state the response to any act of discrimination and harassment;
 - 12.8.6 Safeguarding training that promotes awareness of abuse and how to respond and report concerns;
 - 12.8.7 Training for staff that supports good practice in all areas; and
 - 12.8.8 Clear and accessible information describing the service standards, how to complain and how to report abuse.
- 12.9 Without prejudice to Section 10 (Termination) of this Agreement, the Commissioners shall have the right to suspend provision of the Services in accordance with clause 7 (Breach and Suspension) in the event of an investigation as to the protection, safety or welfare of a Service User by the Commissioners and/or any Regulatory Body in respect of the Services.

- 12.10 The provisions of this clause 12 (Safeguarding) are without prejudice to the Commissioners' right to terminate this Agreement in accordance with Section 10 (Termination) of this Agreement.
- 12.11 The Commissioners may, at any time, require the removal of a member of Staff from duties under this Agreement during an investigation into the conduct of that individual, pending the outcome of the investigation.

13. PAYMENT

- 13.1 In consideration of the provision of the Services in accordance with the Agreement The Commissioner commissioning the Service shall pay the charges accruing under each Service Agreement with the Provider upon receipt of a valid invoice which is to be submitted weekly by email to ASCPayments@brighton-hove.gov.uk or such other address which shall have been previously notified to the Provider. The full address of the Payments Team can be obtained by contacting the team e-mail address.
- 13.2 The invoice requirements are set out in Schedule C.
- 13.3 Service Users may be required to make a contribution towards the cost of the provision of the Services. The amount of the contribution will depend upon the outcome of a statutory financial assessment and may be amended at any time.
- 13.4 The Service User and the Provider shall be informed by the Commissioner in writing of the amount of the Service User's Contribution and subsequently of any amendments to that Contribution.
- 13.5 The Provider is required to collect the Service User's Contribution
- 13.6 The Provider must notify the Commissioners of any arrears of payment by the Service User as soon as reasonably practical. The Commissioners do not accept responsibility for the payment of outstanding arrears but may, where the Provider is able to demonstrate in the judgement of the Commissioners that all reasonable endeavours to collect the Service User's Contribution have been made, make payment to the Provider of the arrears.

14. DISPUTED SUMS

- 14.1 Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be referred to Section 9 (Dispute Resolution).
- 14.2 Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:
- 14.2.1 resolution of the dispute between the Parties; or
 - 14.2.2 receipt of the decision of the Mediator in accordance with Section 9.

15. INTEREST ON OVERDUE PAYMENTS

- 15.1 Interest may be claimed on any overdue undisputed sum properly invoiced under this Agreement at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

16. SET-OFF

- 16.1 Whenever any sum of money shall be recoverable from or payable by the Provider to the Commissioners under this Agreement, the same may be deducted from any sum then due or which may become due to the Provider under this Agreement or any other agreement with a Commissioner.

17. ACCURACY OF PAYMENTS

- 17.1 The Provider shall install and implement such apparatus and systems as the Agreement Administration Manager may reasonably require from time to time to ensure that the Commissioners are charged for and pay only such amounts as they are obliged to under this Agreement.

SECTION 3 – REVIEW AND AGREEMENT MANAGEMENT

18. PROVIDER'S MANAGER

- 18.1 The Provider shall nominate a manager who shall be the single point of contact and take overall responsibility for this Agreement ("Provider's Manager"). The Provider shall notify the Commissioners of any changes to the nominated Provider's Manager as is necessary.

19. SERVICE USER INVOLVEMENT AND CONSULTATION

- 19.1 The Provider shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Practice and their human rights.
- 19.2 The Provider shall carry out Service User surveys and shall carry out any other surveys reasonably required by the Commissioners in relation to the Services. The form, frequency and reporting of any such surveys shall be agreed between the Parties in writing from time to time.
- 19.3 The Provider shall review the responses from any Service User surveys and shall report to the Commissioners any actions it intends to take to address issues highlighted by the results of the survey for the benefit and improvement of the Services.
- 19.4 The Provider shall evidence to the Commissioners the involvement of Service Users in the development of the Services promptly at the request of the Commissioners.

20. PERFORMANCE MONITORING

- 20.1 The Services shall be subject to such monitoring systems as the Commissioners consider appropriate including, but not limited to, those set out in the relevant Specification for the service (Schedule D), Schedule E (Performance Management) and the Service Agreement.

- 20.2 The Provider shall cooperate with the Commissioners in carrying out the monitoring referred to in clause 20.1 at no additional cost to the Commissioners.

21. KPIs

- 21.1 Where any part of the Services are stated in Schedule D (Specification) and/or Schedule E (Performance Management) to be subject to a specific KPI, the Provider shall provide that part of the Services in such a manner as will ensure that the KPIs in respect of that Service are equal to or higher than such specific Target KPIs.
- 21.2 If existing Services are varied and/or new services are added to the Services, Target KPIs for the same will be determined and included within Schedule E (Performance Management).
- 21.3 The Provider shall provide records of and Management Reports summarising the Achieved KPIs and Service Failures as provided for in clause **Error! Reference source not found.** (Agreement Management).
- 21.4 If there is a disagreement between the Parties as to whether a Service Failure has occurred and/or about the action to be taken and/or the timescale within which the action is to be taken, then either party may refer the matter for resolution, in accordance with Section 9 (Dispute Resolution).

22. NOT USED

23. COMPLAINTS

- 23.1 The Provider shall adopt and promote a culture of welcoming comments and complaints and involvement from Service Users and stakeholders in order to improve the quality and delivery of the Services.
- 23.2 The Provider shall have and shall make known to all Service Users its written complaints procedure. The provision of information regarding the complaints procedure should take account of the Service User's communication needs and the Provider shall support Service Users to understand the policy in accordance with clause 47 (Accessible Information Standard) where appropriate.
- 23.3 The Provider's complaints procedure shall comply with all the requirements of any statutory Regulatory Body to which the Provider is subject, including any change in such requirements.
- 23.4 At the Commissioners' request, the Provider must supply the Commissioners with a copy of its records relating to complaints made in relation to the Services, including response times and any remedial action taken in respect thereof and the Provider's response to those complaints.

24. PROVIDER PERFORMANCE

- 24.1 Where the Provider is unable to perform the Services or any part of them at any time, the Provider shall immediately inform the Agreement Administration Manager and confirm the same in writing giving details of the circumstances, reasons and likely duration during which Services will not be provided. Provision of information in accordance with this clause 24 shall not release or excuse the Provider from any of its obligations under this Agreement.

25. SERVICES REVIEW

- 25.1 At least once during each year of the delivery of the Services starting from the date of the commencement of the delivery of the Services by the Provider, the Parties shall undertake a review of the Services being provided, quality standards, the KPIs and any other relevant matters with the aim of assessing what if any changes including improvements can be made and implemented.
- 25.2 On the giving of reasonable notice to the Provider the Provider shall make available such facilities, information and assistance as the Commissioners may reasonably require, including ' access to:
- 25.2.1 Staff; and
- 25.2.2 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 Agreement or the Services.
- 25.3 Any such changes including improvements necessitating an amendment to the Agreement shall be formalised through the issue of a Change Note signed by the parties as provided for in clause 26 (Variation).

26. VARIATION

- 26.1 The Parties agree that the Agreement may be varied throughout its term so as to give effect to any legislative reforms affecting the Services, new regulations and new guidance in relation to the delivery of the Services and consequential amendments necessary to the specification, pricing and other changes necessary or expedient as a result of such reforms.
- 26.2 Further the Parties agree that the Services and their delivery shall be monitored and reviewed as provided for in Clauses 20 and 25 and that the Agreement may be varied so as to effect service changes and improvements measured in terms of better outcomes and/or efficiency and/or reductions in costs including amendments to KPIs including Target KPIs and changes in scope necessary to reflect changes in available budgets whether such changes reflect increases or decreases in the those budgets.
- 26.3 No Variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their duly authorised representatives).
- 26.4 The Parties agree that either party may propose a Variation to the Services at any time during the Agreement Period.
- 26.5 Where the Commissioners propose a Variation which in the reasonable opinion of the Commissioners is necessary for the continued viability of this Agreement which Variation may reflect a reduction in the available funding for the Services of part of the Services, the Provider shall not be entitled to reject or refuse such Variation. If, however, the Provider clearly demonstrates to the reasonable satisfaction of the Commissioners that the proposed Variation is contrary to Law or would otherwise materially and adversely affect the Provider's ability to provide the Services then the Parties shall be at liberty to treat this Agreement as terminable and either party may by written notice to the other give such notice of termination as is reasonable in the circumstances.

26.6 Where the Agreement is terminated in the circumstances set out in Clause 26.5, the Provider shall not be entitled to any compensation upon expiry of the notice of termination.

27. PROVIDER'S RECORDS

27.1 In addition to the Information to be supplied in accordance with the Specification and in relation to payments, throughout the duration of the Agreement the Provider shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Commissioners may reasonably require by written notice to the Provider to enable the Commissioners to complete all official returns, including, but without limitation the following:

- 27.1.1 returns to any central government body or properly authorised agency of central government;
- 27.1.2 information required by any statutory body or compliance with any statute or statutory instrument; and
- 27.1.3 Information required pursuant to clause 50 (Equal Opportunities and Human Rights), provided in each case that the nature of such data and information and the format for the same has been agreed by the Parties or is specified by Law.

27.2 Subject to clause 43 (Data Protection) and Clause 43 (Data Processor Obligations), the Provider shall in all respects and at no additional cost to the Commissioners co-operate promptly with the Commissioners' reasonable requests so as to assist in enabling the Commissioners to comply with all Laws relating to access to information and/or freedom of information as may be in force including the Information Laws.

28. PROVISION OF FINANCIAL INFORMATION

28.1 The Provider shall, whenever so required by the Commissioners, provide the Commissioners with such financial information and data reasonably requested by the Commissioners to enable the Commissioners:

- 28.1.1 to comply with the Code of Practice on Local Authority Accounting in the United Kingdom 2017/18 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time) and with the Code of Audit Practice applicable to CCGs;
- 28.1.2 to examine, evaluate and be satisfied that the Commissioners' minimum standards of economic and financial standing, technical and professional ability and general standing required of the Provider with regard to the provision of the Services, are being delivered.

29. STATUTORY AND REGULATORY

29.1 The Provider shall promptly notify the Commissioners of any notice, order or instruction issued or served on it by any Regulatory Body relating to the Services or this Agreement.

SECTION 4 – HEALTH AND SAFETY

30. HEALTH & SAFETY

(Agreement DPS 2020)

- 30.1 The Provider shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 ("RIDDOR") and all other health, safety and welfare requirements applicable to the Services including those detailed in the Specification.
- 30.2 The Provider shall nominate a suitably competent person to have overall responsibility for its compliance with the obligations under clause 30.1 and for ensuring that all health and safety matters concerning this Agreement are dealt with in accordance with its health and safety policies.
- 30.3 Whilst performing the Services the Provider shall:
- 30.3.1 ensure that its Representatives comply with the lawful requirements of the Commissioners including a requirement to monitor the Provider's health and safety practices periodically;
 - 30.3.2 ensure that its Representatives observe any local arrangements for fire, health, safety, welfare, hygiene and security; and
 - 30.3.3 report all accidents, injuries or dangerous occurrences which arise in connection with the performance of the Services on the same day, within Working Hours, where possible, and in any event within three (3) days of the accident/s/injury or dangerous occurrence.
 - 30.3.4 where the Provider is the 'Responsible Person' for the purposes of RIDDOR, promptly:
 - 30.3.4.1 inform the Commissioners if the Provider makes a report as required of him by RIDDOR and the Provider shall keep records of any such reportable incident as required under RIDDOR; and
 - 30.3.4.2 ensure that any communications in relation to incidents in connection with this Agreement are agreed with the Agreement Manager; and
- 30.4 The Provider shall carry out a suitable and sufficient risk assessment prior to the commencement of the Services and shall have in place and comply with a health and safety policies and safe working procedures.
- 30.5 Without prejudice to Section 10 (Termination), the Commissioners shall be entitled to suspend the provision of the Services where the Provider fails to comply with this clause 30 and the provisions of clause 7 (Breach and Suspension) shall apply.
- 30.6 Where the Commissioners have exercised their powers under clause 30.5:
- 30.6.1 the Provider shall not resume provision of the Services until the Commissioners are satisfied that such non-compliance has been rectified; and
 - 30.6.2 the Commissioners shall not incur any liability for any such suspension of the Services.

SECTION 5 – PREMISES AND ASSETS

31. ASSETS

- 31.1 Except as otherwise specified in the Specification, the Provider shall be responsible at its own cost for providing all equipment including IT equipment, vehicles, plant and materials necessary and/or used by the Provider in connection with the provision of the Services during the Agreement Period (the “Provider’s Assets”).
- 31.2 The Provider shall maintain all Provider’s Assets in a safe condition so that they are fit for the purpose of delivering the Services and as a minimum comply with the requirements of this Agreement and any manufactures servicing and maintenance requirements.
- 31.3 The Provider shall keep, operate, prepare and use all Provider’s Assets:
- 31.3.1 with due regard for fuel economy and energy saving;
 - 31.3.2 in a safe manner and under proper control, which shall include clearly and accurately labelling containers to indicate their contents;
 - 31.3.3 and ensure that its Representatives are properly instructed in such matters.
- 31.4 The Provider shall be responsible for the security of all Provider’s Assets and the Commissioners shall not (as far as permitted by Law) be liable for loss, damage or injury in respect of the same;

32. PROVIDER’S PREMISES

- 32.1 The Provider shall provide all premises and/or sites necessary to provide the Services (the “Provider’s Premises”) and shall:
- 32.1.1 be responsible for payment of all charges, rates and other outgoings or expenses in relation to the Provider Premises;
 - 32.1.2 be responsible for any Environmental Liability arising from or in relation to the Provider Premises except to the extent that such liability arises from any act, omission, default or negligence of the Commissioners;
- 32.2 operate, repair and maintain the Provider Premises in accordance with all Laws and Good Industry Practice including obtaining and maintaining any Necessary Consents for provision of the Services at the Provider Premises.

33. RIGHT OF ACCESS

- 33.1 The Provider shall at all times during the duration of the Agreement permit the Commissioners and their Representatives, National Audit Office and representatives of Local Healthwatch, access on reasonable notice during Working Hours (save in the case of emergency where no notice shall be required) to the Provider Premises for the purpose of:
- 33.1.1 monitoring and inspecting work being performed to provide the Services;

- 33.1.2 interviewing the Provider's Staff engaged in connection with the provision of the Services; and
 - 33.1.3 inspecting the Provider's Assets and systems and procedures used by the Provider to provide the Services.
- 33.2 The Provider may refuse access to the Provider's Premises only where it would adversely affect the provision of the Services when the Parties shall agree an alternative time for access to the Provider's Premises.

SECTION 6 – WARRANTIES AND INDEMNITIES

34. INDEMNITIES

- 34.1 The Provider shall indemnify the Commissioners and keep the Commissioners indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of Agreement, including but without limitation:
- 34.1.1 any claim by a third party for loss or damage (including, but not limited to, bodily injury, disease, or loss or damage to property) occurring as a result of the Provider's performance of the Services;
 - 34.1.2 any breach of its obligations as set out in Section 7 (Information) or Section 8 (Personnel) of the Agreement;
 - 34.1.3 any breach of Law or Necessary Consents; or

to the extent that any such loss, claim or liability is due to the breach of the terms of this Agreement, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of Agreement or Law by the Commissioners.

35. INSURANCE

- 35.1 The Provider shall at its own cost take out and maintain the insurances listed at clause 35.2 (the "Required insurances") and any other insurances required by Law with reputable insurers who are authorised by the Financial Conduct Authority to conduct insurance business or equivalent.
- 35.2 The Required insurances referred to above are:
- 35.2.1 Public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services;
 - 35.2.2 Employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000)] in relation to any one claim or series of claims arising from the Services;

- 35.3 The Required Insurances must remain in place for the duration of the Agreement and be effective in each case not later than the date on which the relevant risk commences.
- 35.4 Where the Provider is in breach of clause 35.1, the Commissioners may pay any premiums necessary to keep the Required Insurances in force or procure such insurances itself and may in either case recover such sums from the Provider in addition to a charge to cover the Commissioners' administrative costs of arranging the same by way of deductions from amounts payable by the Commissioners to the Provider under this Agreement or by recovering the same as a debt due to the Commissioners from the Provider.
- 35.5 As and when required in writing by the Commissioners, the Provider shall provide the Commissioners with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Commissioners that the requirements of this clause 35 (Insurance) are being met, which may include receipts for payment of the premium.
- 35.6 Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.
- 35.7 Within thirty (30) days of any claim arising in excess of [£50,000] on any of the insurances referred to in this clause 35 (Insurance), the Provider shall notify the Commissioners of the same including full details of the incident giving rise to such claim.

36. LIMITATION OF LIABILITY

- 36.1 Subject to clauses 36.3.1 and 36.4, neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Agreement which shall include, without limitation, any loss of or damage to profit, revenue, Agreements, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
- 36.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
- 36.3 Subject to clause 36.4, the Provider's total aggregate liability:
- 36.3.1 is unlimited in respect of:
 - 36.3.1.1 the indemnities in clause 42.3(Data Protection), clause 43.2.18 (Data Processor Obligations]; clause 45.3 (Intellectual Property); and Schedule H (Staff Transfer and Pensions);
 - 36.3.1.2 any breach of clause 37.1.8 (Prohibited Acts);
 - 36.3.1.3 the Provider's wilful default.
 - 36.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of Agreement or otherwise under or in connection with this Agreement (other than a failure to pay any of the Agreement Price that is properly due and payable and for which the Commissioners shall remain fully liable), is unlimited.

- 36.4 Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
- 36.4.1 fraud or fraudulent misrepresentation;
 - 36.4.2 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors;
 - 36.4.3 breach of any obligation as to title implied by statute;
 - 36.4.4 any Prohibited Act; or
 - 36.4.5 any other act or omission liability for which may not be limited under any applicable Law.
- 36.5 Nothing in this Agreement shall impose any liability on the Commissioners in respect of any liability incurred by the Provider to any other person, but this shall not be, to exclude or limit any liability of the Commissioners to the Provider that may arise by virtue of either a breach of this Agreement or by negligence on the part of the Commissioners or the Commissioners' officers, employees, servants or agents.

37. PROVIDER WARRANTIES

- 37.1 The Provider warrants and represents that:
- 37.1.1 it has the full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations under this Agreement;
 - 37.1.2 this Agreement is executed by a duly authorised representative of the Provider;
 - 37.1.3 it will continue to maintain in full force and effect such authorisations, approvals, orders, licenses, certificates, permits and licences of and from any and all governmental, regulatory and administrative bodies as are necessary to lawfully perform the Services and its obligations under this Agreement including any Necessary Consents;
 - 37.1.4 it has operated, and will continue to operate, in material compliance with applicable Laws and regulations;
 - 37.1.5 all information concerning the Provider (including its Affiliates, Sub-contractors and their respective directors, officers, principals, members, partners and employees) which the Provider has furnished to the Commissioners in connection with this Agreement and the procurement of the same and/or otherwise relevant to the provision of the Services does not contain any untrue statement of a material fact or omit to state any material fact required to be stated or necessary to make the statements therein not misleading in any material respect;
 - 37.1.6 it is not currently the subject of, or been threatened with any legal or regulatory proceedings in any jurisdiction which may adversely impact upon or otherwise impair its ability to perform its obligations under this Agreement;

- 37.1.7 there are no material facts or circumstances in relation to the financial position or operation or constitution of the Provider which have not been fully and fairly disclosed to the Commissioners and which if disclosed might reasonably have been expected to affect the decision of the Commissioners to enter into this Agreement;
- 37.1.8 it has not committed any Prohibited Act in entering into this Agreement or any other agreement with the Commissioners and will not commit any such acts in the performance of or with regard to the extension of the term of this Agreement or such other agreement; and
- 37.1.9 it shall ensure, and takes responsibility for, the accuracy of all data, records, documentation and information supplied to the Commissioners under this Agreement and shall pay the Commissioners any extra costs caused by any discrepancies, errors or omissions in such information.
- 37.2 For the avoidance of doubt the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Commissioners may have in respect of breach of that provision by the Provider.

38. DUE DILIGENCE AND RELIANCE ON REPRESENTATIONS

- 38.1 The Provider shall be deemed to have satisfied itself before submitting its offer for the Services, as to the accuracy and sufficiency of any information provided by the Commissioners. The Provider agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Provider's Offer
- 38.2 The Parties each confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Agreement save for any such representation, warranty or undertaking expressly set out in this Agreement. This clause 38 shall not apply so as to restrict the liability of any party hereunder in respect of any fraud or fraudulent misrepresentation.
- 38.3 Subject to clause 38.4, the Provider acknowledges that the Commissioners and their Representatives shall not be liable to the Provider in Agreement, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to this Agreement or not).
- 38.4 Clause 38.3 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under Law.

39. FRAUD AND WHISTLE-BLOWING POLICY

- 39.1 If the Provider or anyone acting on its behalf or to its knowledge (whether such person is a Provider Representative or a Commissioners' Representative) commits any Prohibited Act in relation to this Agreement or any other agreement with the Commissioners or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Provider shall

promptly inform the Commissioners of the occurrence of such Prohibited Act and render all such assistance to the Commissioners as the Commissioners may reasonably require in investigating such acts.

- 39.2 To the extent necessary, the Provider shall itself and shall procure that its Representatives familiarise themselves with the Commissioners' respective Whistleblowing Policies and procedures.

SECTION 7 – INFORMATION AND IPR

40. CONFIDENTIALITY AND TRANSPARENCY

- 40.1 Subject to clause 40.2, the Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 40.2 Clause 40.1 shall not apply to any disclosure of information:
- 40.2.1 required by Law, provided that clause 41 (Freedom of Information) shall apply to any disclosures required under the Information Laws;
 - 40.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
 - 40.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 40.1;
 - 40.2.4 by the Commissioners of any document to which it is a party and which the Parties to this Agreement have agreed contains no commercially sensitive information;
 - 40.2.5 to enable a determination to be made under Section 9 (Dispute resolution);
 - 40.2.6 which is already lawfully in the possession of the receiving party prior to disclosure by the disclosing party;
 - 40.2.7 by the Commissioners to any other department, office or agency of the Government; and
 - 40.2.8 by the Commissioners relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure.
- 40.3 The Provider acknowledges that the Commissioners are subject to transparency obligations which require the Commissioners to publish certain Agreement information and materials. Accordingly, and notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Commissioners to publish this Agreement and its schedules in its entirety, including from time to time agreed changes to this Agreement (save and except such matters as the Commissioners is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Commissioners decides. The Provider shall render such assistance and cooperate with the Commissioners to enable such publication, including, if

the Commissioners so requires, assisting the Commissioners at no additional costs to the Commissioners in the redaction of such documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

- 40.4 Subject to clauses 42 (Data Protection) and 43.2.16 (Data Processor Obligations), on or before the Expiry Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the Commissioners' Representatives, or Service Users including any documents in the possession, custody or control of any Sub-contractor, are delivered up to the Commissioners or at the direction of the Commissioners or securely destroyed at the Commissioners' direction at the end or termination of this Agreement.

41. FREEDOM OF INFORMATION

- 41.1 The Provider acknowledges that the Commissioners are subject to the requirements of the Information Laws and shall assist and fully and promptly cooperate with the Commissioners to enable the Commissioners to comply with each their information disclosure obligations.

- 41.2 The Provider shall and shall procure that its Sub-contractors shall:

41.2.1 transfer to the Commissioners all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

41.2.2 provide the Commissioners with a copy of all Information in its possession or power in the form that the Commissioners requires within five (5) Working Days (or such other period as the Commissioners may reasonably specify) of the Commissioners' request; and

41.2.3 provide all necessary assistance as reasonably requested by the Commissioners to enable the Commissioners to respond to the Request for Information within the time for compliance set out in the Information Laws.

- 41.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Commissioners.

- 41.4 Where the Commissioners receive a Request for Information relating to this Agreement, the Provider or the Services that the Commissioners reasonably consider to be commercially sensitive and/or confidential it shall not disclose the same without first:

41.4.1 notifying the Provider in writing; and

41.4.2 allowing the Provider a reasonable opportunity (taking into account timescales set by Law) to make representations to the Commissioners as to disclosure of such information.

- 41.5 The Provider acknowledges that (notwithstanding the provisions of clause 41.4) the Commissioners may, acting in accordance with the Department of Constitutional Affairs' "Code of Practice on the Discharge of the Functions of Public Authorities" under Part 1 of the Freedom of Information Act 2000 ("the Code") or any such other relevant code or guidelines

and any directions of the Information Commissioner, be obliged under the Information Laws to disclose Information concerning this Agreement, the Provider or the Services:

41.5.1 in certain circumstances without consulting the Provider; or

41.5.2 following consultation with the Provider and having taken their views into account,

provided always that where clause 41.5.1 applies the Commissioners shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

41.6 The Commissioners shall be responsible for determining in their absolute discretion and notwithstanding any other provision in this Agreement, or any other agreement whether the commercially sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Information Laws.

41.7 Subject to the Provider's legal obligations (including under the Data Protection Legislation), the Provider shall at no additional cost to the Commissioners ensure that all information is retained for disclosure in accordance with the requirements for the keeping of records under this Agreement and shall permit the Commissioners to inspect such records as requested from time to time.

41.8 In the event that the Provider incurs or would incur costs in actively locating, retrieving and extracting Information in assisting the Commissioners to respond to a request for Information, the Provider must inform the Commissioners of such likely costs and the Commissioners will inform the Provider in writing whether or not it still requires the Provider to assist with complying with the request. If the Commissioners require the Provider to proceed with the request, the Commissioners will reimburse the Provider for such costs as the Provider incurs to the extent that it is itself entitled to reimbursement of such costs in accordance with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

41.9 The Provider acknowledges that the commercially sensitive Information identified to the Commissioners, if any, is of indicative value only and that the Commissioners may be obliged to disclose that information in accordance with clause 41.5.

42. DATA PROTECTION

42.1 The Parties shall, and the Provider shall procure that its Representatives shall comply with their obligations under the Data Protection Legislation and have proper regard to Data Guidance, whether as Data Controller, Data Processor or otherwise as relevant in connection with the performance of this Agreement.

42.2 The Provider shall perform its obligations under this Agreement in such a way as to ensure that it does not cause the Commissioners to breach any of their applicable obligations under the Data Protection Legislation.

42.3 The Provider shall be liable for and shall indemnify (and keep indemnified) the Commissioners against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis)

and demands incurred by the Commissioners which arise directly from a breach by the Provider of its obligations under the Data Protection Legislation including, without limitation, those arising out of any third party demand, claim or action, or any breach of Agreement, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Provider or its employees, servants, volunteers, agents or Sub-contractors.

- 42.4 The Provider agrees that it shall enter into a data sharing agreement with the Commissioners or any of them if required to do so at the Commissioners' absolute discretion so as to set out the Parties obligations in relation to any Personal Data which may be shared between the Parties.
- 42.5 The provisions of this clause 42 (Data Protection) shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

43. DATA PROCESSOR OBLIGATIONS

- 43.1 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that a party or Sub-contractor may act as both a Data Controller and a Data Processor.
- 43.2 In respect of any Personal Data that the Provider processes as a Data Processor on behalf of the Commissioners in connection with this Agreement, the Provider shall and shall procure that its Representatives shall:
- 43.2.1 solely process the Personal Data for the purposes of fulfilling its obligations under this Agreement and in compliance with the Commissioners' written instructions as set out in this Agreement and as may be specified from time to time in writing by the Commissioners;
 - 43.2.2 notify the Commissioners immediately if any instructions of the Commissioners relating to the processing of Personal Data are unlawful;
 - 43.2.3 not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Commissioners;
 - 43.2.4 comply with the Commissioners' instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Provider is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Provider shall inform the Commissioners in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;
 - 43.2.5 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Provider to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
 - 43.2.6 ensure that none of the Provider's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commissioners;

- 43.2.7 not engage any Sub-contractor to carry out any processing of Personal Data without the prior written consent of the Commissioners provided that notwithstanding any such consent the Provider shall remain liable for compliance with all the requirements of this Agreement including in relation to the processing of Personal Data;
- 43.2.8 ensure that obligations equivalent to the obligations set out in this clause 43 are included in all Agreements between the Provider and permitted Sub-contractors who will be processing Personal Data and who have been approved in accordance with clause 43.2.7;
- 43.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 43.2.10 upon request provide a written description of the technical and organisational measures employed by the Provider pursuant to clause 43.2.9 (within the timescales required by the Commissioners) and if the Commissioners do not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Commissioners (acting reasonably) to ensure compliance;
- 43.2.11 taking into account the nature of the data processing activities undertaken by the Provider, provide, at no cost to the Commissioners, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Commissioners to fulfil their obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
- 43.2.11.1 notifying the Commissioners within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
 - 43.2.11.2 complying with the Commissioners' instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Commissioners, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Commissioners;
- 43.2.12 maintain a record of the Provider's processing activities in accordance with the requirements of the Data Protection Legislation;
- 43.2.13 assist the Commissioners, at no cost to the Commissioners, in ensuring compliance with the obligations set out in the Data Protection Legislation taking

into account the nature of the data processing undertaken by the Provider and the information available to the Provider, including (without limitation):

- 43.2.13.1 providing information and assistance upon request to enable the Commissioners to notify Data Security Breaches to the Information Commissioner's and/or to affected individuals and/or to any other regulators to whom the Commissioners is required to notify any Data Security Breaches; and
 - 43.2.13.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Provider's data processing activities;
 - 43.2.14 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Provider in connection with this Agreement meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
 - 43.2.15 notify the Commissioners immediately and in any event within twenty four (24) hours in writing if:
 - 43.2.15.1 the Provider or any Sub-contractor engaged by or on behalf of the Provider suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
 - 43.2.15.2 the Provider or any Sub-contractor engaged by or on behalf of the Provider receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation,
- and in each case the Provider shall provide full co-operation, information and assistance to the Commissioners in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Commissioners;
- 43.2.16 upon termination of this Agreement at the discretion of and at no cost to the Commissioners, delete securely or return all Personal Data to the Commissioners or deliver as directed by the Commissioners and delete all existing copies of the Personal Data unless and to the extent that the Provider is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Provider shall notify the Commissioners in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Provider, the Provider shall provide the Commissioners with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.
 - 43.2.17 make available to the Commissioners at no cost to the Commissioners all information necessary to demonstrate compliance with the obligations set out in this clause 43 and, upon request, allow the Commissioners, the Information Commissioner's Office and its representatives access to the Provider's Premises, records and personnel for the purposes of assessing the Provider's compliance with its obligations under this clause 43; and

43.2.18 indemnify the Commissioners from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether Agreemental, tortious or otherwise) suffered or incurred by the Commissioners and arising out of or in connection with any breach by the Provider or any Sub-contractors of this clause 43.

43.3 The provisions of this clause 43 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

44. COMMISSIONERS' DATA ON PROVIDER'S IT SYSTEM(S)

44.1 The Provider shall:

44.1.1 take all reasonable precautions and use all reasonable endeavours to preserve the integrity of any Commissioners' Data or other data which it stores and/or processes on behalf of the Commissioners and to prevent any corruption or loss of such data and shall have in place an appropriate archiving and back-up policy;

44.1.2 follow its detailed archiving procedures for Commissioners' Data as set out in its archiving and back-up policy, a copy of which is to be provided to the Commissioners and as such policy may be updated by the Provider from time to time, which shall include as a minimum, the Provider making a back-up copy of Commissioners' Data at the intervals and following the process detailed in its archiving and back-up policy and recording the copy on media form which the Commissioners' Data can be reloaded if there is any corruption or loss of the Commissioners Data;

44.1.3 in the event of any corruption of or loss or damage to a Commissioners' Data, use all reasonable endeavours to restore the lost or damaged Commissioner's Data, at its own expense, from the latest back-up of such Commissioners' Data maintained by the Provider in accordance with the archiving procedure described in its archiving and back-up policy or, where the Commissioners' Data has not been restored by the Provider within ten (10)] Working Days, at the Commissioners' option, promptly reimburse the Commissioners for any reasonable expenses it incurs in having the Commissioners' Data restored by a third party;

44.1.4 be responsible for any loss, destruction, alteration or disclosure of Commissioners' Data caused by itself and any of its Sub-contractors, including (but not limited to) any third Parties sub-contracted by the Provider to perform services related to Commissioners' Data maintenance and back-up; and

44.1.5 in providing the Services, have in place and comply with its privacy and security policy relating to the privacy and security of the Commissioners Data, such policy to include measures equal to or broadly comparable with the relevant provisions of the Commissioners' Data in Transit Policies. The Provider shall provide a copy of its privacy and security policy to the Commissioners upon request and wherever such policy is updated by the Provider from time to time and shall take into account any comments the Commissioners has on such policy.

45. INTELLECTUAL PROPERTY RIGHTS

- 45.1 Save as expressly granted under this Agreement, neither the Commissioners nor the Provider shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other party prior to or independently of the performance by the relevant party of its obligations under this Agreement.
- 45.2 In the absence of prior written agreement by the Commissioners to the contrary, all Intellectual Property Rights created by the Provider or any employee, agent or Sub-contractor of the Provider:
- 45.2.1 in the course of performing the Services; or
- 45.2.2 exclusively for the purpose of performing the Services,
- shall by virtue of this Agreement be vested in the Commissioners on creation.
- 45.3 The Provider shall indemnify (and keep indemnified) the Commissioners against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have resulted directly from the Commissioners' failure properly to observe their obligations under this clause 45.

46. PUBLICITY

- 46.1 Each party shall use all reasonable endeavours to ensure that any formal public statements made by a party as to each other's activities or the performance of the Agreement shall only be made after consultation with the other party.
- 46.2 No party shall make use of another party's logo without their express permission.
- 46.3 The Provider shall not do anything or cause anything to be done which may damage the reputation of the Commissioners or bring the Commissioners individually or collectively into disrepute.

47. ACCESSIBLE INFORMATION STANDARD

- 47.1 Notwithstanding any other provision of this Agreement, the Provider must ensure that Service Users receive information in formats that they can understand and are given appropriate support to help the Service User to communicate and shall comply with the Accessible Information Standard where the Service User has an information and/or communication need which is related to or caused by a disability, impairment or sensory loss.
- 47.2 The Provider shall have in place and publish or publicly display an accessible communication policy which is in compliance with the Accessible Information Standard. The Provider shall provide a copy of the policy and evidence of its adherence with its own policy and the Accessible Information Standard, including but not limited to, evidence of identifying, recording, flagging, sharing of information and meeting of needs of relevant Residents, by no later than fourteen(14) Working Days following a written request of the Commissioners.

- 47.3 Where the Service User has a Support Plan the Provider must, where applicable, ensure it includes accurate information about the Service User's information and/or communication support needs which are recorded in accordance with the Accessible Information Standard.
- 47.4 The Provider shall have internal procedures in place, and ensure staff are appropriately trained on the requirements of the Accessible Information Standard and respond effectively, efficiently and professionally to all information and/or communication needs relating to all Service Users to whom the Services are provided. The Provider shall within fourteen (14) Working Days of a request from the Commissioners provide evidence of staff competency / training records which indicate that all relevant staff and Representatives have received appropriate training regarding implementation and ongoing compliance with the Accessible Information Standard.

48. PROVISION OF INFORMATION TO HEALTHWATCH

- 48.1 Throughout the duration of the Agreement, the Provider shall have regard to and comply with the requirements of the Local Government and Public Involvement in Health Act 2007, the Local Involvement Networks (Duty of Providers to Allow Entry) Regulations 2008 and other related legislation so far as these may apply to the Services.
- 48.2 Where the Provider receives a request for information from the Local Healthwatch, the Provider must respond in accordance with this Clause 48 (Access to Provider Premises by a Healthwatch Authorised Representative and Provision of Information to Healthwatch).
- 48.3 Where the Provider holds the information requested, and it is not exempt information (as defined by Local Government and Public Involvement in Health Act 2007) ("Exempt Information"), the Provider shall provide that information to the Local Healthwatch within twenty (20) Working Days following the date of receipt by the Provider of the request for information.
- 48.4 Where the Provider holds the information requested but it is Exempt Information, the Provider shall:
- 48.4.1 if the information is Exempt Information because it is capable of identifying a living individual, provide the information required to the Local Healthwatch in a form whereby the identity of the individual cannot be ascertained, within twenty (20) Working Days following the date of receipt by the Provider of the request for information; or
 - 48.4.2 in any other case, within twenty (20) Working Days following the date of receipt by the Provider of the request for information, notify the Local Healthwatch that the Provider is not required to disclose the information requested.
 - 48.4.3 If the Provider does not hold the information, notify the Local Healthwatch that this is the case within twenty (20) Working Days following the date of receipt by the Provider of the request for information.
- 48.5 For the avoidance of doubt, the Provider shall only be required to provide information or notify the Local Healthwatch in accordance with this clause 48 where;
- 48.5.1 The request for information is made in writing; and

- 48.5.2 The information requested is, in the opinion of the Local Healthwatch, necessary for the effective carrying on of the activities specified in section 221(2) of the Local Government and Public Involvement in Health Act 2007 that the Local Healthwatch is to carry on pursuant to arrangements made under that Act.

SECTION 8 – PERSONNEL

49. PERSONNEL

- 49.1 The Provider shall employ or engage sufficient Staff of suitable character who are of sufficient and appropriate ability, skill, knowledge, training and experience in the area of work which they are to be engaged, to deliver the Services.
- 49.2 The Provider shall not employ, engage or use the service of any person who:
- 49.2.1 is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or Vulnerable Adults or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children or Vulnerable Adults without the Commissioners' prior and express written consent; or
- 49.2.2 discloses that they have a Relevant Conviction, or who is found by the Provider to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without the Commissioners' prior and express written consent.
- 49.3 The Provider shall (and shall procure that the relevant Sub-contractor shall):
- 49.3.1 ensure that all Staff who, in providing the Services, will be engaged in the provision of Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate; and
- 49.3.2 monitor the level, frequency and validity of the checks required under this clause 49.3 for each member of Staff.
- 49.4 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services:
- 49.4.1 has a Relevant Conviction; or
- 49.4.2 is barred from carrying out Regulated Activity.
- 49.5 The Provider shall immediately notify the Commissioners of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 49 have been met.

- 49.6 The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.
- 49.7 The Provider shall ensure that its Staff and other Representatives:
- 49.7.1 are adequately supervised and informed of the aspects of this Agreement applicable to them;
 - 49.7.2 where specifically identified to the Commissioners, will be assigned to provide the Services;
 - 49.7.3 are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;
 - 49.7.4 on request, disclose their identity to the Commissioners or any third party;
 - 49.7.5 other than as permitted by this Agreement, do not solicit or act in such a manner as to induce payment for performance of the Services;
 - 49.7.6 act in a courteous considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs whilst providing the Services; and
- 49.8 The Provider shall provide, maintain and permit access to records of its Staff and other Representatives in accordance with this Agreement.
- 49.9 Subject to clause **Error! Reference source not found.**, the Commissioners may require the Provider, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Services any Representatives specified by such notice (including without limitation the Provider's Manager). Where required the Provider shall forthwith remove such Representatives from the provision of the Services and provide a replacement as appropriate to ensure that the Services are carried out in accordance with this Agreement. Any Representatives removed from work under the provisions of this clause 49.9 may not be employed subsequently in the provision of the Services without the written consent of the Commissioners.
- 49.10 The Commissioners shall not be liable either to the Provider or to any Representatives in respect of any liability loss or damage occasioned by the operation of clause 49.9.

50. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

- 50.1 The Provider shall have in place an equal opportunities policy. This policy must specify that the Provider will not treat staff less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Provider will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.

- 50.2 The Provider shall take all reasonable steps to ensure that none of its Staff or other Representatives unlawfully discriminate and at all times comply with the Provider's obligations under this clause 50.
- 50.3 The Provider shall not (and shall procure that its Staff do not), except where permitted by the Law, discriminate between or against Service Users on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation
- 50.4 The Provider shall have due regard in its performance of this Agreement to the obligations contemplated by section 149 of the Equality Act 2010, and shall, within a reasonable timescales, provide the Commissioners with a plan as to how it will comply with such obligations if requested to do so by the Commissioners.
- 50.5 In the performance of the Services and in its dealings with Service Users, Commissioners' officers and employees and members of the general public, the Provider shall comply and shall ensure that Staff comply with;
- 50.5.1 the Human Rights Act 1998 as if the Provider were a public body (as defined in the Human Rights Act 1998);
- 50.5.2 all Laws relating to equal opportunities, and
- 50.5.3 the Commissioners' equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Provider.
- 50.6 In the event of any finding of unlawful age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation discrimination being made against the Provider or its Sub-contractor(s) during the duration of this Agreement by any court or tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission (or any successor organisation) over the same period, the Provider shall inform the Commissioners of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Commissioners to prevent repetition of the unlawful discrimination.

51. TUPE

- 51.1 The Parties agree that the applicable provisions of Schedule H (Staff Transfer and Pensions) will apply during the duration of this Agreement to any transfer under TUPE of Transferring Employees, Third Party Employees and/or Relevant Employees.

SECTION 9 – DISPUTE RESOLUTION

52. REFERRAL TO OFFICERS

- 52.1 If any dispute arises out of or in connection with this Agreement, the Parties shall promptly notify each other of the matter in dispute ("**Dispute**"), which shall in the first instance be referred to the Commissioners' Administration Manager and the Provider's Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all

Parties and consider all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.

- 52.2 Where the Commissioners' Administration Manager and the Provider's Manager do not achieve within fourteen (14) days of notification of a Dispute a solution acceptable to all Parties involved, and provided no right of termination has been exercised, then senior representatives of both Parties shall meet promptly, and in any event within twenty one (21) days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.
- 52.3 Subject to clause 14 (Disputed Sums), the provision of the Services and the payment of fees shall not be affected or suspended in the event of and during any Dispute.

53. MEDIATION

- 53.1 In the event that the Dispute cannot be resolved by negotiation or conciliation under clauses 52.1 and 52.2 within two (2) months or such other period as may be determined by the Commissioners at their absolute discretion both Parties shall attempt to settle it by mediation.
- 53.2 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 53.2.1 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 (1) party to the other or 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 is unable or unwilling to act, apply to CEDR (or any successor body) to appoint a Mediator;
- 53.2.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him 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;
- 53.2.3 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;
- 53.2.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives; and
- 53.2.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.
- 53.3 If the Parties fail to resolve the Dispute by mediation within two (2) months of the Mediator being appointed, or such longer period as may be agreed between the Parties, then any dispute or difference between them may be referred to the courts pursuant to clause 79 (Law of Agreement and Jurisdiction).

SECTION 10 – TERMINATION

54. EXPIRY

54.1 This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of this Agreement. For the avoidance of doubt the Provider shall not be entitled to any compensation on expiry.

55. TERMINATION ON NOTICE

55.1 The Commissioners may terminate this Provider Agreement in whole or in part at any time on three (3) months written notice to the Provider. For the avoidance of doubt, no compensation shall be payable to the Provider where this Agreement is terminated in whole or part under this clause 55.1.

55.2 The Commissioners may terminate this Agreement, in whole or in part, upon giving the Provider such notice as it considers reasonable if they reasonably believe that any of the circumstances set out in regulation 73(1)(a) or 73(1)(c) of the Public Agreements Regulations 2015 apply, such notice to expire at any time. For the avoidance of doubt the Provider shall not be entitled to any compensation on such termination.

55.3 Termination of Service Agreements

55.3.1 Either Party may terminate a Service Agreement on the giving of the following minimum periods of notice:...

| Total number of hours weekly | Minimum notice |
|------------------------------|-----------------------|
| Up to 10 hours | 14 days |
| 10-99 hours | two calendar months |
| 100+ hours | three calendar months |

55.3.2 Either Party may terminate a Service Agreement which termination shall take effect as soon as is practicable after notice of termination has been given where:

55.3.2.1 The Service User's needs can no longer be met; or

55.3.2.2 Where there is potential for significant harm to the Service User, a member of Staff or another person using the service; or

55.3.2.3 In cases of death; or

55.3.2.4 There are 3 months or more of unpaid service user contributions.

55.4 Where any of the circumstances set out above arise the Parties shall work together to safeguard the interests of the Service User until such time as an alternative arrangement can be made so as to ensure the Service User's needs are met.

55.5 Termination of a Service Agreement does not terminate the Provider Agreement.

56. TERMINATION FOR PROVIDER DEFAULT

56.1 The Commissioners may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Provider in the following circumstances:

- 56.1.1 the Provider fails to comply with a Remedial Action Plan;
- 56.1.2 following the outcome of an Investigation;
- 56.1.3 if a Persistent Breach has occurred;
- 56.1.4 if there is an Insolvency Event;
- 56.1.5 the Provider makes an assignment or novation of this Agreement in breach of clause 63 (Change in Control), or sub contracts the Services or any part of the Services in breach of clause 65 (Sub-contracting);
- 56.1.6 the Provider breaches any of its obligations under clauses 35 (Insurance) and 77 (Conflicts of Interest);
- 56.1.7 if there is a change of control of the Provider within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Commissioners reasonably object;
- 56.1.8 the Commissioners reasonably believes that the circumstances set out in regulation 73(1)(b) of the Public Agreements Regulations 2015 apply;
- 56.1.9 if the Provider commits a breach that results in material damage to the reputation of either or both the Commissioners.

57. TERMINATION FOR BREACH OF WARRANTY OR PROHIBITED ACTS

57.1 If a Prohibited Act is committed by the Provider or any of its Representatives including Sub-contractors, not acting independently of the Provider, then the Commissioners may without prejudice to any accrued rights or remedies under this Agreement, terminate this Agreement forthwith by written notice having immediate effect.

57.2 The Commissioners may terminate this Agreement forthwith and recover all its losses if the Provider is in material breach of any of its representations and warranties in clause 37 (Provider Warranties) (notwithstanding that such warranties and representations are expressed to be warranties).

57.3 Any notice of termination under this clause 57 shall specify:

- 57.3.1 the warranty breached or the nature of the Prohibited Act;
- 57.3.2 if a Prohibited Act, the identity of the party whom the Commissioners believe has committed the Prohibited Act; and
- 57.3.3 the date on which this Agreement will or is deemed to have terminated, in accordance with the applicable provision of this clause 57.

58. TERMINATION ON FORCE MAJEURE

58.1 If a force Majeure Events prevents either party from performing its obligations under the Agreement in any material respect for a period of three (3) consecutive months then, provided the notification requirements set out in clause 66 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under this Agreement, either party may terminate this Agreement by notice in writing to the other party having immediate effect.

59. EFFECT OF TERMINATION OR EXPIRY

59.1 Where this Agreement is terminated the Commissioners shall:

59.1.1 not be required to make further payments under this Agreement until the costs, loss and/or damage due under this Agreement have been calculated and when such payment become due the Commissioners shall be entitled to withhold from such payments the costs, loss and/or damages due to it under this Agreement; and

59.2 Notwithstanding that a party may have a right to terminate this Agreement that party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement.

DUTY TO CO-OPERATE

59.3 The Provider shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any Replacement Provider undertaking such service, the same or similar to the Services in accordance with clause 59.4:

59.3.1 during the final six (6) months of the Agreement Period (where this expires under clause 54 (Expiry)) or during the period of any notice of termination of this Agreement and

59.3.2 for a period of six (6) months thereafter.

59.4 Such co-operation referred to in clause 59.3 shall include:

59.4.1 liaising with the Commissioners and/or a Replacement Provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Commissioners or to such Replacement Provider;

59.4.2 subject to the provisions of clause 40 (Confidentiality), providing to the Commissioners and/or to a Replacement Provider all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance; and

59.4.3 using all reasonable endeavours to assign or otherwise transfer the benefit of any Sub-contract or other Agreement related to the performance of the Services, if so required by the Commissioners and so permitted by other Parties to the relevant Sub-contract or other Agreement.

59.5 The Provider shall use all reasonable endeavours to facilitate the smooth transfer of responsibility for the Services to a Replacement Provider(s) or the Commissioners, as the case may be, and the Provider shall not act at any time during the duration of this Agreement or thereafter in a way calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer (but this clause shall not prevent the enforcement by the Provider of any of its rights under whether this Agreement or otherwise).

60. ANTI SLAVERY

60.1 In performing its obligations under the Agreement, the Provider shall:

- 60.1.1 Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 60.1.2 Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 60.1.3 Include in Agreements with its direct Sub-contractor and suppliers provisions which are at least as onerous as those set out in this clause 60;
- 60.1.4 Notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement; and
- 60.1.5 Maintain a complete set of records to trace the supply chain of all Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Provider's premises, records, and to meet the Provider's personnel to audit the Provider's compliance with its obligations under this clause 60.

60.2 The Provider represents and warrants that at the date of this Agreement it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

SECTION 11 – GENERAL

61. SUCCESSORS

61.1 The provisions of this Agreement are binding on any successors in title of the Parties.

62. RELATIONSHIP OF PARTIES

62.1 The Provider shall not be deemed to be, an agent of the Commissioners and the Provider shall not hold itself out as having authority or power to bind the Commissioners or any one of them in any way, other than expressly conferred by this Agreement.

62.2 Nothing in this Agreement shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a Agreement of employment between the Provider and the Commissioners.

63. CHANGE IN CONTROL

- 63.1 The Provider shall immediately notify the Commissioners of any Change of Control of the Provider and/or registration of the Provider (including for example change from individual proprietor to a limited company) in addition to informing any Regulatory Body (as applicable).

64. ASSIGNMENT AND NOVATION

- 64.1 The Provider shall not assign, novate, transfer or otherwise dispose of any of its rights or benefits under this Agreement other than:

64.1.1 with the prior written consent of the Commissioners, which consent the Commissioners may in their absolute discretion refuse and/or grant on terms; and

64.1.2 provided that the Provider undertakes to pay all reasonable expenses incurred by the Commissioners in connection with the proposed assignment or novation whether or not the assignment or novation is completed.

- 64.2 The Commissioners may (and the Provider shall do all things necessary to assist the Commissioners to) assign or otherwise dispose of its rights and obligations under this Agreement or any part thereof to another party provided that:

64.2.1 the Commissioners shall give prior written notice of any assignment or novation to the Provider; and

64.2.2 such assignee or novatee shall have the legal capacity and sufficient financial resources to perform the obligations of the Commissioners under this Agreement.

65. SUB-CONTRACTING /AGENCY WORKERS

- 65.1 In the event that the Provider enters into any Sub-contract in connection with this Agreement it shall:

65.1.1 remain responsible to the Commissioners for the performance of its obligations under this Agreement notwithstanding the appointment of any Sub-contractor and be responsible for the acts omissions and neglects of its Sub-contractors;

65.1.2 consult with the Commissioners before terminating any sub-contract and/or appointing new Sub-contractors to provide Services under this Agreement;

65.1.3 impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Sub-contractor complies with such terms. As a minimum the Sub Agreement must include:

65.1.3.1 the scope of the Services to be provided by the Sub-contractor and the price agreed for the provision of those Services;

65.1.3.2 the payment terms and timescales;

65.1.3.3 a provision which requires payment to be made of all sums due by the Provider to the Sub-contractor within a specified period not

exceeding thirty (30) days from the receipt of a valid invoice and appropriate late payment provisions as set out in clause 13 (Payment);

- 65.1.3.4 a clause which states that the Provider is not able to unilaterally vary the scope of the services and/or the price agreed under the Sub-contract;
- 65.1.3.5 appropriate insurance provisions for the Services to be provided by the Sub-contractor which comply with the provisions of clause 35 (Insurance);
- 65.1.3.6 not vary any of the provisions referred to in clauses 65.1.3.1 to 65.1.3.5 except with the prior written consent of the Commissioners; and
- 65.1.3.7 provide a copy, at no charge to Commissioners, of any such sub-contract on receipt of a request for such by the Agreement Manager

65.2 The use of agency staff by the Provider for the provision of any element of the Services will not constitute sub-contracting for the purpose of this clause 65, as the Provider shall remain solely responsible for the delivery of the Services and the agency staff will be working under the Provider's supervision, instruction and direction. Without prejudice to any other provisions of this Agreement, the Provider shall ensure and shall satisfy itself that any agency workers used by the Provider have the necessary employment and Disclosure and Barring Service checks, training, skills and expertise to deliver the Services on behalf of the Provider

66. FORCE MAJEURE

- 66.1 If any party is delayed in or prevented from performing any of its obligations under this Agreement by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.
- 66.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. Such notification shall contain 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.
- 66.3 As soon as practicable following such notification, the Parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of this Agreement.
- 66.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under this Agreement. Following such notification (subject to termination under clause 58 (Termination on Force Majeure)), this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 66.5 For the duration of any suspension of the Provider's obligations under this clause 66, the Commissioners shall only be liable to pay the Provider an amount that reflects the reduced Services (if any) being performed.

67. BUSINESS CONTINUITY PLANNING AND CIVIL CONTINGENCIES

- 67.1 The Provider is required to have in place adequate and appropriate measures to ensure, where reasonably practicable, that it is able to continue providing the Services within a predetermined time in the event of service disruption or a state of emergency which partially or completely interrupts the Provider's business critical functions and which would otherwise impact the Provider's provision of the Services, and:
- 67.2 The Commissioners may from time to time require the Provider to demonstrate to the reasonable satisfaction of the Commissioners the viability and effectiveness of the Provider's business continuity arrangements by providing details of its exercising and maintenance programmes.

68. ASSISTANCE IN LEGAL PROCEEDINGS

- 68.1 Where requested by the Commissioners' Administration Manager, the Provider shall give all reasonable assistance and co-operation and provide to the Commissioners any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which the Commissioners may become involved, or any relevant disciplinary hearing internal to the Commissioners, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Services.
- 68.2 Where the Provider becomes aware of any incident, accident or other matter which may lead to a complaint to the Local Government Ombudsman or a claim or legal proceedings, in respect of the provision of or failure to provide the Services, it shall notify the Agreement Administration Manager by telephone and in writing as soon as practicable and in any event within forty eight (48) hours of becoming aware of the same. Such written notification shall include all relevant information that is not confidential to enable the Agreement Administration Manager to investigate the matter fully.
- 68.3 Such information provided or assistance rendered pursuant to the obligations in this clause 68, in whatever form, shall be at no additional cost to the Commissioners.

69. PREVENT DUTY

- 69.1 The Provider acknowledges that the Commissioners have a duty under the Counter Terrorism and Security Act 2015 ("CTSA 2015") to have due regard to the requirement to prevent people from being drawn into terrorism ("Prevent Duty"). The Provider shall, and shall procure that its Representatives shall, give all reasonable assistance and support to the Commissioners in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.

70. GOOD FAITH

- 70.1 The Parties shall, and shall procure that their Representatives shall, at all times in relation to this Agreement and the performance of the Services, act reasonably and in good faith.
- 70.2 Except where expressly stated otherwise, any decision, agreement, request, consent, approval (including whether performance is to the satisfaction a party), action or other step of a similar nature required to be taken by a party shall be taken reasonably and in good faith

and it shall be reasonable to withhold or delay such decision, agreement et cetera on the grounds of:

70.2.1 non-compliance by the other party with Laws; or

70.2.2 a materially adverse effect on the proper performance of the Services.

71. RIGHTS AND DUTIES RESERVED

71.1 All rights and duties which those Commissioners have as local authorities or other public body and which the Commissioners' officers have in their roles including as a local planning authority and a waste disposal authority, are reserved.

72. ILLEGALITY

72.1 In the event that any part of this Provider Agreement shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any Court or Regulatory Body having jurisdiction over the Parties of this Agreement, the Parties hereby expressly agree that the remaining parts and provisions of this Agreement shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains as far as possible the same as under this Agreement or as may be agreed between the Parties.

73. SURVIVAL

73.1 Termination of this Agreement for any reason shall not affect this clause 73 and the following clauses or Sections, which shall continue in force after such termination: Clause 12 (Safeguarding) clause 14 (Disputed Sums), clause 16 (Set-Off), clause 27 (Provider's Records), Section 6 (Warranties and Acknowledgments), clause 40 (Confidentiality), clause 41 (Freedom of Information), clause 42 (Data Protection), clause 43 (Data Processor Obligations), clause 51 (TUPE), Section 9 (Dispute Resolution), Section 10 (Termination), clause 63 (Assignment and Novation), clause 65 (Sub-contracting), clause 68 (Assistance in Legal proceedings), clause 76 (Notices); clause 79 (Law of Agreement and jurisdiction).

74. WAIVER

74.1 No term or provision of this Agreement shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Agreement unless (and then only to the extent that) it is expressly stated in that waiver.

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

74.3 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in accordance with clause 76 (Notices).

75. Third Party Rights

75.1 Subject to Schedule H (Staff Transfer and Pensions), it is agreed for the purposes of the Agreements (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement except for any person to whom the benefit of this Agreement is assigned in accordance with clause 63 (Change in Control).

76. NOTICES

76.1 Any demand, notice, or other communication required to be given under this Agreement shall, unless expressly stated otherwise, be in writing and shall be treated as validly served if:

76.1.1 served personally on the addressee;

76.1.2 sent by pre-paid post;

76.1.3 sent by email to the address specified at Schedule B (Officers) and confirmed by hard copy letter.

76.2 Any notice that complies with clause 76.1 shall be deemed to have been received by the addressee when delivered:

76.2.1 personally, on the date of delivery;

76.2.2 by email, at the time of transmission if sent during Working Hours and otherwise on the next Working Day,

76.2.3 in the case of delivery by post on the third Working Day after the date of posting.

77. CONFLICTS OF INTEREST

77.1 Acting always in the best interest of the Commissioners, the Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider's Representatives are placed in a position where (in the reasonable opinion of the Commissioners), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or its Representatives and the duties owed to the Commissioners under this Agreement.

77.2 The Provider shall notify the Commissioners and (subject to any overriding duty of confidentiality) provide full particulars to the Commissioners immediately on becoming aware of any possible conflict of interest referred to in clause 77.1 (or any other conflict between the interests of the Commissioners and the Provider or any other person to whom services are provided by the Provider) which may arise or potentially arise or which may have reasonably been reasonably foreseen as arising.

77.3 The Provider shall immediately take all reasonable action to remove or avoid the cause of any such conflict of interest to the satisfaction of the Commissioners.

78. COUNTERPARTS

78.1 This Agreement may be executed in one or more counterparts and any party may enter into this Agreement by executing a counterpart. Any single counterpart or a set of counterparts

executed in either case by all the Parties shall constitute one and the same agreement and a full original of this Agreement for all purposes.

79. LAW OF AGREEMENT AND JURISDICTION

79.1 This Agreement shall be governed by the laws of England and Wales and subject to Section 9 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the courts of England.

[IN WITNESS of which the Parties have caused this Agreement to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED

by the affixing of the **COMMON SEAL of
BRIGHTON AND HOVE CITY COUNCIL**

Authorised Signatory

**EXECUTED as a DEED by
NHS BRIGHTON & HOVE
CLINICAL COMMISSIONING GROUP**

Authorised Signatory

EXECUTED as a DEED

by **XXXX**

acting by and under the signature of:

Name: _____ Signature: _____

Director

Name: _____ Signature: _____

Director (or Company Secretary)

SCHEDULE A – DEFINITIONS & INTERPRETATION

In accordance with clause in this Agreement the following words shall have the meanings set out below:

| | |
|------------------------------------|--|
| “Accessible Information Standard” | means the formal guidance developed and issued by NHS England, known as “SCCI 1605 Accessible Information”, which health and social care providers are required to comply with in accordance with s.250 of the Health and Social Care Act 2012. The Accessible Information Standard is aimed at ensuring disabled people have access to information that they can understand and any communication support they might need and consists of the Accessible Information Standard Specification and the Accessible Information Standard Implementation Guidance available at: https://www.england.nhs.uk/ourwork/patients/accessibleinfo/ as may be amended from time; |
| “Accreditation and Enrolment” | Means the evaluation of requests to participate received from Providers and the admittance to the DPS of Providers that fulfil the Selection Criteria; |
| “Achieved KPI(s)” | means in respect of any part of the Services in any measurement period, the standard of performance actually achieved by the Provider in the provision of that part of the Services in the measurement period in question (calculated and expressed in the same way as the KPI for that part of the Services is calculated and expressed in Schedule E (Performance Management)); |
| “Affiliate(s)” | means in relation to any company, any holding company or subsidiary of that company or any subsidiary of such holding company and “holding company” and “subsidiary” shall have the meaning given to them in section 1159 and Schedule 6 of the Companies Act 2006; |
| “Agreed Fee” | means the sum set out in the Service Agreement being the agreed hourly or daily rate for the delivery of the Services payable by the Commissioners in accordance with this Agreement; |
| “Agreement” | means the agreement in respect of the provision of the Services consisting of the following documents which shall be interpreted as a single Agreement arrangement:- <ol style="list-style-type: none"> 1. The Service Agreement (which shall incorporate the Requirement and the Offer); 2. Specification for the Service. (Schedule 4 of the Provider Agreement) 3 .Provider Agreement including all other Schedules 4. Provider Entry Guide; |
| “Agreement Administration Manager” | means the representative of the Commissioners initially detailed in Schedule B (Officers) as the same may be replaced or delegate his functions from time to time; |
| “Agreement Management Meeting” | means a meeting held in accordance with clause Error! Reference source not found. (Agreement Management) and /or Schedule F (Agreement Management); |
| “Agreement Year” | means a period of twelve (12) months, commencing on the Services Commencement Date and each anniversary thereof, with the final Agreement Year ending on the Expiry or termination of the Agreement; |
| “Bribery Act” | means the Bribery Act 2010 and any subordinate legislation made under that |

| | |
|--------------------------------|---|
| | Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| “CEDR” | means the Centre for Effective Dispute Resolution; |
| “Change of Control” | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; |
| “Commissioners’ Data” | means: <ul style="list-style-type: none"> a) the data, case management information, text, drawings, diagrams, documents, records, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are: <ul style="list-style-type: none"> i. supplied or communicated to the Provider by or on behalf of the Commissioners; ii. inputted into the Commissioners IT systems or the Providers IT system by the Commissioners or the Commissioners’ Representatives; or which the Provider is required to access, generate, process, store or transmit pursuant to this Agreement, whether on the Commissioners IT systems or the Providers IT system; or any Personal Data for which the Commissioners or any one of them is the Data Controller; |
| “Contracting Authority” | means as defined in the Public Agreements Regulations 2015; |
| “Conviction” | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to the Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education reform Act 1988); |
| “Data Controller” | has the meaning given to that term in the Data Protection Legislation in force from time to time; |
| “Data Processor” | has the meaning given to that term in the Data Protection Legislation in force from time to time; |
| “Data Protection Legislation ” | Means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 the General Data Protection Regulation (EU) 2016/679 (“GDPR”), Data Protection Act 2018 and any national legislation implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, any codes of practice or guidance issued by the Information Commissioner’s Office, from time to time; and any replacement legislation coming into effect from time to time; |
| “Data Security Breach” | means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; |
| “Data Subject” | has the meaning given to that term in the Data Protection Legislation in force from time to time; |

| | |
|---|--|
| “Default Notice” | as defined at clause 7 6; |
| “Default” | as defined in Clause 8.1 |
| “Delay” | shall have the meaning set out in clause 5 |
| “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 and applied in line with Regulations 74 to 76 PCR; |
| “Exempt Information” | shall have the meaning set out in clause 48.3; |
| “Expiry Date” | means the end of the Agreement Period; |
| “Financial Year” | means 1 April to 31 March |
| “FOIA” | means Freedom of Information Act 2000 |
| “Force Majeure Event” | means war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Provider’s Representatives including Sub-contractors), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided; |
| “General Data Protection Regulation/GDPR” | means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; |
| “Good Industry Practice” | means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Provider under the same or similar circumstances at the relevant time for such exercise; |
| “Information Commissioner’s Office” | means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority; |
| “Information Laws” | means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time; |
| “Information” | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| “Insolvency Event” | in relation to the Provider: <ul style="list-style-type: none"> (a) any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed); (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged with seven (7) days) upon the whole or any material part of the Provider’s assets; (c) a court makes an order that the Provider be wound up or a resolution for a voluntary winding up of the Provider is passed; (d) ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the |

| | |
|----------------------------------|---|
| | meaning of Section 123 of the Insolvency Act 1986; being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors; |
| “Intellectual Property Rights” | means any and all patents, trademarks, service marks copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any good will and accrued rights of action; |
| “Investigation” | means an investigation (including any safeguarding investigation) carried out by the Commissioners and or Any Regulatory Body; |
| “Key Performance Indicator/KPIs” | means the key performance indicators set out in the Specification and /or Schedule E (Performance Management); |
| “Key Personnel” | means those personnel identified in Schedule F (Agreement Management);] |
| “Law(s)” | means any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance code of practice, direction, judgment or determination with which the Commissioners and/or the Provider is bound to comply including the Commissioners’ rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time; |
| “Legal Guardian” | means an individual who, by legal appointment or by the effect of written Law, is given custody of both the property and person of one who is unable to manage their own affairs; |
| “Local Government Ombudsman” | means the independent body that investigates complaints from the public about maladministration in local government and other organisations providing local public services, whose website can be found at - http://www.lgo.org.uk/ ; |
| “Local Healthwatch” | means the local independent consumer champion for health and social care in England; |
| “Management Reports” | means the reports to be prepared and presented by the Provider in accordance with clause 21 and Schedule F (Agreement Management) [to include comparison of Achieved KPIs with Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs; |
| “Mediator” | as defined in clause 53.2.1; |
| “Month” | means a calendar month and the term “Monthly” shall be interpreted accordingly; |
| “Necessary Consents” | means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including without limitation all planning permissions |
| “Offer” | means the Provider’s Offer in response to a Requirement published by way of the Application; |
| “Open for Offers” | means the period during which time the Provider can create and submit their |

| | |
|-------------------------------|---|
| | Offer within the Application; |
| “Out of Hours Duty Service” | means the Commissioners’ Emergency Duty Service (EDS) ; |
| “PCR” | Means the Public Contract Regulations 2015, as amended from time to time; |
| “Persistent Breach” | means the Provider’s repeated breach any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement |
| “Personal Data” | has the meaning given to that term in the Data Protection Legislation in force from time to time; |
| “Prohibited Act” | <p>the following shall constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Commissioners a financial or other advantage to:</p> <p style="padding-left: 40px;">(i) induce that person to perform improperly a relevant function or activity;</p> <p style="padding-left: 80px;">or</p> <p style="padding-left: 40px;">(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p style="padding-left: 40px;">(i) under the Bribery Act;</p> <p style="padding-left: 40px;">(ii) under legislation or common law concerning fraudulent acts;</p> <p style="padding-left: 40px;">(iii) defrauding, attempting to defraud or conspiring to defraud the Commissioners; and/or</p> <p>Any activity, practice or conduct which would constitute one of the offences listed under sub-clause (c) above, if such activity, practice or conduct had been carried out in the UK.</p> |
| “Provider Agreement” | Means these terms and conditions |
| “Provider’s Assets” | as defined at clause 31 |
| “Provider’s Manager” | means the representative of the Provider as initially listed in Schedule B (Officers) as the same may be replaced from time to time; |
| “Provider’s Premises” | as defined at clause 32; |
| “Quarter” | means a consecutive period of three Months commencing on 01 April, 01 July, 01 October or 01 January and the term “Quarterly” shall be interpreted accordingly; |
| “Regulated Activity Provider” | has the meaning contained in the Safeguarding Vulnerable Groups Act 2006, as amended; |
| “Regulated Activity” | has the meaning contained in the Safeguarding Vulnerable Groups Act 2006, as amended; |
| “Regulatory Body” | a body with authority to regulate the Services |
| “Relevant Conviction” | (d) means a Conviction that is relevant to the nature of the Services to be provided; |
| “Remedial Action Plan” | As defined in 7.5; |
| “Remediation Notice” | as defined in clause 56.1; |

| | |
|--|---|
| “Replacement Provider” | means any third party Agreement to provide Replacement Services to the Commissioners from time to time; |
| “Replacement Services” | means any services that are identical or substantially similar to any of the Services and which the Commissioners receive in substitution for any of the Services following the termination or expiry of this Agreement (in whole or in part), whether those services are provided by the Commissioners or by any Replacement Provider; |
| “Representative” | means any employee, officer, worker, agent or Provider and volunteer engaged by a party in connection with the Services including any Sub-contractor; |
| “Required Insurances” | as defined at clause 35 (Insurance); |
| “Requirement”: | means a detailed specification and request for individual services made by the Council via the Application |
| “Resumption Notice” | as defined at clause 7.5.8; |
| “Safe Working Arrangements” | has the meaning given in clause 30.4; |
| “Safeguarding Policies and Procedures” | means the Provider’s written policies and procedures as amended from time to time, for safeguarding Vulnerable Adults; |
| “Selection Criteria” | Means the requisite criteria that a Provider must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment onto the DPS. |
| “Service Agreement” | Means the Parties’ acceptance of the Provider’s final Offer in response to the Council’s corresponding Requirement incorporating the terms of this Provider Agreement. |
| “Service Commencement Date” | means [insert date the Services due to start]; |
| “Service Outcomes” | means the outcomes for the service as described in the Specification; |
| “Service User” | means the person(s) directly receiving the Services provided by the Provider as set out in the Specification (and where specified, shall include their Carer / Legal Guardian);] |
| “Service User Contribution “ | The contribution to be made by the Service User to the cost of the Services as calculated following a financial assessment; |
| “Services” | means the services, supplies and/or works to be provided by the Provider under this Agreement as more particularly described in the Specification, the Service Agreement any Variation thereto made in accordance with this Agreement; |
| “Specification” | means the specification at Schedule D detailing the Services |
| “Staff” | means all persons employed by the Provider to perform its obligations under this Agreement together with the Provider’s servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Agreement; |
| “Sub-contract” | means any sub-contract entered into by the Provider or by any Sub-contractor for the purpose of the performance of any obligation on the part of the Provider under this Agreement; |
| “Support Plan” | means a document issued to the Provider setting out specific care |

| | |
|-------------------------|--|
| | requirements for a Service User in addition to the general care requirements set out in the Provider Agreement and Specification |
| “Suspension Notice” | As defined at clause 7.5.12; |
| “Suspension” | As defined at clause 7.5.2; |
| “Target KPIs” | means the minimum level of performance for a KPI which is required by the Commissioners as set out against the relevant KPI in Schedule D (Specification) and Schedule E (Performance Management); |
| “Third Party Employee” | means an employee of a Third Party Employer whose Agreement of employment transfers to the Provider by virtue of the application of TUPE [as listed in Schedule H]; |
| “Third Party Employer” | means a Provider engaged by the Commissioners to provide [some of the] Services to the Commissioners and whose employees will transfer to the Provider on the Effective Date; |
| “Transferring Employee” | means an employee of the Commissioners whose Agreement of employment becomes, by virtue of the application of TUPE in relations to what is done for the purposes of carrying out this Agreement between the Commissioners and the Provider, a Agreement of employment with someone other than the Commissioners; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “Variation” | means a variation of the Service or the Agreement in accordance with this Agreement; |
| “VAT” | means value added tax or any similar or substituted tax; |
| “Vulnerable Adult” | means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 of the Safeguarding Vulnerable groups Act 2006 is provided; |
| “Working Days” | means Monday to Friday inclusive of each week, excluding Christmas Day, Good Friday and Bank Holidays in England; |
| “Working Hours” | Means 09:00 to 17:00 on Working Days. |

INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the terms set out in Schedule A shall have the meanings ascribed to them in Schedule A.
- 1.2 Unless the context makes it clear that this is not what is intended, any reference in this Agreement to:
- 1.2.1 A particular gender identity shall include all other gender identities;
 - 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.

SCHEDULE B – OFFICERS

The Council: Commissioning & Performance Manager

SCHEDULE C –PRICING CONDITIONS

Invoicing Arrangements

The Service Provider will invoice on a pro rata basis of their hourly rate according to Service Delivered (e.g. half an hour of Service will equate to fifty percent of the hourly rate).

Unless otherwise expressly set out in writing in the Contract, the Agreed Charge shall cover all costs, expenses and charges in respect of the performance of the Service Provider's obligations under the Contract, including but not limited to labour, equipment, materials, transport, administration, operating costs, overhead charges, profit, other costs, expenses and disbursements and all general risks, liabilities and obligations set out in or implied as necessary to comply with the Agreement.

Billing information and invoices must be accurate, reflect the Services commissioned and include any variations i.e. increases or decreases to Services actually provided with reasons for the difference. In addition any increase must be reported separately and promptly to the Commissioners and may result in a review of the Support Plan

The invoice must detail the name, address, and telephone number, of the Provider. It must include the Identity Number (also known as the CareFirst number), an Invoice Number, Date, Period of charge, Fee (including period of reduced charges, with reasons identified), less Service User's Contribution.

Payments due to the Provider under this Agreement are stated exclusive of VAT, which shall be payable at the applicable rate by the Commissioners upon submission of a valid VAT invoice. The Provider shall promptly notify the Authorised Officer in the event of a change in VAT registration

Valid Invoices will be settled within 30 days of receipt.

Payment Instructions for Continuing Health Care may be varied and will be confirmed in for each Requirement.

Where the Service User is admitted to hospital, respite care or takes a holiday any other circumstances of absence, the Service Provider must retain capacity to deliver Services to the absent Service User for a period of at least 2 weeks or for such longer period as may be agreed in writing between the Parties (an Intermission).

The Service Provider shall resume delivery of the Services to such Service User on their return home within such 2 week period or other agreed period. No fee will be charged during the period Intermission.

Charges permissible for Missed Visits and other exceptional circumstances are set out in the Specification.

Bank Holiday arrangements

Care delivered on a standard bank holiday will attract 1.25 x hourly rate (pro rata)

Care delivered on Christmas Day, Boxing Day and New Year's Day will attract 2 x hourly rate (pro rata)

When the above fall on a weekend any additional bank holidays will be paid at 1.25 x hourly rate (pro rata)

For example: Christmas Day on Friday, visits attract 2 x hourly rate.

(Agreement DPS 2020)

Boxing Day on Saturday, visits attract 2 x hourly rate.

Bank Holiday on Monday (in lieu of Boxing Day), visits attract 1.25 x hourly rate.

SCHEDULE D – SPECIFICATION

SCHEDULE E – PERFORMANCE MANAGEMENT

The Commissioners will work with the Provider in the first year of the operation of the Agreement to set appropriate levels for the Key Performance Indicators which shall be incorporated in the Schedule and are set out in the Specification and duplicated below.

PART 1: KPIs and Outcomes

The Provider shall monitor its performance against each Target KPI and Outcomes and shall send the Commissioners a report detailing the Achieved KPIs and Outcomes in accordance with Schedule F (Agreement Management).

Set out below are the KPIs and Outcomes to be reported on:

SCHEDULE F – AGREEMENT MANAGEMENT

1. Key Personnel

- a. The Key Personnel to be appointed by the Provider as at the Agreement Commencement Date are:

| Role | Name |
|------|------|
| | |
| | |
| | |
| | |

- b. The Agreement Manager appointed by the Commissioners is:

| Role | Name |
|-------------------|------|
| Agreement Manager | |

2. Agreement Management Meetings

- a. The Commissioners' Administration Manager for the Agreement shall arrange the dates for the meetings organise a venue and circulate agendas, reports and prepare minutes of the meetings. The meetings will review operational and financial matters and will review performance levels as against the KPI's including any KPIs relating to social value. The meetings shall in addition to monitoring Agreement progress provide an opportunity to examine methods of service delivery with a view to driving through continuous improvement and increased efficiencies so as to ensure the delivery of sound quality services to the service users throughout the life of the Agreement. The meetings will also address remedies where performance is not in line with Agreement requirements.
- b. As soon as practicable following any meeting minutes will be circulated for approval to the Parties. Such approval should be given or withheld (as the case may be) within ten (10) Working Days. Where no response is received within such period, the Parties will be deemed to have agreed the content of the relevant minutes.
- c. The Provider will not charge the Council for any costs incurred in attending any meetings pursuant to this paragraph 2 (Meetings).

3. Management Reports

The Provider shall submit the following Management Reports to the Council:

| <i>Type</i> | <i>Contents</i> | <i>Frequency</i> | <i>Submission Date</i> |
|-------------------------------|---|------------------|---|
| Performance management report | The Provider's performance against the Target quarterly KPIs for the relevant | Quarterly | Not later than 10 Working Days after the end of |

| | measurement period | | the relevant quarter |
|--------------------------------|---|----------|--|
| Annual Report | The Provider's performance against the annual KPIs for the year. | Annually | Not later than 30 Working Days after the end of the relevant period |
| Outcomes / Social Value report | A report outlining the achievements against the Outcomes / Social Value Requirements. | Annually | Not later than 30 Working Days after the end of the relevant Quarter |

4. Minimum Dataset

- a. The Commissioners will agree with the Provider the form and content of reports and of the minimum Dataset
- b. The Provider shall provide all or part of the Minimum Dataset to the Council upon request.

SCHEDULE G – NOT USED

SCHEDULE H – STAFF TRANSFER AND PENSIONS

Part 1 TUPE and Pensions

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to this Schedule:

| | |
|--------------------------------|--|
| Acquired Rights Directive | Means Directive 77/187/EEC as amended and updated. |
| Data Protection Legislation | means the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 the General Data Protection Regulation (EU) 2016/679 (“GDPR”), Data Protection Act 2018 and any national legislation implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, any codes of practice or guidance issued by the Information Commissioner’s Office, from time to time; and any replacement legislation coming into effect from time to time; |
| Effective Date | means the date on which the Services (or any part of the Services), transfer from a Former Provider to the Provider or Sub-contractor and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Provider or Sub-contractor. |
| Employed In Connection With | means employed by a Former Provider(s) (or its Sub-contractor(s) if relevant) solely or mainly in the management or delivery of the provision of the Services; |
| Employee Liability Information | means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE: <ul style="list-style-type: none"> (a) the identity and age of the employee; (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Former Provider arising out of the employee's employment with the transferor; and |

| | |
|--|---|
| | (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE. |
| Employment Liabilities | means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, Agreement, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| Employment Regulations | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI2006/246) as amended or replace or any other regulations implementing the Acquired Rights Directive |
| Former Provider(s) | Provider(s) supplying services to one or more of the Commissioners before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such Provider (or any sub-contractor of any such sub-contractor); |
| Former Providers' Final Staff List | means the list(s) of all the former Providers' and Sub-contractors' personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date; |
| Former Providers' Provisional Staff List | means the list(s) prepared and updated by the Former Provider(s) of all the Former Providers' and Sub-contractors' personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Commissioners; |
| Relevant Transfer | means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of this Agreement; |
| Relevant Transfer Date | means the Service Commencement Date |
| Replacement Services | means any services that are fundamentally the same as any of the services which one or more of the Commissioners receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Provider; |
| Service Transfer Date | means the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to a Commissioner or any |

| | |
|--|---|
| | Replacement Provider; |
| Staffing Information | means in relation to all persons detailed on Former Providers' Provisional Staff Lists, in an anonymised format, such information as the Commissioners may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, Agreementors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services; |
| Sub-contract | means any sub-contract entered into by a Former Provider or by any Sub-contractor for the purpose of the performance of any obligation on the part of the Provider under this Agreement; |
| Sub-contractor | means the Agreementors or Providers engaged by the Provider (or a sub-contractor of the Provider) to provide goods, services or works to, for or on behalf of the Former Provider for the purposes of providing the Services to the Commissioners or a Commissioner; |
| Subsequent Transfer | means, following the commencement of this Agreement, circumstances whereby the identity of the Provider changes whether as a result of termination of this Agreement, or part thereof or otherwise) resulting in a transfer of the Services in whole or in part; |
| Transferring Former Provider Employees | Means employees of a Former Provider whose Agreements of employment transfer with effect from the Effective Date to the Provider by virtue of the application of TUPE. A list of Transferring Employees, as at the date of execution of the Agreement, is attached at Part 2 of this Schedule H |
| TUPE | Means the Transfer or Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended. |

1.2 All other words, terms and expressions used in this Schedule H (Staff Transfer and Pensions) shall have the meanings given to them in Schedule A (Definitions) of this Agreement.

1.3 Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the a Commissioner or Commissioners, Former Provider, Replacement Provider or Replacement Sub-contractor, as the case may be.

2. TRANSFER OF EMPLOYEES TO THE PROVIDER ON THE SERVICE TRANSFER DATE

2.1 The Commissioners and the Provider agree that the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Provider Employees.

2.2 As a result of the operation of the Employment Regulations, the Agreements of employment between the Former Provider(s) and the Transferring Former Providers' Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on, and from, the Relevant Transfer Date as if originally made

between the Provider and Sub-contractors and each such Transferring Former Provider Employee.

- 2.3 The Commissioners shall use reasonable endeavours to procure that the Former Providers shall provide the Employee Liability Information to the Provider and, where necessary, update such information, as required by TUPE. The Commissioners give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by any Former Provider Employer.
- 2.4 The Provider shall be liable for and indemnify and keep indemnified the Commissioners and any Former Provider(s) or Sub-contractors against any Employment Liabilities arising from or as a consequence of:
 - 2.4.1 any proposed changes to terms and conditions of employment or working conditions the Provider or Sub-contractor may consider making on or after the Effective Date;
 - 2.4.2 any of the employees informing the Commissioners they object to being employed by the Provider or Sub-contractor pursuant to Regulation 4 (7) of TUPE; and
 - 2.4.3 As a result of any proposed measures the Provider or Sub-contractor may consider taking on or after the Effective Date.
- 2.5 The Provider shall, and shall procure that any relevant Sub-contractor shall, be liable for and indemnify and keep indemnified the Commissioners against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Provider or any Sub-contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, termination costs, and otherwise from and including the Effective Date.
- 2.6 The Provider shall immediately on request by the Commissioners and or the Former Provider or Sub-contractors provide details of any measures that the Provider or any Sub-contractor of the Provider envisages it will take in relation to any Transferring Employees including any proposed changes to terms and conditions of employment. If there are no such measures, the Provider will give confirmation of that fact, and shall indemnify and keep indemnified the Commissioners and any Former Providers against all Employment Liabilities resulting from any failure by it to comply with this obligation.
- 2.7 The Provider shall ensure that any Sub-contract entered into pursuant to this Agreement contains equivalent provisions to those set out in this Schedule H (Staff Transfer and Pensions).
- 2.8 The indemnities in Clause 2 shall not apply to the extent that liability arises or is attributable to an act or omission of a Former Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from Former Providers' failures to comply with their obligations under the Employment Regulations.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 Where a Subsequent Transfer constitutes a Relevant Transfer then one or more of the Commissioners or a Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Provider shall and shall procure that any Sub-contractor shall:

- 3.2.1 on request from one or more of the Commissioners on a date not more than 12 months immediately preceding the expiry of this Agreement and/or any review date; and/or
- 3.2.2 on receiving notice of termination of this Agreement (on whatever grounds and in whatever circumstances) or otherwise; and/or
- 3.2.3 at such times as required by TUPE

provide promptly (and in any event within 21 days of a request) and at no cost to the Commissioners, in respect of any person engaged or employed by the Provider or any Sub-contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Commissioners or one or more of them (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Provider shall notify the Council, within fourteen (14) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Commissioners.

- 3.3 At least twenty eight (28) days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-contractor shall prepare and provide to the Commissioners and/or, at the direction of the Commissioners, the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-contractor's personnel named are Relevant Employees.
- 3.4 The Commissioners or one or more of them shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider of any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Provider warrants to the Commissioners and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List, the Employee Liability Information and the Staffing Information (the TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 3.6 The Provider shall and shall procure that any Sub-contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Commissioners' prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-contractor shall supply to the Commissioners full particulars of such proposed changes and the Commissioners shall be afforded reasonable time to consider them.
- 3.8 In the six (6) months prior to expiry or termination of this Agreement or from the date of service of a termination notice of this Agreement, the Provider shall not and shall procure that any Sub-contractor shall not materially increase or decrease the total number of staff listed on the Provider's Provisional Staff List, their remuneration, or make any other change in the terms and

conditions of those employees or transfer or remove from the performance of the services any supervisory or managerial personnel without the Commissioners' prior written consent (such consent not to be unreasonably withheld or delayed).

3.9 The Provider shall indemnify and keep indemnified in full the Commissioners and each and every Replacement Provider against all Employment Liabilities arising from or connected with:

3.9.1 any person who is or has been employed or engaged by the Provider or any Sub-contractor in connection with the provision of any of the Services; or

3.9.2 Any failure by the Provider and/or any Sub-contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

3.9.3 any failure by the Provider or any Sub-contractor to supply or delay in supplying the Staffing Information, the Provider's Provisional Staff List, the Provider's Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;

3.9.4 any failure on the part of the Provider or any Sub-contractor to provide the Relevant Employees with any benefit of any nature including appropriate pension provision or failure to make all due payments to the Relevant Employees or pension fund;

3.9.5 any failure or omission of any legal or statutory obligation on the Provider;

3.9.6 any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Agreement; and

3.9.7 any other obligations of or arising under this Agreement,

Whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

3.10 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

3.11 The parties agree that the Agreements (Rights of Third Parties) Act 1999 shall apply to paragraphs 3.2 to 3.10, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Commissioners in its own right under section 1(1) of the Agreements (Rights of Third Parties) Act 1999.

3.12 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. EMPLOYER OBLIGATIONS UNDER PENSIONS LEGISLATION

4.1 The Provider shall comply with the relevant requirements of the Pensions Act 2004, Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

SCHEDULE I – DATA PROCESSING ACTIVITIES

Categories of Data

Please tick all relevant boxes and add more detail if required:

Personal Data

- | | |
|--------------------------------------|--------------------------|
| Name | <input type="checkbox"/> |
| identification number | <input type="checkbox"/> |
| location data | <input type="checkbox"/> |
| online identifier (email/IP address) | <input type="checkbox"/> |

Other (please insert details):

Special Categories of Personal Data

- | | |
|---|--------------------------|
| race | <input type="checkbox"/> |
| ethnic origin | <input type="checkbox"/> |
| political opinions | <input type="checkbox"/> |
| religion | <input type="checkbox"/> |
| trade union membership | <input type="checkbox"/> |
| genetics | <input type="checkbox"/> |
| biometrics (where used for ID purposes) | <input type="checkbox"/> |
| health | <input type="checkbox"/> |
| sex life | <input type="checkbox"/> |
| sexual orientation | <input type="checkbox"/> |

Criminal Offence Data

- | | |
|-------------|--------------------------|
| allegations | <input type="checkbox"/> |
| proceedings | <input type="checkbox"/> |
| convictions | <input type="checkbox"/> |

Categories of Data Subjects

Please tick all relevant boxes:

- | | |
|---|--------------------------|
| Council service users/customers | <input type="checkbox"/> |
| Council service user/customer next of kin | <input type="checkbox"/> |
| Council employees | <input type="checkbox"/> |
| Council employees next of kin | <input type="checkbox"/> |

Other (please insert details):

Processing Operations

Please tick all relevant boxes:

- | | |
|---|--------------------------|
| Using data provided by the Council(s) | <input type="checkbox"/> |
| Collecting new data from Data Subjects | <input type="checkbox"/> |
| Transforming data by adding new data collected from service users/customers to data provided by the Council | <input type="checkbox"/> |
| Sharing data with anyone other than the Council | <input type="checkbox"/> |
| Erasure or destruction of personal data | <input type="checkbox"/> |

Other (please insert details):

Location of Processing Operations

Please tick one box only:

- UK
- EEA¹ (European Economic Area)
- Outside EEA (European Economic Area)

If outside the EEA please provide details:

Identity of sub-contractors

Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process this data without prior written Council approval.

Purposes

If you're using the data for a reason other than the purpose of delivering the Agreement, please amend this section accordingly and provide details here.

Duration

If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Agreement, please amend this section accordingly and detail how long these activities will go on for.

¹ Details of countries in the EEA are available at the following website: www.gov.uk/eu-eea

SCHEDULE H – DATA SHARING AGREEMENT TEMPLATE

This Agreement is made the day of 20

Between:

- (1) [Council], of [address] (the **Council**); and
- (2) [INSERT] a company registered in [INSERT] with company number [INSERT] whose registered office address is at [INSERT] (the **Partner**).

Background:

- (A) [Insert background information about the sharing arrangement.]
- (B) The parties have agreed to share Personal Data (as defined below) for the Agreed Purpose(s) on the terms set out in this Agreement.

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

| | |
|------------------------------------|---|
| Agreed Purpose(s) | the purpose(s) for which the parties are entitled to use the Shared Personal Data, as set out in Schedule 2; |
| Agreement | this data sharing agreement and its schedules; |
| Business Day | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| Commencement Date | the date of this Agreement; |
| Data Discloser | the party disclosing Shared Personal Data under this Agreement; |
| Data Recipient | the party receiving Shared Personal Data under this Agreement; |
| Data Protection Legislation | laws and regulations in any relevant jurisdiction that apply in relation to the Processing of Personal Data including (without limitation) the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any replacement or additional legislation coming into effect from time to time, together with any codes of practice or other guidance issued by a Regulatory Authority in any relevant jurisdiction; |
| Data Security Breach | a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data; |
| Deletion Procedure | the deletion procedure agreed by the parties and set out at Schedule 3 of this Agreement; |
| GDPR | the General Data Protection Regulation (EU) 2016/679; |
| Permitted Recipient | a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment |

of the Agreed Purpose(s) who has a legitimate need to receive and Process Personal Data for the Agreed Purpose(s);

| | |
|--------------------------------|---|
| Regulatory Authority | any competent data protection or privacy authority by which either party is regulated; |
| Shared Personal Data | the Personal Data to be shared between the parties under this Agreement, as set out in Schedule 1; |
| Subject Access Request | a request from a Data Subject to exercise his or her right of access to Personal Data under the Data Protection Legislation; and |
| Third Country/Countries | all countries outside of the scope of the data protection laws of the European Economic Area (EEA), excluding countries that have been approved by the European Commission from time to time as having adequate data protection laws. |

The terms **Data Controller**, **Data Subject**, **Process** and **Personal Data** shall each have the meaning given in the Data Protection Legislation.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended or re-enacted from time to time; and
 - 1.2.2 the singular includes the plural.

2 Purpose

- 2.1 This Agreement sets out the framework for the sharing of Personal Data between the parties as Data Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other in respect of the Shared Personal Data.
- 2.2 Where this Agreement conflicts with any other agreement between the parties, this Agreement shall take precedence.

3 Compliance with Data Protection Legislation

- 3.1 Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.

4 Shared Personal Data

- 4.1 Each party shall ensure that:
- 4.1.1 the Shared Personal Data is accurate and is not irrelevant or excessive with regard to the Agreed Purpose(s).
 - 4.1.2 it Processes the Shared Personal Data fairly and lawfully during the term of this Agreement. The legal basis which permits the sharing of the Shared Personal Data for the Agreed Purpose(s) is set out in Schedule 2.

4.2 [Drafting note: One of the options at 4.2 must be included in this Agreement]

[Without prejudice to clauses 5.4 and 5.5, each party shall inform the Data Subjects, on or before the date when that party commences Processing of their Personal Data, of the purposes for which it will Process their Personal Data and to provide all the information that it is obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be Processed by that party.]

OR:

[Without prejudice to clause 5.4 and 5.5, the parties have agreed that [the Council/the Partner] shall be responsible for delivering a privacy notice to Data Subjects to provide all information that the parties are obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be Processed by the parties. The form of the privacy notice and the timing and method of delivery of the privacy notice will be agreed in writing by the parties and may be incorporated within the information to be provided at Schedule 5 and 6.

- 4.3 The parties agree that they shall record all Shared Personal Data using compatible databases and data transfer methods as may be agreed in writing between the parties.

5 Data Subjects' rights

- 5.1 Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including Subject Access Requests, requests for deletion, restriction, rectification, portability, objections and rights in relation to automated decision making. Records kept should include, but shall not necessarily be limited to, the following:

- 5.1.1 copies of the relevant request received;
- 5.1.2 details of the data accessed and shared with the Data Subject, if any; and
- 5.1.3 notes of any meetings, correspondence or phone calls relating to the request.

- 5.2 The Council shall be responsible for responding to Subject Access Requests in relation to Shared Personal Data. The Partner shall provide all reasonable assistance to enable the Council to comply with Subject Access Requests and to respond to queries or complaints from Data Subjects. The Partner shall supply the Council such Shared Personal Data as is relevant to and required by any Subject Access Requests, within ten (10) Business Days of receiving such a request from the Council, unless agreed with the Council otherwise in writing.

- 5.3 If the Partner receives a Subject Access Request directly from a Data Subject, the Partner shall notify the Council promptly and in any event on the next Business Day following receipt of the request.

- 5.4 Each party shall bear its own costs of complying with this clause 5 unless agreed otherwise in writing between the Council and the Partner.

- 5.5 In the event that the Partner collects Personal Data directly from a Data Subject, they shall provide the Data Subject with the information set out at Schedule 5, save where the Data Subject already has that information.

- 5.6 In the event that the one party obtains Personal Data from the other party, the party receiving the Personal Data shall provide the Data Subject with the information set out at Schedule 6, save where:

- 5.6.1 the Data Subject already has the information;
- 5.6.2 the provision of such information proves impossible or would involve a disproportionate effort; and/or
- 5.6.3 the Personal Data must remain confidential subject to an obligation of professional secrecy regulated by the European Union or under English law, including a statutory obligation of secrecy.

6 Data retention and deletion

- 6.1 Neither party shall retain or Process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose(s).

- 6.2 Notwithstanding clause 6.1, each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.

- 6.3 Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:

- 6.3.1 on termination or expiry of this Agreement; or

6.3.2 once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose(s).

6.4 Following the deletion of the Shared Personal Data in accordance with clause 6.3, each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.

7 Transfers of Shared Personal Data to Third Countries

7.1 Neither party shall disclose or transfer the Shared Personal Data to any person located in a Third Country without the prior written consent of the other party.

8 Security of Shared Personal Data

8.1 Having regard to the state of technological development and the cost of implementing such measures, each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures as set out in Schedule 4 in order to:

8.1.1 prevent:

(a) unauthorised or unlawful Processing of the Shared Personal Data; and

(b) the accidental loss or destruction of, or damage to, the Shared Personal Data; and

8.1.2 ensure a level of security appropriate to:

(a) the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage; and

(b) the nature of the Shared Personal Data to be protected.

8.2 Each party shall ensure that its staff members are appropriately trained to handle and Process the Shared Personal Data in accordance with the technical and organisational security measures set out in Schedule 4 and with the Data Protection Legislation.

8.3 The level, content and regularity of training referred to in clause 8.2 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and Processing of the Shared Personal Data and to the nature of the Shared Personal Data handled by the relevant staff members.

8.4 Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.

9 Data Security Breaches and reporting procedures

9.1 Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party as soon as possible and in any event within 24 hours after becoming aware of the breach. Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.

10 Resolution of disputes with Data Subjects or Regulatory Authorities

10.1 In the event of a dispute or claim brought by a Data Subject or a relevant Regulatory Authority concerning the Processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

10.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or Regulatory Authority and to consider participating in any other dispute resolution proceedings developed for data protection disputes.

10.3 Each party shall abide by a decision of a competent court of the UK or of the UK Regulatory Authority which is final and against which no further appeal is possible.

11 Warranties and indemnity

- 11.1 The Partner warrants and undertakes that it will:
- 11.1.1 Process the Shared Personal Data in compliance with all applicable Data Protection Legislation;
 - 11.1.2 make a copy of this Agreement available upon request to the Data Subjects who are third party beneficiaries;
 - 11.1.3 respond promptly and as far as reasonably possible to enquiries from any relevant Regulatory Authority in relation to the Shared Personal Data;
 - 11.1.4 maintain registration with all relevant Regulatory Authorities to enable the Partner to Process all Shared Personal Data for the Agreed Purpose(s);
 - 11.1.5 take all appropriate steps to ensure compliance with the security measures set out at clause 8 above; and
 - 11.1.6 not disclose or transfer Shared Personal Data to a Third Country.
- 11.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 11.3 The Partner undertakes to indemnify the Council and hold the Council harmless from any costs, charge, damages, expense or loss incurred or suffered by the Council as a result of the breach by the Partner of any of the provisions of this Agreement.
- 11.4 For the avoidance of doubt, the indemnity at clause 11.3 applies without limitation to any cost, charge, damages, expense or loss suffered by the Council in relation to investigation, audit and enforcement action undertaken by the relevant Regulatory Authority in relation to the Partner's breach of this Agreement.

12 Limitation of liability

- 12.1 Neither party excludes or limits liability to the other party for:
- 12.1.1 fraud or fraudulent misrepresentation;
 - 12.1.2 death or personal injury caused by negligence; or
 - 12.1.3 any matter for which it would be unlawful for the parties to exclude or limit liability.
- 12.2 Each Party accepts responsibility for any costs, charge, damages, expense or loss which arises following its own breach of this Agreement.

13 Allocation of cost

- 13.1 Except as expressly set out in this Agreement, each party shall perform its obligations under this Agreement at its own cost.

14 Termination

- 14.1 The Council shall be entitled to terminate this Agreement in the event that the Partner commits a material breach of any of the terms of this Agreement, which breach is irremediable or, if remediable, has not been remedied within thirty (30) days of receipt by the Partner of a notice in writing from the Council requiring the Partner to remedy it; or
- 14.2 The Partner's obligations under this Agreement shall survive the termination or expiry of any underlying agreement to which this Agreement relates.

15 Third party rights

- 15.1 Other than as expressly set out in this Agreement, a person who is not a party to this Agreement is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms, the parties may rescind or vary this Agreement without the consent of that person.

16 Rights and remedies

(Agreement DPS 2020)

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

17 Notice

17.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party by hand or by a recorded delivery Service.

18 Variation

18.1 No variation of this Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of each of the parties.

19 Waiver

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

20 Changes to Data Protection Legislation

20.1 If the Data Protection Legislation applicable to this Agreement changes in a way that this Agreement is no longer adequate for the purposes of governing lawful data sharing, the Partner agrees to make any amendments required to enable this Agreement to be adequate for those purposes.

21 Entire agreement

21.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and the terms of this Agreement shall supersede any previous agreements.

22 Governing law and jurisdiction

22.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.

In witness whereof this Agreement has been signed by the parties or their duly authorised representatives on the date written at the beginning of this Agreement.

Signed by)
for and on behalf of [Council])
)

Signed by)
for and on behalf of [Partner])
)

Schedule 1 **[OBLIGATORY]**

Shared Personal Data

Please:

- put a tick against those categories of personal data which apply to the data being Processed by the Partner; and
- add further categories of personal data under the column 'Other', if applicable

| Type of personal data being Processed under this Contract | Please tick where applicable |
|---|------------------------------|
| Name | |
| Contact details | |
| Bank details | |
| Identification number | |
| Location data | |
| Online identifier (email / IP address) | |
| Other (Please insert details) | |

1.2 Special Category Data²

Please tick any of the boxes which apply to any of the personal data being Processed by the Partner:

| Type of Special Category Data | Please tick if applicable: |
|--|----------------------------|
| Race (data which identifies the race of the data subject, including the data subject's image) | |

² Unlike 'personal data', Special Category Data is an exhaustive list of types of data, as listed in full here. For more information see: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/special-category-data/>

| | |
|--|--|
| Ethnic origin (data which identifies the ethnic background of the individual, including the data subject's image) | |
| Political opinions (data which identifies the political opinion of the data subject) | |
| Religion (data which lists the religious beliefs of the data subject) | |
| Trade Union Membership (data which lists the TU membership of the data subject) | |
| Genetics (data relating to the genetics of the data subject) | |
| Biometrics (Biometric data, where used for ID purposes) | |
| Health (records relating to a data subject's physical or mental health) | |
| Sexuality and/or sex life | |

| Criminal Offence Data | Please tick if applicable: |
|--|-----------------------------------|
| Data relating to allegations against the data subject | |
| Data relating to proceedings against/involving the data subject | |
| Data relating to convictions against the data subject | |

1.3 Data Subjects

| Categories of Data Subjects | Please tick if applicable: |
|------------------------------------|-----------------------------------|
| Council service-users | |
| Council service-users' next of kin | |
| Council employees | |
| Council employees' next of kin | |

| | |
|--------------------------------------|--|
| Other (Please insert details) | |
|--------------------------------------|--|

1.4 What data Processing takes place?

Please tick all boxes relevant to the Partner's Processing of Council Data:

| Processing Operations | Please tick if applicable: |
|---|----------------------------|
| Using data provided by the Councils | |
| Collecting new data from Data Subjects | |
| Transforming data by adding new data collected from service users to data provided by the council | |
| Sharing data with anyone other than the Councils | |
| Erasure or destruction of personal data | |
| Other (Please insert details) | |

1.5 Where will the Partner's Processing of the Council Data take place?:

| Location of Processing Operations | Please tick if applicable: |
|---|----------------------------|
| UK | |
| European Economic Area (including UK) and/or those countries which have been approved by the European Commission from time to time as having adequate protections for individuals' rights and freedoms for their personal data ³ | |
| Outside EEA (European Economic Area) ⁴ | |

1.6 The Partner's Sub-Contractors:

Please complete table:

| | |
|--|---|
| Identity of Partner's Sub-contractors, if applicable | <i>[Insert details of all permitted sub-contractors, including full legal name, registered address and location where Processing of Personal Data will occur and a description of the Processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to Process any personal or special category data without prior written approval of the Councils.]</i> |
| Purposes for the Processing of the data: | |
| Duration of the Processing of Council Data by Sub-Contractor: | |

³ The EEA comprises: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the UK, Norway, Lichtenstein and Iceland.

Those countries and territories given a finding of adequacy as of July 2018 are as follows: Andorra, Argentina, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay.

⁴ If the Service Provider ticks this box, this Agreement must be reviewed by IG and/or Legal.

Schedule 2 **[OBLIGATORY]**

Why the Parties use the Shared Personal Data, and the reason (“lawful basis”) that they do so

As a data controller, the Partner is legally required to explain:

- ✓ why it will use the data which is being shared under the terms of this agreement,
- ✓ their reason, or ‘lawful basis’, for doing so under the GDPR.

This information is set out in this Schedule 2. Please complete **Section 1** and then **Section 2 OR 3**, (as relevant) and **Section 4**.

Section 1:

Please tick the relevant box which applies to the Partner’s sharing and Processing of data shared under this Agreement.

The Council and the Partner shall share and Process the Shared Personal Data:

| | | | |
|--|-----|--|--|
| | (A) | For the same purpose(s) which the parties determine jointly | If you tick this box please complete Section 2 and 4 below only |
| | (B) | For different purpose(s) which the parties determine independently | If you ticked this box please complete Section 3 and 4 below only |

Section 2: If you ticked (A) at Section 1 above, please complete this Section 2. You need not complete Section 3:

Please list the shared purposes for which the data is used by the Council and Partner below (“the Agreed Purpose(s)”) **[These should be purposes agreed with the Council]**

[List purposes, for example, ‘the provision of residential care for those suffering from dementia’]

Section 3: If you ticked (B) at Section 1 above, please complete this Section 3. You need not complete Section 2:

Please list the purposes for which the data is used by the Partner (“the Agreed Purpose(s)”) **[These should be purposes which are different to the Council’s purposes for using the data]**

Section 4: [You must complete this section]

[Drafting note: no legal basis is ‘better’ than any other, however ‘necessary for performance of a task in the public interest’ is most likely to be relevant to the public sector, and if this is not applicable then ‘compliance with a legal obligation’. ‘Vital interests’ will only apply in limited circumstances and avoid reliance on consent. The ICO states that “There is no absolute ban on public authorities using consent or legitimate interests as their lawful basis, but the GDPR does restrict public authorities’ use of these two bases.”]

| Legal basis: | Tick here if this legal basis is relied upon: | Details: |
|---|---|---|
| The Data Subject has consented to the Processing | | [DRAFTING NOTE: This lawful basis is problematic and best avoided if another can be used] |
| The Processing is necessary for performance of a contract with the individual or to take steps at the request of the Data Subject prior to entering into a contract | | |
| The Processing is necessary for compliance with a legal obligation | | [MOST LIKELY TO BE RELEVANT] |
| The Processing is necessary to protect the vital interests of the Data Subject | | [DRAFTING NOTE: This is only relevant in a life or death type situation – e.g. where a homeless person looked extremely unwell it would be in their vital interests for their accommodation provider to explain to a paramedic that the person had diabetes] |
| The Processing is necessary for performance of a task carried out in the public interest | | [DRAFTING NOTE: Most likely to be relevant to BHCC] |

| Legal basis: | Tick here if this legal basis is relied upon: | Details: |
|--|---|---|
| <p>The Processing is necessary for the purposes of the legitimate interests of the Council or the Partner and those interests are not overridden by the privacy rights and interests of the individual</p> | | <p>[DRAFTING NOTE: because the Council is a public authority, this legal basis can only be relied upon when the Council is carrying out non-public functions.</p> <p>Please note that if the legitimate interests condition is relied upon it is necessary to document the legitimate interests and to consider whether these interests are outweighed by the privacy rights and interests of affected individuals. Please include details of the relevant legitimate interests, any competing privacy interests of individuals and the reasons why you consider that the identified legitimate interests outweigh the disadvantage to the affected individuals.]</p> |

Where special category data is being processed, please specify in relation to that data:

1. Lawful basis from the list above.....
2. Please tick an additional basis from the table below:

| Additional basis: | Tick here if this legal basis is relied upon: | |
|---|---|---|
| Substantial Public Interest | | [DRAFTING NOTE: This is most likely to be relevant to a public authority] |
| Employment, social security and social protection: legal rights and obligations | | |
| Vital interests of data subject or another living person | | [DRAFTING NOTE: This applies only in emergency life or death situations where the data subject is e.g. unconscious and unable to consent] |
| Not for profit bodies | | |

| | | |
|--|--|---|
| | | |
| Manifestly made public by the Data Subject | | |
| Establishment, exercise or defence of legal claims | | |
| Archiving in the public interest, research or statistics | | |
| Provision of health or social care | | |
| Public health | | |
| Explicit Consent | | [DRAFTING NOTE: Public authorities should avoid relying on consent wherever possible] |

If criminal data is being processed, please contact Information Governance or the Legal team as such processing is very restricted and ICO guidance is not yet available.

Schedule 3

Deletion Procedure

[DRAFTING NOTE: This should be completed in all contracts but is obligatory where there is some complexity to the data sharing arrangements: for example, Special Category Data is being shared, or significant quantity of Personal Data is being shared, or different parties have the right/ability to delete data]

1. At the Council's discretion the Partner will delete (in accordance with the Deletion Procedure) or safely return to the Council any Shared Personal Data or other Personal Data held by the Partner in relation to this Agreement.
2. The Deletion Procedure should as a minimum leave a stub or record which lists:
 - An outline of what data has been deleted;
 - How that data was deleted (ensuring that hard copies of Shared Personal Data are confidentially destroyed e.g. by shredding / placing in confidential waste, and that electronic copies are removed save for the details in this stub or record of their existence);
 - Who deleted the Personal Data; and
 - When such Personal Data was deleted.
3. Where any data is deleted by the Partner the record outlined at Schedule 3(2) above must be provided to the Council within five (5) days.

Schedule 4

Security Measures

[This should be completed in all contracts as best practice but is obligatory where there is some complexity to the data sharing arrangements, for example: Special Category Data is being shared; significant quantity of Personal Data is being shared; the Personal Data is shared with a number of parties; the data is held in a way which could be vulnerable, for example on devices]

[Insert details of security measures required to be put in place to protect the shared Personal Data. This Schedule should detail the security measures that each party will take to ensure that data is kept securely while in their control and when transmitted to the other party. The parties' information security teams can assist with populating this Schedule.]

Schedule 5

Information to be provided to the Data Subject, where Personal Data have been collected from the Data Subject

[OBLIGATORY]

Where Personal Data are collected from the Data Subject by the Partner, the Partner shall, at the time when Personal Data are obtained (and provided that the Data Subject does not already have such information), provide the Data Subject with the following information:

- (a) The identity and contact details of themselves as data controller, and where applicable details of a representative;
- (b) The contact details of the data protection officer, if applicable;
- (c) The purposes of the Processing for which the Personal Data are intended as well as the legal basis for the Processing; and
- (d) The recipients or categories of recipients of the Personal Data, if any;
- (e) The period for which the Personal Data will be stored or, if that is not possible, the criteria used to determine that period;
- (f) The existence of the Data Subject's right to request access to and rectification or erasure of Personal Data or restriction of Processing concerning the Data Subject or to object to data Processing as well as the right to data portability;
- (g) Where there is no statutory basis for the Processing of the Shared Personal Data, and where the Processing is based on the Data Subject's consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of Processing based on consent before its withdrawal;
- (h) The right to lodge a complaint with a Regulatory Authority;
- (i) Whether the provision of the Data Subject's Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Data Subject is obliged to provide the Personal Data and of the possible consequences of failure to provide such data;
- (j) Whether the Partner uses the Shared Personal Data for automated decision-making, including profiling.

Schedule 6

Information to be provided to the Data Subject, where Personal Data have not been obtained from the Data Subject

[OBLIGATORY]

1. Where Personal Data have not been obtained directly from the Data Subject by the Partner, the Partner shall provide the Data Subject with the following information:
 - (a) The identity and contact details of themselves as data controller, and where applicable, the controller's representative;
 - (b) The contact details of the data protection officer, if applicable;
 - (c) The purposes of the Processing for which the Personal Data are intended as well as the legal basis for the Processing;
 - (d) The categories of Personal Data concerned;
 - (e) The period for which the Personal Data will be stored or, if that is not possible, the criteria used to determine that period;
 - (f) The existence of the Data Subject's right to request access to and rectification or erasure of Personal Data or restriction of Processing concerning the Data Subject or to object to data Processing as well as the right to data portability;
 - (g) Where there is no statutory basis for the Processing of the Shared Personal Data, and where the Processing is based on the Data Subject's consent, the existence of the right to withdraw consent at any time, without affecting the lawfulness of Processing based on consent before its withdrawal;
 - (h) The right to lodge a complaint with a Regulatory Authority
 - (i) From which source the Personal Data originate, and if applicable, whether it came from publicly accessible sources;
 - (j) The existence of automated decision-making, including profiling.

2. This information will be provided by the Partner:
 - (a) Within one month of obtaining the Personal Data; or
 - (b) If the Personal Data is to be used for communication with the Data Subject, at the latest of the time of the first communication to that Data Subject; or
 - (c) If a disclosure to a third party is envisaged, at the latest when the Personal Data are first disclosed.

3. Where a party intends to further Process the Personal Data for a purpose other than that for which the Personal Data were obtained, that party shall provide the Data Subject prior to that further Processing with information on that purpose.